

***FORMS  
FOR USE  
BEFORE THE  
REGISTER OF WILLS  
AND THE  
ORPHANS' COURT DIVISION  
IN PHILADELPHIA***



## **FOREWORD**

*It is with great pleasure that the Probate and Trust Law Section of the Philadelphia Bar Association presents this 2002 edition of "Forms for Use Before the Register of Wills and Orphans' Court Division in Philadelphia," informally referred to as "The Green Book." The purpose of this version, as was the purpose of its predecessors, is to provide those who practice in the Philadelphia Orphans' Court Division with a tool - a good forms book.*

*This book would not have been possible without the diligent efforts and the dedication of a great many people to whom heartfelt thanks is owed: the hardworking members of the Section's "Green Book" Committee, who wrote the materials presented: Mary Jane Barrett, Susan G. Collins, Kim D. Fetrow, Julia B. Fisher, Kevin P. Gilboy, Leanna J. Harmon, Martha R. Hurt, Steven R. Klammer, George Mathew, John F. Raimondi, Margaret E. W. Sager, Elizabeth D. Shevlin, Nina Booz Stryker and Margaret G. Thompson; the tireless editorial team: George S. Forde, Jr., Eugene H. Gillin and Ralph N. Teeters; and, the patient Chairs of the Section who supported our efforts throughout: Linda A. Fisher, Benjamin R. Neilson, Margaret E. W. Sager, Edmund L. Harvey, Jr. and Norman E. Donoghue, II.*

*The greatest thanks and appreciation are also extended to our sponsor, Wachovia Wealth Management.*

*It should be emphasized that the forms included in this volume represent the Committee's view of suggested forms for practice in accordance with the current Court rules and statutes which govern our practice. As each case is uniquely different and the rules and statutes are in constant flux, each practitioner should consult the latest rules and statutes and use the materials contained in this volume merely as a guide in shaping pleadings to reflect his or her own case.*

*Daphne Goldman, Chair  
The "Green Book" Committee  
Probate and Trust Law Section  
Philadelphia Bar Association*



## ***ACKNOWLEDGMENT***

*The Philadelphia Orphans' Court is privileged to be the ultimate beneficiary of the Philadelphia Bar Association Probate and Trust Law Section's 21<sup>st</sup> century revision of "Forms for Use Before the Register of Wills and the Orphans' Court Division in Philadelphia" – the Green Book.*

*The quality of practice in the Orphans' Court will be greatly enhanced by the updates to this well-respected form book, which provides novice and experienced Orphans' Court practitioners with suggested forms which follow the relevant statutes and rules of court in common situations. Lawyers who utilize well prepared samples insure pleadings with fewer mistakes, and the Court is thus enabled to adjudicate matters with greater ease and efficiency.*

*In addition, this latest edition incorporates the advances of technology by providing links to computerized forms which can be downloaded from the Court's website, contributing to the quality of the work-product and ultimate convenience to the practitioner.*

*The many volunteers of the Probate and Trust Law Section are to be commended for many hours of work which resulted in this superb addition to the Orphans' Court practitioner's library, and the generosity of Wachovia Wealth Management in underwriting its publication is gratefully acknowledged.*

*Joseph D. O'Keefe  
Administrative Judge  
Orphans' Court Division*



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## CHAPTER 1

# GENERAL FORM OF PETITION

## 1.1

### GENERAL TYPES OF PETITIONS

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There are two petition procedures to begin proceedings in Orphans' Court Division (the "Orphans' Court"). Both require filings with the Clerk of the Orphans' Court (the "Clerk"). One must decide whether a Rule 1.2.A petition, as so designated in the Philadelphia Orphans' Court Rules (the "Rules"), or a petition for citation under Rule 3.5.B, is appropriate.

A Rule 1.2.A petition is used when a party wishes court approval of a proposed act. Typically, this would be approval to invade principal held in a restricted account, leave to take discovery, the appointment of a guardian for a minor, or a request for the fixing of additional security in order to sell real estate.

A Rule 1.2.A petition, when filed, is held by the Clerk for the requisite twenty days under the Rules. Counsel is required to give notice to and serve a copy of the petition on all interested parties at the time of filing. The notice must state that an answer may be filed with the Clerk within twenty days, and that failure to file an answer will result in the matter going before the court as uncontested. See 3.2. A copy of the notice letter must be attached to the petition as an exhibit. No notice is required of a Rule 1.2.A petition when the consents of all interested parties are attached to the petition.

Counsel should indicate on the cover sheet which is affixed to the petition whether notice is required and whether the joinders of all parties are attached. If no notice is required or all joinders are attached, the petition would then be sent by the Clerk directly to the Motion Judge.

If a party wishes to compel another party to perform an act, then a petition for citation under Rule 3.5.B must be filed, in which the individual is cited to show cause why he should not be compelled to perform the designated act. A citation is a writ issued out of a court of competent jurisdiction, commanding a person or entity named therein to appear on a day named and do something therein mentioned, or show cause why the person or entity should not. The purpose of a citation is to obtain *in personam* jurisdiction over a person or entity.

If a citation is required, counsel should prepare a petition requesting the court to issue a citation. The petition would fall under Rule 1.2.A.(1) as a petition for which no notice is required. Once the petition has been approved by the court, the Clerk will prepare the

## 1.1 GENERAL TYPES OF PETITIONS

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citation to be served by counsel upon all interested parties along with a copy of the petition. The preliminary decree awarding the citation states that the citation is “Returnable *sec. leg.*” (meaning “returnable according to law”). The Clerk typically fixes a return date of forty-five days from the date the judge signs the preliminary decree. Pursuant to Section 765 of the Probate, Estates and Fiduciaries Code (the “PEF Code”), when no time is specifically fixed by the Orphans’ Court, the citation is effective for six months from the date the judge awards the citation. Under the Orphans’ Court Rules, any party cited must be given at least twenty days notice in which to file an answer with the Clerk. Service of the citation and petition may be made by an adult person, by the Sheriff of the county wherein the citation issued, or by deputized service by the Sheriff of any county in which service can be had. The citation can also be served by registered mail, by publication, or written acceptance of service by or on behalf of the person to whom the citation is directed. After service of the citation and petition has been made, the original citation with proof of service must be filed with the Clerk. If the party to whom a citation has been awarded fails or is unable to serve the citation and petition within the time provided, an *alias citation* may be requested. In the event the party to whom an *alias citation* has been awarded fails or is unable to serve the citation and petition within the time provided, a *pluries citation* may be requested. Any subsequent citations requested are also called *pluries citations*.

## 1.2 GENERAL REQUIREMENTS OF A PETITION

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Generally, a petition should contain the following:

1. A **preliminary decree page** attached to the front of the petition where indicated.
2. A **decree page** attached to the front of the petition (except for petitions filed with the Register of Wills).
3. The **petition** itself which should contain:
  - a. A caption, which should include a heading stating the purpose of the petition (see 1.3);
  - b. A statement of the facts in numbered paragraphs conforming to the requirements of the applicable court rule;
  - c. A request for the relief desired; and
  - d. The signature of the petitioner with his name typed under it.
4. An **affidavit** or **verification** (see 1.4).
5. Any required **exhibits, consents** or **approvals**. With respect to petitions requiring notice, counsel's certification listing the persons notified, stating the date and manner of service, together with a copy of the notice given, should be attached to the petition as a separate exhibit.
6. A **cover sheet** in the form required by the Orphans' Court. The form of cover sheet may be obtained from the Court's website <http://courts.phila.gov/forms.html> [copy on following page].

The petition should be prepared on 8-1/2" x 11" paper and should be typewritten (double spaced) or printed. See Rule 1.2.A, Sup. Ct. O.C. Rule 3.4 and Rule 3.4.A.

Court of Common Pleas of Philadelphia County  
Orphans' Court Division

**Cover Sheet**

FOR COURT USE ONLY
ASSIGNED TO JUDGE
CONTROL NO.
<i>Responding parties must include this number on all filings.</i>

NAME OF ESTATE	ORPHANS' COURT NUMBER
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TYPE OF ESTATE				
<input type="checkbox"/> Decedent's Estate	<input type="checkbox"/> Trust Inter Vivos	<input type="checkbox"/> Testamentary Trust	<input type="checkbox"/> Incapacitated Person	<input type="checkbox"/> Minor
<input type="checkbox"/> Principal ( <i>power of attorney</i> )	<input type="checkbox"/> Non-Profit Corporation	<input type="checkbox"/> Other ( <i>specify</i> )		

FILING PARTY'S RELATIONSHIP TO ESTATE
---------------------------------------

PLEADING OR DOCUMENT FILED
----------------------------

NAME OF FILING PARTY (NOT COUNSEL FOR THE PARTY)	ADDRESS

<b>ATTORNEYS MUST CHECK ONE BOX</b>	
TO THE CLERK OF ORPHANS' COURT:	
<input type="checkbox"/> Kindly enter my appearance on behalf of	<input type="checkbox"/> I have entered my appearance on behalf of
_____	

NAME OF FILING ATTORNEY OR PARTY	ADDRESS
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PHONE NUMBER	FAX NUMBER	ADDRESS

SUPREME COURT IDENTIFICATION NO.	E-MAIL ADDRESS
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SIGNATURE OF FILING ATTORNEY OR PARTY	DATE
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OTHER PARTIES ( <i>Name, address, and telephone number of unrepresented parties or all counsel already of record. If needed, use separate sheet.</i> )

**A STAMPED, SELF-ADDRESSED ENVELOPE MUST BE ATTACHED FOR EACH ATTORNEY OF RECORD AND UNREPRESENTED PARTIES (FOR PRELIMINARY DECREES ATTACH AN ENVELOPE FOR THE FILING PARTY ONLY).**

Is notice required? <input type="checkbox"/> No <input type="checkbox"/> Yes. Copy of notice attached to pleading. Date of Notice: _____ <input type="checkbox"/> Yes. All joinders are attached.	If Citation is requested: 1. Was Citation against Respondent previously issued? <input type="checkbox"/> Yes <input type="checkbox"/> No 2. If yes, date of service:	Has another petition been decided in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No Is another petition pending? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, identify the Judge:
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<b>FOR COURT USE ONLY - FIRST FILINGS ONLY (If Applicable)</b>			
DATE OF BIRTH	DATE OF DEATH	REGISTER OF WILLS NUMBER	DATE OF DEED OF TRUST

*The Filing Party shall complete the information at the bottom of the Cover Sheet filed with the Clerk, and not the service copies. The information will only be used by the Clerk. The Clerk shall not release this information to the general public.*



### 1.3 GENERAL FORM OF CAPTION

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#### 1.3.1

With respect to petitions filed in the Orphans' Court, the caption appearing on the decree page and on any consents or approvals should read as follows:

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

No. \_\_\_\_\_ of 20\_\_\_\_

Estate of JOSEPH B. DUNN, Deceased

#### **DECREE**

#### 1.3.2

The caption appearing on petitions, answers and replies filed in the Orphans' Court should read as follows:

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

No. \_\_\_\_\_ of 20\_\_\_\_

Estate of JOSEPH B. DUNN, Deceased

#### **PETITION FOR [title of petition]**

To the Honorable, the Judges of said Court:

**1.3**  
**GENERAL FORM OF CAPTION**

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**1.3.3**

The caption appearing on petitions filed with the Register of Wills should read as follows:

REGISTER OF WILLS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA

No. \_\_\_\_\_ of 20\_\_\_\_

Estate of JOSEPH B. DUNN, Deceased

**PETITION FOR [title of petition]**

To the Honorable \_\_\_\_\_, Register of Wills of Philadelphia County:

**1.3.4**

With respect to petitions to settle or compromise actions involving minors, incapacitated persons, or wrongful death claims which are filed in the Trial Division, the caption appearing on the order page and on any consents or approvals should read as follows:

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA  
FIRST JUDICIAL DISTRICT

JOHN DUNN, by his Guardian,	:	CIVIL TRIAL DIVISION
HENRY DOE	:	
	:	
v.	:	APRIL TERM, 20____
	:	
THOMAS WHITE	:	NO. 3050

**ORDER**

**1.3**  
**GENERAL FORM OF CAPTION**

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**1.3.5**

The caption appearing on petitions, answers and replies filed in the Trial Division should read as follows:

IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA  
FIRST JUDICIAL DISTRICT

JOHN DUNN, by his Guardian,	:	CIVIL TRIAL DIVISION
HENRY DOE	:	
	:	
v	:	APRIL TERM, 20_____
	:	
THOMAS WHITE	:	NO. 3050

**PETITION [title of petition]**

To The Honorable, the Judges of the said Court:



## 1.4 GENERAL FORM OF AFFIDAVIT OR VERIFICATION

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### 1.4.1

The affidavit to be executed by an individual should read as follows:

COMMONWEALTH OF PENNSYLVANIA    )  
  ) *ss.*  
COUNTY OF PHILADELPHIA            )

Jane R. Dunn, being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are true and correct to the best of her knowledge, information and belief [❖ and that all adult parties in interest have consented to this petition].

❖ *Bracketed material should appear when appropriate. See Philadelphia Orphans' Court Rule 3.4.A(4).*

---

Jane R. Dunn  
Petitioner

Sworn and subscribed to before  
me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

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Notary Public



**1.4**  
**GENERAL FORM OF AFFIDAVIT OR VERIFICATION**

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**1.4.3**

Sample Verification. The verification to be executed by an individual (the form can be modified for execution by a corporate fiduciary) should read as follows:

I, Thomas Morgan, verify that I am the Petitioner in the within petition, and that the facts contained in the foregoing petition are true and correct to the best of my knowledge, information and belief; and that this verification is subject to the penalties of 18 Pa. C.S.A. §4904 relative to unsworn falsification to authorities.

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Thomas Morgan  
Petitioner

Dated: \_\_\_\_\_





## **1.5**

### **ORPHANS' COURT DIVISION NUMBER**

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When a petition, account or any document is filed for the first time in the Orphans' Court, the Clerk will assign an Orphans' Court number. This number will remain the same on any future filings in that matter (decedent's estate, minor's estate, incapacity proceeding or trust). It is always a different number from the one which may have been previously assigned by the Register of Wills.

This number is easily found in the Orphans' Court Number Index Book in the Clerk's office and should be used on all pleadings for that matter or on the Orphans' Court Online Docket Access system, available through the Court's website <http://courts.phila.gov/cpo.html>.



## 1.6

### COMMON ORPHANS' COURT FILING PROBLEMS

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Common Orphans' Court filing problems are:

1. Failure to have a completed cover page, which should include the individual attorney's full name with identification number, address and telephone number, on all pleadings.
2. Missing or incomplete affidavit or verification.
3. Missing Decree page.
4. Improper caption, or no caption.
  - a. If decedent's estate matter: "Estate of JOHN DOE, Deceased"
  - b. If minor's estate: "Estate of JOHN DOE, JR., a Minor"
  - c. If an incapacity proceeding: "Estate of MARY DOE, an Alleged Incapacitated Person"
  - d. After a guardian has been appointed for incapacitated person: "Estate of MARY DOE, an Incapacitated Person"
  - e. If deed of trust: "Trust of JOSEPH DOE, Settlor under Deed of Trust dated January 1, 2000"
5. Requesting a parent to be appointed as sole guardian of a minor's estate (PEF Code §5112 (3)).
6. Requesting principal allowance(s) prior to appointment of a guardian. A petition for allowance cannot be incorporated in a petition for appointment of guardian.
7. Failure to include (i) counsel's certification that estate is solvent; and (ii) the estate's total inventory value in a petition to fix or waive additional security.
8. Failure to include evidence of the deposit in petition for allowance in minor's estate, when the funds had been ordered "deposited in restricted savings certificate and/or account."
9. Failure to adhere to the local Philadelphia Orphans' Court Rules.

## 1.6 COMMON ORPHANS' COURT FILING PROBLEMS

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10. Failure to state properly an account filed for audit.
11. In audit papers filed with an account:
  - a. Failure to complete the applicable checklist. [Copies on following pages.]
    - (1) Account Filing Checklist - Guardian of Minor
    - (2) Account Filing Checklist - Decedent's Estate
    - (3) Account Filing Checklist - Trust (Testamentary/Inter Vivos)
    - (4) Account Filing Checklist - Guardian of Incapacitated Person
    - (5) Minors and Incapacitated Person Checklist
    - (6) Wrongful Death and Survival Actions Checklist
  - b. Failure to include all information requested in the petition for adjudication/statement of proposed distribution.
  - c. Failure to attach all the required supporting documents.
  - d. Failure to include certification of counsel on all copies being presented to the court.
  - e. Failure to include in audit notice: date, time, courtroom, judge, statement of issues before the court, and statement that a person must be present or represented by counsel to press a claim or make an objection.
  - f. Failure to give timely audit notice.
  - g. Lack of specific reference to deaths of named beneficiaries or remaindermen.
  - h. Failure to refer to principal disbursements in account or audit notice (rather than only on appearance slip).

COURT OF COMMON PLEAS OF PHILADELPHIA • ORPHANS' COURT DIVISION  
**ACCOUNT FILING CHECKLIST . GUARDIAN OF MINOR**

ESTATE OF _____, MINOR	<b>PREPARER:</b> ATTORNEY/ACCOUNTANT	TELEPHONE NUMBER
O.C. NUMBER _____ OF _____	ADDRESS	

**INSTRUCTIONS:** Persons wishing to file an account must first complete this form, indicating in "preparer" column (**YES or N/A**) whether the items listed are included in the audit papers and/or the account. Items that are required in all cases are printed in **BOLD**. Upon review by the staff of the Clerk's Office, the account and related audit papers may be accepted for filing if complete or rejected if incomplete.

PREPARER	ITEM	O.C. CLERK
	1a) <b>ACCOUNT COVER SHEET and SUMMARY PAGE</b> [O.C. Rule 6.1]	
	1b) <b>ACCOUNT SIGNED by ALL ACCOUNTANTS/VERIFIED by at LEAST ONE ACCOUNTANT</b> [O.C. Rule 6.1.A.]	
	2a) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION filed</b> [O.C. Rule 6.9.A.]	
	2b) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION SIGNED by EACH ACCOUNTANT</b> [O.C. Rule 6.9.B.]	
	2c) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION VERIFIED by at LEAST ONE ACCOUNTANT</b> [O.C. Rule 6.9.B.]	
	3a) <b>COPY of DECREE/TYPED COPY of INSTRUMENT APPOINTING GUARDIAN</b> [O.C. Rule 6.9.D.(4)(a)]	
	4) <b>STATEMENT of METHOD of NOTICE</b> [O.C. Rule 6.9.D.(1)(f)]	
	5) <b>STATEMENT of FORMER MINOR</b> [O.C. Rule 6.9.D.(4)(c)]	
	6) <b>AGREEMENT of COMPROMISE and SETTLEMENT</b> [O.C. Rule 6.9.D.(1)(b)]	
	7) <b>AGREEMENT REGARDING ACCOUNTANT'S COMPENSATION</b> [O.C. Rule 6.9.D.(1)(c)]	
	8a) <b>CERTIFICATE of APPOINTMENT OF FOREIGN FIDUCIARY</b> [O.C. Rule 6.9.D.(6)(a)]	
	8b) <b>AFFIDAVIT by FOREIGN FIDUCIARY</b> [O.C. Rule 6.9.D.(6)(b)]	
	9) <b>CERTIFICATION REGARDING PRIOR FILED ORIGINALS</b> [O.C. Rule 6.9.D.(7)]	

<input type="checkbox"/> <b>ACCEPTED</b> <input type="checkbox"/> <b>REJECTED</b>	REVIEWED BY _____	DATE _____
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COURT OF COMMON PLEAS OF PHILADELPHIA • ORPHANS' COURT DIVISION  
**ACCOUNT FILING CHECKLIST • *DECEDENT'S ESTATE***

ESTATE OF _____, DECEASED	<b>PREPARER:</b> ATTORNEY/ACCOUNTANT	TELEPHONE NUMBER
O.C. NUMBER _____ OF _____	ADDRESS	

**INSTRUCTIONS:** Persons wishing to file an account must first complete this form, indicating in "preparer" column (**YES or N/A**) whether the items listed are included in the audit papers and/or the account. Items that are required in all cases are printed in **BOLD**. Upon review by the staff of the Clerk's Office, the account and related audit papers may be accepted for filing if complete or rejected if incomplete.

PREPARER	ITEM	O.C. CLERK
	1a) <b>ACCOUNT COVER SHEET and SUMMARY PAGE</b> [O.C. Rule 6.1]	
	1b) <b>ACCOUNT SIGNED by ALL ACCOUNTANTS/VERIFIED by at LEAST ONE ACCOUNTANT</b> [O.C. Rule 6.1.A.]	
	2a) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION</b> filed [O.C. Rule 6.9.A.]	
	2b) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION SIGNED by EACH ACCOUNTANT</b> [O.C. Rule 6.9.B.]	
	2c) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION VERIFIED by at LEAST ONE ACCOUNTANT</b> [O.C. Rule 6.9.B.]	
	3a) <b>IF WILL, TYPED COPY of WILL &amp; CODICILS</b> [O.C. Rule 6.9.D.(2)(b)]	
	3b) <b>IF WILL, CERTIFIED CORRECT</b> [O.C. Rule 6.9.D.(2)(b)]	
	4) ORIGINAL LETTERS TESTAMENTARY or LETTERS OF ADMINISTRATION [O.C. Rule 6.9.D.(2)(a)]	
	5) <b>PROOF of ADVERTISEMENT of LETTERS</b> [O.C. Rule 6.9.D.(2)(a)] (unless filed by order of Court)	
	6a) <b>TYPED COPY of INVENTORY</b> [O.C. Rule 6.9.D.(2)(b)]	
	6b) <b>CERTIFIED CORRECT</b> [O.C. Rule 6.9.D.(2)(b)]	
	7a) <b>STATEMENT of METHOD of NOTICE</b> [O.C. Rule 6.9.D.(1)(f)]	
	7b) NOTICE OF CHARITABLE GIFT TO ATTORNEY GENERAL [O.C. Rule 5.5]	
	8) PETITION to APPOINT/REQUEST to WAIVE GUARDIAN/TRUSTEE AD LITEM [O.C. Rule 12.4.A.]	
	9) INHERITANCE TAX RECEIPTS [O.C. Rule 6.9.D.(1)(e)]	
	10) AGREEMENT of COMPROMISE and SETTLEMENT [O.C. Rule 6.9.D.(1)(b)]	
	11) AGREEMENT REGARDING ACCOUNTANT'S COMPENSATION [O.C. Rule 6.9.D.(1)(c)]	
	12a) CERTIFICATE of APPOINTMENT OF FOREIGN FIDUCIARY [O.C. Rule 6.9.D.(6)(a)]	
	12b) AFFIDAVIT by FOREIGN FIDUCIARY [O.C. Rule 6.9.D.(6)(b)]	
	13) CERTIFICATION REGARDING PRIOR FILED ORIGINALS [O.C. Rule 6.9.D.(7)]	
	14) INCOME ACCOUNTING WAIVERS [O.C. Rule 6.9.D.(1)(d)]	

<input type="checkbox"/> <b>ACCEPTED</b> <input type="checkbox"/> <b>REJECTED</b>	REVIEWED BY _____	DATE _____
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COURT OF COMMON PLEAS OF PHILADELPHIA • ORPHANS' COURT DIVISION		
<b>ACCOUNT FILING CHECKLIST • <i>TRUST (TESTAMENTARY/INTER VIVOS)</i></b>		
ESTATE OF _____ _____, DECEASED/SETTLOR	PREPARER: ATTORNEY/ACCOUNTANT	TELEPHONE NUMBER
O.C. NUMBER _____ OF _____	ADDRESS	
<p><b>INSTRUCTIONS:</b> Persons wishing to file an account must first complete this form, indicating in "preparer" column (<b>YES or N/A</b>) whether the items listed are included in the audit papers and/or the account. Items that are required in all cases are printed in <b>BOLD</b>. Upon review by the staff of the Clerk's Office, the account and related audit papers may be accepted for filing if complete or rejected if incomplete.</p>		
PREPARER	ITEM	O.C. CLERK
	1a) <b>ACCOUNT COVER SHEET and SUMMARY PAGE</b> [O.C. Rule 6.1]	
	1b) <b>ACCOUNT SIGNED by ALL ACCOUNTANTS/VERIFIED by at LEAST ONE ACCOUNTANT</b> [O.C. Rule 6.1.A.]	
	2a) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION filed</b> [O.C. Rule 6.9.A.]	
	2b) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION SIGNED by EACH ACCOUNTANT</b> [O.C. Rule 6.9.B.]	
	2c) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION VERIFIED by at LEAST ONE ACCOUNTANT</b> [O.C. Rule 6.9.B.]	
	3a) <b>TYPED COPY of TRUST INSTRUMENT</b> [O.C. Rule 6.9.D.(3)(b)]	
	3b) <b>CERTIFIED CORRECT</b> [O.C. Rule 6.9.D.(3)(b)]	
	4a) ORIGINAL TRUST INSTRUMENT/ORIGINAL LETTERS TESTAMENTARY [O.C. Rule 6.9.D.(3)(a)]	
	4b) CERTIFIED CORRECT [O.C. Rule 6.9.D.(3)(b)]	
	5a) <b>STATEMENT of METHOD of NOTICE</b> [O.C. Rule 6.9.D.(1)(f)]	
	5b) NOTICE OF CHARITABLE GIFT TO ATTORNEY GENERAL [O.C. Rule 5.5]	
	6) PETITION to APPOINT/REQUEST to WAIVE GUARDIAN/TRUSTEE AD LITEM [O.C. Rule 12.4.A]	
	7) INHERITANCE TAX RECEIPTS [O.C. Rule 6.9.D.(1)(e)]	
	8) AGREEMENT of COMPROMISE and SETTLEMENT [O.C. Rule 6.9.D.(1)(b)]	
	9) AGREEMENT REGARDING ACCOUNTANT'S COMPENSATION [O.C. Rule 6.9.D.(1)(c)]	
	10a) CERTIFICATE of APPOINTMENT OF FOREIGN FIDUCIARY [O.C. Rule 6.9.D.(6)(a)]	
	10b) AFFIDAVIT by FOREIGN FIDUCIARY [O.C. Rule 6.9.D.(6)(b)]	
	11) CERTIFICATION REGARDING PRIOR FILED ORIGINALS [O.C. Rule 6.9.D.(7)]	
	12) INCOME ACCOUNTING WAIVERS [O.C. Rule 6.9.D.(1)(d)]	
<input type="checkbox"/> <b>ACCEPTED</b>		
<input type="checkbox"/> <b>REJECTED</b>		
	REVIEWED BY _____	DATE _____

10-132B (Rev. 10/02)

COURT OF COMMON PLEAS OF PHILADELPHIA • ORPHANS' COURT DIVISION  
**ACCOUNT FILING CHECKLIST • GUARDIAN OF INCAPACITATED PERSON**

ESTATE OF _____, INCAP.	<b>PREPARER:</b> ATTORNEY/ACCOUNTANT	TELEPHONE NUMBER
O.C. NUMBER _____ OF _____	ADDRESS	

**INSTRUCTIONS:** Persons wishing to file an account must first complete this form, indicating in "preparer" column (**YES or N/A**) whether the items listed are included in the audit papers and/or the account. Items that are required in all cases are printed in **BOLD**. Upon review by the staff of the Clerk's Office, the account and related audit papers may be accepted for filing if complete or rejected if incomplete.

PREPARER	ITEM	O.C. CLERK
	1a) <b>ACCOUNT COVER SHEET and SUMMARY PAGE</b> [O.C. Rule 6.1]	
	1b) <b>ACCOUNT SIGNED by ALL ACCOUNTANTS/VERIFIED by at LEAST ONE ACCOUNTANT</b> [O.C. Rule 6.1.A.]	
	2a) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION filed</b> [O.C. Rule 6.9.A.]	
	2b) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION SIGNED by EACH ACCOUNTANT</b> [O.C. Rule 6.9.B.]	
	2c) <b>PETITION for ADJUDICATION &amp; STATEMENT of PROPOSED DISTRIBUTION VERIFIED by at LEAST ONE ACCOUNTANT</b> [O.C. Rule 6.9.B.]	
	3) <b>COPY of DECREE or INSTRUMENT APPOINTING GUARDIAN</b> [O.C. Rule 6.9.D.(5)(a)]	
	4) STATEMENT of APPOINTMENT OF PERSONAL REPRESENTATIVE [O.C. Rule 6.9.D.(5)(b)]	
	5) STATEMENT of METHOD of NOTICE [O.C. Rule 6.9.D.(1)(f)]	
	6) AGREEMENT of COMPROMISE and SETTLEMENT [O.C. Rule 6.9.D.(1)(b)]	
	7) AGREEMENT REGARDING ACCOUNTANT'S COMPENSATION [O.C. Rule 6.9.D.(1)(c)]	
	8a) CERTIFICATE of APPOINTMENT OF FOREIGN FIDUCIARY [O.C. Rule 6.9.D.(6)(a)]	
	8b) AFFIDAVIT by FOREIGN FIDUCIARY [O.C. Rule 6.9.D.(6)(b)]	
	9) CERTIFICATION REGARDING PRIOR FILED ORIGINALS [O.C. Rule 6.9.D.(7)]	

<input type="checkbox"/> <b>ACCEPTED</b> <input type="checkbox"/> <b>REJECTED</b>	REVIEWED BY _____	DATE _____
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**In the Court of Common Pleas of Philadelphia County  
First Judicial District of Pennsylvania**

Joint General Court Regulation  
Trial Division and Orphans' Court Division No. 97-1  
**Minors and Incapacitated Person Checklist**

Settlement/Trial Division Judge: \_\_\_\_\_ Court Term: \_\_\_\_\_

Caption: \_\_\_\_\_ Number: \_\_\_\_\_

Is this case disposed except for this petition? \_\_\_\_ Yes \_\_\_\_ No

If yes, how was it disposed? \_\_\_\_ S.D.&E. \_\_\_\_ Jury Trial \_\_\_\_ Non-Jury Trial (Incls. Assessment of Damages)

\_\_\_\_ Other (explain) \_\_\_\_\_

Consolidated Cases (Indicate Court Term and Number) \_\_\_\_\_

Any pleadings filed in Orphans' Court:  Yes  No

**Are the following items included in the Petition/Order?**

	<b>Yes</b>	<b>No</b>
1. Minor's/Incapacitated Person's:		
a. Date of Birth	<input type="checkbox"/>	<input type="checkbox"/>
b. SS#	<input type="checkbox"/>	<input type="checkbox"/>
c. Address	<input type="checkbox"/>	<input type="checkbox"/>
d. Written approval of settlement if minor is 16 years of age or older	<input type="checkbox"/>	<input type="checkbox"/>
2. Parent(s)/guardian verification attached	<input type="checkbox"/>	<input type="checkbox"/>
3. If guardian of estate was appointed, is Order attached	<input type="checkbox"/>	<input type="checkbox"/>
4. Information concerning mother and father	<input type="checkbox"/>	<input type="checkbox"/>
5. Details concerning the injury	<input type="checkbox"/>	<input type="checkbox"/>
6. Doctor's report of present condition of minor/incapacitated person	<input type="checkbox"/>	<input type="checkbox"/>
7. Statement from parents and/or guardian certifying the condition of minor/incapacitated person and approval of proposed settlement	<input type="checkbox"/>	<input type="checkbox"/>
8. Counsel's reasons for approval of proposed settlement	<input type="checkbox"/>	<input type="checkbox"/>
9. Petition signed by counsel	<input type="checkbox"/>	<input type="checkbox"/>
10. Department of Welfare or any other entity lien or claim	<input type="checkbox"/>	<input type="checkbox"/>
11. Does the Order contain the following:		
a. Itemization of costs for reimbursement	<input type="checkbox"/>	<input type="checkbox"/>
b. Counsel fee computed on net settlement	<input type="checkbox"/>	<input type="checkbox"/>
c. Affidavit will be filed certifying compliance with the Order	<input type="checkbox"/>	<input type="checkbox"/>
d. Amount to Guardian of minor/incapacitated person <i>(in restricted accounts, typically if under \$350,000)</i>	<input type="checkbox"/>	<input type="checkbox"/>
e. Amount to Guardian of minor/incapacitated person <i>(typically if over \$350,000)</i>	<input type="checkbox"/>	<input type="checkbox"/>

*I verify the answers above to be true and correct and understand  
that sanctions may be imposed for inaccurate or incomplete answers.*

11-9 (Rev. 5/98)

**In the Court of Common Pleas of Philadelphia County  
First Judicial District of Pennsylvania**

Joint General Court Regulation  
Trial Division and Orphans' Court Division No. 97-1  
**Wrongful Death and Survival Actions Checklist**

Settlement/Trial Division Judge: \_\_\_\_\_ Court Term: \_\_\_\_\_

Caption: \_\_\_\_\_ Number: \_\_\_\_\_

Is this case disposed except for this petition?     Yes     No

If yes, how was it disposed?     S.D.&E.     Jury Trial     Non-Jury Trial (Incls. Assessment of Damages)

Other (explain) \_\_\_\_\_

Consolidated Cases (Indicate Court Term and Number) \_\_\_\_\_

Any pleadings filed in Orphans' Court:     Yes     No

**Are the following items included in the Petition:**

	<b>Yes</b>	<b>No</b>
1. Verification from Administrator/Executor	<input type="checkbox"/>	<input type="checkbox"/>
2. If guardian of estate was appointed, is Order attached	<input type="checkbox"/>	<input type="checkbox"/>
3. Notice letter to all parties in interest is attached	<input type="checkbox"/>	<input type="checkbox"/>
4. Counsel's reasons for approval of proposed settlement	<input type="checkbox"/>	<input type="checkbox"/>
5. Reasons for the allocation between wrongful death and survival action	<input type="checkbox"/>	<input type="checkbox"/>
6. Reason and amount of pecuniary loss suffered by each beneficiary of Wrongful Death Claim	<input type="checkbox"/>	<input type="checkbox"/>
7. Petition signed by counsel	<input type="checkbox"/>	<input type="checkbox"/>
8. Department of Welfare or any other entity claim or lien	<input type="checkbox"/>	<input type="checkbox"/>
9. Does the Order of Distribution set forth the following:		
a. Itemization of costs for reimbursement	<input type="checkbox"/>	<input type="checkbox"/>
b. Counsel fee computed on net settlement	<input type="checkbox"/>	<input type="checkbox"/>
c. Wrongful Death Claim	<input type="checkbox"/>	<input type="checkbox"/>
i. Amount to spouse and adult children	<input type="checkbox"/>	<input type="checkbox"/>
ii. Amount to minor/incapacitated person <i>(in restricted accounts, typically if under \$350,000)</i>	<input type="checkbox"/>	<input type="checkbox"/>
iii. Amount to Guardian of minor/incapacitated person <i>(typically if over \$350,000)</i>	<input type="checkbox"/>	<input type="checkbox"/>
iv. Parent	<input type="checkbox"/>	<input type="checkbox"/>
d. Survival Claim: To Administrator/Executor of the Estate of the Deceased	<input type="checkbox"/>	<input type="checkbox"/>
e. Affidavit will be filed certifying compliance with the Order	<input type="checkbox"/>	<input type="checkbox"/>

*I verify the answers above to be true and correct and understand  
that sanctions may be imposed for inaccurate or incomplete answers.*

11-10 (Rev. 5/98)

\_\_\_\_\_

**1.7**  
**FORM OF COMPLETED PETITION AND ANSWER**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed petition, it is hereby decreed that a citation is awarded, directed to Jane R. Dunn, Executrix of the Will of John B. Dunn, Deceased, to show cause why she should not be required to prepare and file immediately an account in the Office of the Clerk of Orphans' Court of Philadelphia County.

This citation is returnable *sec. leg.*

\_\_\_\_\_  
J.

## 1.7

### FORM OF COMPLETED PETITION AND ANSWER

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[SEE CAPTION AT 1.3.2]

#### PETITION

The petition of Harvey White respectfully states that:

1. On January 1, 2000, Joseph B. Dunn died a resident of Philadelphia, Pennsylvania.
2. Letters Testamentary were granted by the Register of Wills of Philadelphia County to Jane R. Dunn, 47 Main Street, Philadelphia, Pennsylvania, on January 15, 2000.
3. Petitioner is a party in interest in the Estate of Joseph B. Dunn, being a creditor in the amount of \$5,000.
4. More than six months have expired since the first complete advertisement of the grant of Letters Testamentary and the Executrix has failed to file an account and may now be cited to file her account in accordance with 20 Pa. C.S.A. §3501.1.

Wherefore, Petitioner respectfully requests that a citation be awarded, directed to Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, to show cause why she should not be required to prepare an account and file the same in the Office of the Clerk of Orphans' Court of Philadelphia County.

---

Harvey White

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

- ❖ *Proof of Service must be filed with the Clerk's Office on the original red-lined citation promptly after service has been completed.*

**1.7**  
**FORM OF COMPLETED PETITION AND ANSWER**

---

[SEE CAPTION AT 1.3.2]

**ANSWER**

Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, in answer to the petition of Harvey White to show cause why she should not be required to file an account of her administration of the estate of the decedent, respectfully states that:

1. Respondent admits the allegations in paragraph 1 of the petition.
2. Respondent admits the allegations in paragraph 2 of the petition.
3. Respondent denies the allegations in paragraph 3 of the petition because the decedent, Joseph B. Dunn, incurred the indebtedness in question solely in his capacity as president of Joseph B. Dunn, Inc., and not in his individual capacity.
4. Respondent admits that no account has been filed by her to date, but denies that Petitioner is entitled to such an accounting because he is not a creditor of the decedent and not a party in interest.

**NEW MATTER**

5. Respondent has not completed the administration of the estate, and, therefore, is not prepared to file her account.

Wherefore, respondent respectfully requests that Petitioner's request be denied.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]



CHAPTER 2

**PROCEDURE**

**2.1**

**PRAECIPE**

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IN THE COURT OF COMMON PLEAS OF  
PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

Smith, Jones, P.C.  
By: John Smith, Esquire  
Attorney I.D. No. 01234  
1234 Four Penn Tower Building  
Philadelphia, PA 19100  
215 561-1234

No. \_\_\_\_\_ of 20\_\_\_\_

Estate of THOMAS MORGAN, SR., Deceased

**PRAECIPE**

To the Clerk:

Kindly place the above-captioned matter on the [date] [or next available] Audit List.

\_\_\_\_\_  
John Smith

Dated: April 24, 2001





## 2.2

### NOTICE LETTER AND CERTIFICATION

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#### CERTIFICATION OF MAILING OF NOTICE LETTER

Estate of THOMAS MORGAN, SR., Deceased

I certify that on May 31, 2001, I sent notice of the presentation of the foregoing Petition to the persons whose names appear on the copies of the annexed letters, by first-class mail, together with a copy of the Petition.

---

John K. Trustworthy  
Counsel for Estate

*[on attorney letterhead]*

May 31, 2001

Mr. John Jones  
101 Jennifer Street  
Philadelphia, PA 19100

Re: Estate of Thomas Morgan, Sr., Deceased

Dear Mr. Jones:

I enclose a copy of Petition to Fix or Waive Additional Security for the Sale of Premises 1234 Smith Road, Philadelphia, Pennsylvania, for the sum of \$100,000 to Mary and Susan Stokes, which will be filed with the Clerk of Orphans' Court Division, Room 415 City Hall, Philadelphia, Pennsylvania 19107 on June 1, 2001.

If you have any objections to the granting of the prayer of the Petition, you must state them in writing with the Clerk of Orphans' Court within twenty (20) days of June 1, 2001. If you do not file written objections, the Court will assume you have no objections and may grant the prayer of the Petition.

Very truly yours,

John K. Trustworthy



**2.3**

**AFFIDAVIT OF SERVICE**

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COMMONWEALTH OF PENNSYLVANIA )  
 ) *ss.*  
COUNTY OF PHILADELPHIA )

James Doe, being duly sworn according to law, deposes and says that he is an adult and that on September 16, 2001 at 2:00 p.m. he served upon Harvey White, of 1314 North Avenue, Philadelphia, Pennsylvania, a copy of citation, dated September 12, 2001, and a copy of petition, dated September 10, 2001, by handing the said papers to Harvey White personally, at the aforesaid address.

\_\_\_\_\_  
James Doe

Sworn to and subscribed before  
me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public



## 2.4

### PETITION FOR PRODUCTION OF DOCUMENTS

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[SEE CAPTION AT 1.3.1]

#### DECREE

Now, \_\_\_\_\_, 20\_\_\_\_, it is hereby decreed that a citation is awarded, directed to Upstanding Trust Company, as trustee of the trust under Item SECOND of the Will of Joseph B. Dunn, Deceased to show cause why it should not produce documents, correspondence and other papers relating to stock dividends received by the trust for inspection and copying as requested in the annexed petition.

The citation is returnable the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .m. in the office of the Clerk of the Orphans' Court Division, City Hall, Philadelphia, Pennsylvania.

\_\_\_\_\_  
J.

*[Petition on following page]*

## 2.4

### PETITION FOR PRODUCTION OF DOCUMENTS

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[SEE CAPTION AT 1.3.2]

#### PETITION

The petition of John Dunn respectfully states that:

1. Petitioner is the son of Joseph B. Dunn, who died on July 7, 2000, a resident of Philadelphia, Pennsylvania, leaving a Will dated October 2, 1992, which was duly admitted to probate. A copy of the Will is attached hereto as Exhibit "A."
2. Under Item SECOND of his Will, decedent placed his entire estate in trust, to pay the net income to his wife, Jane R. Dunn, and upon her death to distribute the principal to his then living issue, *per stirpes*.
3. Upstanding Trust Company is trustee of the trust under Item SECOND of the Will and it has filed its First and Final Account as trustee because of the death of decedent's widow, Jane R. Dunn, on January 1, 2001.
4. Petitioner has filed objections to this Account, alleging that certain stock dividends received by the trust have been characterized improperly as income and distributed to the life tenant, rather than as principal to be accumulated for ultimate distribution to Petitioner, the remainderman.
5. Petitioner requests that Upstanding Trust Company, trustee of the trust under Item SECOND of the Will of Joseph B. Dunn, Deceased, be ordered to show cause why it should not produce and permit the inspection and copying of all documents, correspondence and other papers relating to the receipt of stock dividends by the trustee and the decision of trustee to allocate them to income.
6. The documents to be produced are in the custody, possession or control of Upstanding Trust Company.
7. The production of these documents is necessary in order that Petitioner may adequately prepare for a hearing on his objections.

Wherefore, Petitioner respectfully requests that a citation be awarded, directed to Upstanding Trust Company, as trustee of the trust under Item SECOND of the Will of Joseph B. Dunn, Deceased to show cause why it should not produce documents,

**2.4**  
**PETITION FOR PRODUCTION OF DOCUMENTS**

---

correspondence and other papers relating to the stock dividends received by the trust for inspection and copying as requested.

---

John Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

- ❖ *See Section 774 of the PEF Code, Rules 3.1 and 3.6, and Rule 3.6.A. Rule 3.6.A(1) provides that requests for depositions, discovery or production of documents may be granted only on petition upon cause shown.*





## 2.5

### **PETITION TO OPEN AND REVIEW AN ADJUDICATION BASED UPON AN ERRONEOUS STATEMENT OF FACT**

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[SEE CAPTION AT 1.3.1]

#### **DECREE**

Now, \_\_\_\_\_, 20 \_\_\_\_, upon consideration of the annexed petition, it is hereby decreed that the Adjudication of Jones, J., dated September 1, 2000, of the First and Final Account of Jane R. Dunn, Administratrix of the Estate of Joseph B. Dunn, Deceased, is hereby opened with respect to the award of one-fourth of the estate to each of Sarah Dunn and Harry Moore, guardian of the estate of Betty Dunn, a minor, for the purpose of review, and that, as thus reopened, the same be referred to the Honorable Harold Jones, Auditing Judge, for a re-audit of the Account with respect to the said awards.

---

J.

*[Petition on following page]*

**2.5**  
**PETITION TO OPEN AND REVIEW AN ADJUDICATION**  
**BASED UPON AN ERRONEOUS STATEMENT OF FACT**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The petition of Jane R. Dunn, Administratrix c.t.a. of the Estate of Joseph B. Dunn, respectfully states that:

1. Joseph B. Dunn died on July 7, 2000, a resident of Philadelphia, Pennsylvania.
2. At that time no Will had been found and decedent was therefore assumed to have died intestate.
3. Letters of Administration were issued to Petitioner on February 26, 2001, by the Register of Wills of Philadelphia County.
4. The parties in interest in the decedent's estate under the intestate laws of this Commonwealth are:

Jane R. Dunn 261 Horse Hair Road Philadelphia PA 19000	Wife (one-half interest)
--	--------------------------

Sarah Dunn 564 Main Street Philadelphia PA 19000	Daughter (one-fourth interest)
--	--------------------------------

Betty Dunn 564 Main Street Philadelphia PA 19000	Daughter (one-fourth interest)
--	--------------------------------

5. The foregoing parties are *sui juris* with the exception of decedent's daughter, Betty Dunn, a minor, for whose estate Harry Moore was appointed guardian by Decree of this Court dated August 1, 2000.
6. Petitioner's First and Final Account as Administratrix of decedent's estate has been confirmed *nisi* by Adjudication of Jones, J., dated September 1, 2000, which Adjudication awarded the balance of decedent's estate as follows: one-half to Jane R. Dunn, and one-fourth to each of Sarah Dunn and Harry Moore, guardian of the

## 2.5

### PETITION TO OPEN AND REVIEW AN ADJUDICATION BASED UPON AN ERRONEOUS STATEMENT OF FACT

---

estate of Betty Dunn, a minor. A Schedule of Distribution, directed by the said Adjudication, has not been filed.

7. Subsequent to said Adjudication confirming her First and Final Account, Petitioner discovered decedent's Will, dated October 2, 1992, a copy of which is attached hereto as Exhibit "A."
8. By his Will, decedent left his entire estate to Petitioner, but did not name an executor.
9. After a hearing by the Register of Wills of Philadelphia County, the said Will was admitted to probate by order of the Register dated January 3, 2001 and Letters of Administration c.t.a. were thereupon issued to Petitioner.
10. Simultaneously herewith Petitioner has filed with this Court a petition for a citation to show cause why the right of Sarah Dunn and Harry Moore, as guardian, to appeal from the Decree of the Register of Wills admitting decedent's Will to probate should not be limited to a period of three months, in accordance with Section 908 of the PEF Code. As of the time of filing the present petition no appeal has been filed by Sarah Dunn or Harry Moore, as guardian.
11. The only persons affected by this petition are Sarah Dunn and Harry Moore, as guardian.
12. Notice of the presentation of this petition has been given to Sarah Dunn and Harry Moore, as guardian.
13. Petitioner hereby certifies that the Auditing Judge has been informed of her intention to file this petition by letter from Petitioner's counsel dated January 15, 2000.
14. Under Section 3521 of the PEF Code, if any party in interest shall, within five years after the final confirmation of any account of a personal representative, file a petition to review any part of the account or of the adjudication setting forth specific errors therein, the Court shall give such relief as equity and justice shall require.

Wherefore, Petitioner respectfully requests that the Adjudication of Jones, J., dated September 1, 2000, of the First and Final Account of Petitioner, Jane R. Dunn, Administratrix of the Estate of Joseph B. Dunn, Deceased, be opened with respect to the award of one-fourth of the estate to each of Sarah Dunn and Harry Moore, guardian of the estate of Betty Dunn, a minor, for the purpose of review, and that, as thus reopened, the same

**2.5**

**PETITION TO OPEN AND REVIEW AN ADJUDICATION  
BASED UPON AN ERRONEOUS STATEMENT OF FACT**

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be referred to the Honorable Harold Jones, Auditing Judge, for a re-audit of the Account with respect to the said awards.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

## 2.6

### PETITION FOR DECLARATORY JUDGMENT

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[SEE CAPTION AT 1.3.1]

#### DECREE

Now, \_\_\_\_\_ 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby decreed that a declaratory judgment is rendered, whereby Jane R. Dunn, trustee under Item SIXTH of the Will of Joseph B. Dunn, Deceased may, in her discretion, distribute principal to John Dunn in a sum not to exceed \$5,000 annually, without regard to principal withdrawals made by him from the Trust under Will of Harold Dunn, Deceased as appointed by Item TENTH of the Will of Isabel Dunn, Deceased.

\_\_\_\_\_  
J.

*[Petition on following page]*

## 2.6

### PETITION FOR DECLARATORY JUDGMENT

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[SEE CAPTION AT 1.3.2]

#### PETITION

The petition of Jane R. Dunn respectfully states that:

1. Petitioner is the surviving trustee of the non-marital trust created under Item SIXTH of the Will of Joseph B. Dunn, Deceased who died on May 11, 2000. A copy of the Will is attached hereto as Exhibit "A."
2. The First Account of Petitioner has been filed for audit because of the death of Henry Doe who had been serving as co-trustee.
3. Under the terms of Item SIXTH of the Will, all of the net income is distributable to decedent's son, John Dunn, and trustee may also distribute to John Dunn such additional portions of the principal as trustee, in her discretion, may consider proper; "provided, however, that in no calendar year shall trustee distribute from principal more than the difference between \$5,000 and the aggregate of sums distributed to John Dunn from the principal of trusts created under the Will of John Dunn's grandmother, Isabel Dunn."
4. Following the death of John Dunn, this trust will continue for the benefit of his two daughters, both of whom are *sui juris*.
5. John Dunn's grandmother, Isabel Dunn, who died on August 14, 1999, was the income beneficiary of a trust created under the Will of her uncle, Harold Dunn, and she also possessed a testamentary power to appoint the principal of that trust among her issue.
6. Under Item TENTH of her Will, Isabel Dunn exercised the power of appointment and provided that the principal subject thereto be held by the trustees named in her Will in further trust for the benefit of her grandson, John Dunn, with provision, *inter alia*, that all of the income be distributed to him from this trust and that he have the power, upon demand, to obtain, annually, \$10,000 of the principal.
7. Isabel Dunn provided for an outright distribution of her own assets to her issue.
8. During 1999, John Dunn withdrew \$10,000 of principal from the trust under Will of

## 2.6

### PETITION FOR DECLARATORY JUDGMENT

---

Harold Dunn as appointed by Item TENTH of the Will of Isabel Dunn (the “Item TENTH Trust”), and it is his intention to make a similar withdrawal for calendar year 2000.

9. John Dunn has requested Petitioner, as trustee, to distribute \$5,000 of principal to him from the trust under his father’s Will for the calendar year 1999 and intends to make a similar request for the calendar year 2000.
10. It is the trustee’s position that she, in her discretion, may distribute \$5,000 of principal, annually, to John Dunn from the trust under his father’s Will, without regard to principal withdrawals made by him from the Item TENTH Trust since that trust is a trust “created” under the Will of Harold Dunn and is not a trust “created” under the Will of John Dunn’s grandmother, Isabel Dunn.
11. Since it is contemplated that this question will arise periodically, Petitioner requires declaratory relief.
12. This Court may grant declaratory relief under 42 Pa. C.S.A. §7531 *et seq.* to determine any questions arising in the administration of this trust, including questions as to the construction of the Will of Joseph B. Dunn, Deceased.
13. A copy of this petition has been sent to John Dunn’s children whose interests are adverse to the interpretation advanced by trustee. A list of the persons whose interest may be affected by this petition is attached as Exhibit “B.”

Wherefore, Petitioner respectfully requests this Court for a declaratory judgment that trustee under Item SIXTH of the Will of Joseph B. Dunn, Deceased may, in her discretion, distribute principal to John Dunn, in a sum not to exceed \$5,000 annually, without regard to principal withdrawals made by him from the trust under Will of Harold Dunn, Deceased as appointed by Item TENTH of the Will of Isabel Dunn, Deceased.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]





## 2.7

### **ENFORCEMENT PROCEDURE**

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The following four petitions constitute the four sequential steps of the attachment procedure, whereby the fiduciary is ultimately brought before the Court *en banc* for failure to file his or her account. The remedy for contempt of the Court's order to file the account is confinement, until there is compliance with the order. All four petitions are filed pursuant to Rule 3.5.B and the place for filing is with the Clerk. Service of the writ of attachment is made by the Sheriff.

#### *[STEP 1 IN THE ATTACHMENT PROCESS]*

### 2.7.1

#### **PETITION FOR CITATION TO SHOW CAUSE WHY AN ACCOUNT SHOULD NOT BE FILED IN ACCORDANCE WITH SECTION 3501.1 OF THE PEF CODE**

[SEE CAPTION AT 1.3.1]

#### **DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed petition, it is hereby decreed that a citation is awarded, directed to Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, to show cause why she should not be required to prepare and file immediately an account in the Office of the Clerk of the Orphans' Court Division of Philadelphia County.

This citation is returnable *sec. leg.*

---

J.

*[Petition on following page]*

**2.7**  
**ENFORCEMENT PROCEDURE**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The petition of Harvey White respectfully states that:

1. On July 7, 2000, Joseph B. Dunn died a resident of Philadelphia, Pennsylvania.
2. Letters Testamentary were granted by the Register of Wills of Philadelphia County to Jane R. Dunn, 47 Main Street, Philadelphia, Pennsylvania on July 15, 2000.
3. Petitioner is a party in interest in the Estate of Joseph B. Dunn, Deceased being a creditor in the amount of \$5,000.
4. More than six months have expired since the first complete advertisement of the grant of Letters Testamentary and the Executrix has failed to file an account and may now be cited to file her account in accordance with Section 3501.1 of the PEF Code.

Wherefore, Petitioner respectfully requests that a citation be awarded, directed to Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, to show cause why she should not be required to prepare an Account and file the same in the Office of the Clerk of the Orphans' Court Division of Philadelphia County.

---

Harvey White

[SEE AFFIDAVIT AT 1.4.1]

Note: *Under Section 3501.1 of the PEF Code, a personal representative may be cited to file an account at any time after the expiration of six months from the first complete advertisement of the original grant of letters.*

**2.7**  
**ENFORCEMENT PROCEDURE**

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*[STEP 2 IN THE ATTACHMENT PROCESS]*

**2.7.2**  
**PETITION FOR ORDER TO FILE AN ACCOUNT**

[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 2000, proof of service of citation having been filed of record and there being no appearance or answer on behalf of respondent, it is hereby decreed and ordered that Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, file an Account of her administration of the decedent's estate in the office of Clerk of the Orphans' Court Division, Room 415, City Hall of Philadelphia County within [❖ ten] days after personal service of this order upon her.

❖ *The judge may allow more time.*

---

J.

*[Petition on following page]*

**2.7**  
**ENFORCEMENT PROCEDURE**

---

[SEE CAPTION AT 1.3.2]

**PETITION FOR ORDER TO FILE AN ACCOUNT  
IN ACCORDANCE WITH SECTION 3501.1 OF THE PEF CODE**

The petition of Harvey White respectfully states that:

1. On June 30, 2000, this Court awarded a citation directed to Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, to show cause why she should not file an Account of her administration of the estate.
2. The said citation was served upon Jane R. Dunn, Executrix, and proof of service duly made has been filed of record.
3. No answer has been made by Jane R. Dunn, nor has she filed an Account.

Wherefore, Petitioner respectfully requests this Court to enter a Decree ordering Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, to file an Account of her administration of the estate in the office of the Clerk of the Orphans' Court Division, Room 415, City Hall of Philadelphia County within [ten] days after personal service of the order upon her.

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Harvey White

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

**2.7**  
**ENFORCEMENT PROCEDURE**

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*[STEP 3 IN THE ATTACHMENT PROCESS]*

**2.7.3**  
**PETITION FOR CITATION FOR WRIT OF ATTACHMENT**

[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, it appearing that Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, has failed to file an Account of her administration of the above-captioned matter as directed by this Court by Decree dated \_\_\_\_\_ which was personally served upon the said respondent on \_\_\_\_\_, it is hereby ORDERED and DECREED that a Citation is awarded, directed to Jane R. Dunn, Executrix of the aforementioned estate to show cause why a Writ of Attachment should not issue for failure to comply with the Order of Court dated \_\_\_\_\_, directing her to file an Account of her administration of the above-captioned estate.

Copy of Petition and Citation to be personally served on the said Jane R. Dunn, Executrix.

This Citation is returnable *sec. leg.*

\_\_\_\_\_  
J.

*[Petition on following page]*

**2.7**  
**ENFORCEMENT PROCEDURE**

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[SEE CAPTION AT 1.3.2]

**PETITION FOR CITATION  
FOR WRIT OF ATTACHMENT**

The petition of Harvey White respectfully represents that:

1. This Honorable Court by Decree dated \_\_\_\_\_ issued an Order to Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, directing her to file an Account of her administration of the estate within [ten] days after service thereof.
2. A copy of the said Order and Petition were personally served upon Jane R. Dunn on \_\_\_\_\_, and proof of service duly made and filed of record.
3. The said Jane R. Dunn has failed to comply with said Order.

Wherefore, Petitioner requests that a Citation be awarded directed to Jane R. Dunn to show cause why a Writ of Attachment should not issue for failure to comply with the Order of Court dated \_\_\_\_\_.

\_\_\_\_\_  
Harvey White

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

**2.7**  
**ENFORCEMENT PROCEDURE**

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*[STEP 4 IN THE ATTACHMENT PROCESS]*

**2.7.4**  
**PETITION FOR ATTACHMENT**

[SEE CAPTION AT 1.3.1]

**DECREE**

Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, has failed to file an Account of her administration of the above captioned estate as directed by this Court by Decree dated \_\_\_\_\_. She has further failed to respond to the Citation to Show Cause why a Writ of Attachment should not issue against her, which was personally served upon the said respondent on \_\_\_\_\_.

Accordingly, we enter the following

**ORDER**

Now, \_\_\_\_\_, 20\_\_\_\_, it is hereby ORDERED and DECREED that an Attachment issue against Jane R. Dunn returnable \_\_\_\_\_ at 10:00 a.m. in Courtroom 426 City Hall, Philadelphia, Pennsylvania, at which time Jane R. Dunn shall show cause why she should not be held in contempt of Court for failure to comply with this Court's Order dated \_\_\_\_\_.

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J.

*[Petition on following page]*

**2.7**  
**ENFORCEMENT PROCEDURE**

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[SEE CAPTION AT 1.3.2]

**PETITION FOR ATTACHMENT**

The petition of Harvey White respectfully represents that:

1. Your Honorable Court by Decree dated \_\_\_\_\_, entered an Order on Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, directing her to file an Account of her administration of the estate within ten days after service thereof.
2. A copy of the order and petition were personally served upon Jane R. Dunn on \_\_\_\_\_, and proof of service duly made and filed of record.
3. Jane R. Dunn has failed to comply with the order.
4. A Citation was then awarded on \_\_\_\_\_ directed to Jane R. Dunn to show cause why a Writ of Attachment should not issue for failure to comply with the Order of Court dated \_\_\_\_\_.
5. The Citation was personally served upon respondent on \_\_\_\_\_ and proof of service duly made and filed of record.
6. No answer has been filed to the Citation nor has the respondent filed an Account as ordered by this Court in its Decree dated \_\_\_\_\_.

Wherefore, Petitioner requests that a Writ of Attachment issue against Jane R. Dunn for failure to file an Account or to reply to the Citation.

\_\_\_\_\_  
Harvey White

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]



## CHAPTER 3

# APPEALING AN ACTION OF THE REGISTER OF WILLS

### 3.1

#### APPEALING THE REGISTER'S ACTION

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Appeals may be made directly to the Register in two circumstances: (1) the Register may revoke the grant of letters of administration where they were improperly granted in the first instance, Section 3181 of the PEF Code; and (2) within three months of the date of death, where a later Will or codicil is discovered, the Register may open the decree of probate and admit the later Will or codicil. Section 3138 of the PEF Code.

All other appeals must be taken to the Orphans' Court Division.

The procedure for appealing from the Register is set forth in the Rules 10.2.A through 10.2.E.

1. File an "Appeal from Register" with the Clerk of the Orphans' Court on the form provided by that office. If the appeal concerns an inheritance tax matter, a copy of the notice of appeal should also be filed with the Register of Wills as agent for the Department of Revenue. After the appeal has been filed with the Clerk, the Register should be requested by the appellant to transmit the record to the Clerk.
2. File a Petition for Citation with the Clerk contemporaneously with filing the appeal, including the information required in Rule 10.2.C(2).
3. Serve the citation and copy of the petition for citation within thirty days on all parties in interest and file the original citation, with proof of service endorsed, with the Clerk.
4. The Clerk will place the appeal on the next available audit list sixty days after the issuance of the citation, and the appellant must give notice at least fifteen days prior to the call of the list that the matter has been placed on the audit list, with the date, time and courtroom scheduled. The notice must also set forth the nature of the interest of the person to whom the notice is given and a brief description of the nature of the dispute.

If any of the above requirements are not complied with, the appeal will be dismissed.

**3.1**

**APPEALING THE REGISTER'S ACTION**

[Pre-printed form]

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION**

**APPEAL FROM REGISTER OF WILLS**

Will No. \_\_\_\_\_ of \_\_\_\_\_  
Adm. No. \_\_\_\_\_ of \_\_\_\_\_  
Misc. No. \_\_\_\_\_ of \_\_\_\_\_

ESTATE OF: \_\_\_\_\_, \_\_\_\_\_

O.C. NO. \_\_\_\_\_ OF \_\_\_\_\_

**TO THE REGISTER OF WILLS OF PHILADELPHIA COUNTY:**

The undersigned, a party in interest, appeals to the ORPHANS' COURT of said County from the decision of the REGISTER OF WILLS in the Estate:

- (1) admitting to Probate a certain writing, dated the \_\_\_\_\_ day of \_\_\_\_\_ as the last will of said decedent, and granting letters testamentary thereon:
- (2) granting letters of administration to \_\_\_\_\_
- (3) with respect to the Inheritance Tax Assessment.

strike out  
inapplicable  
sections

\_\_\_\_\_  
**Appellant Signature**

\_\_\_\_\_  
Print Appellant's Name & Address

Attorney: \_\_\_\_\_  
Address: \_\_\_\_\_

I.D. No. \_\_\_\_\_  
Phone # \_\_\_\_\_

Date Filed \_\_\_\_\_

**3.2**

**PETITION TO THE ORPHANS' COURT DIVISION  
TO SHOW CAUSE WHY THE ACTION OF THE REGISTER  
IN ADMITTING TO PROBATE A CERTAIN WILL SHOULD  
NOT BE SET ASIDE AND A LATER WILL ADMITTED TO PROBATE**

---

---

[SEE CAPTION AT 1.3.1 ]

**PRELIMINARY DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that a Citation is awarded, directed to John Dunn to show cause why the Appeal from the Decree from the Register of Wills admitting to probate the writing dated August 1, 1990 should not be sustained and the Decree of the Register of Wills be opened to permit the Register to receive and act upon a Petition for probate of a later writing, dated September 1, 1994, as the Will of the decedent.

The Citation is returnable *sec. leg.*

---

J.

*[Decree on following page]*

**3.2**

**PETITION TO THE ORPHANS' COURT DIVISION  
TO SHOW CAUSE WHY THE ACTION OF THE REGISTER  
IN ADMITTING TO PROBATE A CERTAIN WILL SHOULD NOT  
NOT BE SET ASIDE AND A LATER WILL ADMITTED TO PROBATE**

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---

[SEE CAPTION AT 1.3.1 ]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed petition, and following a hearing thereon at which just cause was shown, it is hereby ORDERED and DECREED that the Appeal from Probate is sustained and the Letters Testamentary granted on the Will dated August 1, 1990 are revoked and the Register of Wills is directed to open the probate record to receive the later Will dated September 1, 1994 to probate.

\_\_\_\_\_  
J.

*[Petition on following page]*

### 3.2

**PETITION TO THE ORPHANS' COURT DIVISION  
TO SHOW CAUSE WHY THE ACTION OF THE REGISTER  
IN ADMITTING TO PROBATE A CERTAIN WILL SHOULD  
NOT BE SET ASIDE AND A LATER WILL ADMITTED TO PROBATE**

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[SEE CAPTION AT 1.3.2 ]

#### **PETITION**

The petition of James Dunn respectfully states that:

1. Petitioner is the nephew of Joseph B. Dunn who died on January 1, 1995, a resident of Philadelphia, Pennsylvania.
2. A writing dated August 1, 1990, a copy of which is attached as Exhibit "A," was admitted to probate by the Register of Wills of Philadelphia County as the Will of decedent on February 1, 1995 and Letters Testamentary were granted to John Dunn.
3. More than three months following the grant of letters on February 1, 1995, Petitioner discovered a later Will dated September 1, 1994, a copy of which is attached as Exhibit "B."
4. Petitioner is named in the Will dated September 1, 1994, as the executor and sole beneficiary.
5. On June 1, 1995, Petitioner filed an appeal from the decree of the Register, and filed a bond with the Register as required by Section 908(b) of the PEF Code; the record of proceedings before the Register has been duly certified to this Court.

Wherefore, Petitioner respectfully requests that a citation be awarded, directed to John Dunn, to show cause why the appeal from the decree of the Register of Wills admitting to probate the writing dated August 1, 1990 should not be sustained and the decree of the Register of Wills be opened to permit the Register to receive and act upon a petition for probate of a later writing, dated September 1, 1994, as the Will of the decedent.

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James Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3 ]



### 3.3

## **PETITION TO THE ORPHANS' COURT DIVISION TO SHOW CAUSE WHY AN APPEAL FROM THE REGISTER SHOULD NOT BE SUSTAINED FOR LACK OF TESTAMENTARY CAPACITY AND UNDUE INFLUENCE**

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[SEE CAPTION AT 1.3.1]

### **PRELIMINARY DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that a Citation is awarded, directed to John Jones, Sally Morgan and Stephen Morgan, to show cause why the appeal from the probate of the writing dated May 1, 1990 should not be sustained on the grounds of lack of testamentary capacity and undue influence.

The Citation is returnable *sec. leg.*

---

J.

*[Decree on following page]*

**3.3**

**PETITION TO THE ORPHANS' COURT DIVISION TO SHOW CAUSE  
WHY AN APPEAL FROM THE REGISTER SHOULD NOT BE SUSTAINED  
FOR LACK OF TESTAMENTARY CAPACITY AND UNDUE INFLUENCE**

---

---

[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed petition, the Appeal of Thomas Morgan, Jr. from the Decree of the Register of Wills dated November 1, 1994, admitting to probate a certain writing dated May 1, 1990, as the Last Will and Testament of Thomas Morgan, Sr., Deceased is sustained. The record is remanded to the Register of Wills, who is directed to grant Letters of Administration to the person or persons entitled thereto.

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J.

*[Petition on following page]*



### 3.3

#### **PETITION TO THE ORPHANS' COURT DIVISION TO SHOW CAUSE WHY AN APPEAL FROM THE REGISTER SHOULD NOT BE SUSTAINED FOR LACK OF TESTAMENTARY CAPACITY AND UNDUE INFLUENCE**

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[SEE CAPTION AT 1.3.2]

#### **PETITION**

The petition of Thomas Morgan, Jr., respectfully represents that:

1. Thomas Morgan, Sr. died unmarried on February 15, 1994, a resident of Philadelphia, leaving the following three children to survive him as the persons entitled to his estate under the intestate laws:

Thomas Morgan, Jr.  
99 Jones Lane  
Philadelphia, Pennsylvania

Sally Morgan  
88 Hummingbird Way  
Havertown, Pennsylvania

Stephen Morgan  
88 Hummingbird Way  
Havertown, Pennsylvania

2. Petitioner is a party in interest in the estate of said decedent, entitled to a one-third interest as one of decedent's three children under the intestate laws.
3. A certain writing alleged to be the last Will of decedent and purporting to have been executed May 1, 1990, was admitted to probate by the Register of Philadelphia County as the Last Will and Testament of the decedent on November 1, 1994, and Letters Testamentary thereon granted to John Jones. A copy of the writing dated May 1, 1990 is attached as Exhibit "A."
4. On December 1, 1994, Petitioner filed a Notice of Appeal from the Decree of the Register dated November 1, 1994.
5. Petitioner avers that at the time of execution of said writing, the physical and mental condition of the decedent was greatly impaired by sickness and infirmity, and he was not a person of sound mind, capable of disposing by Will of his estate; and further, said writing was procured by undue influence, duress and constraint practiced upon

### 3.3

#### **PETITION TO THE ORPHANS' COURT DIVISION TO SHOW CAUSE WHY AN APPEAL FROM THE REGISTER SHOULD NOT BE SUSTAINED FOR LACK OF TESTAMENTARY CAPACITY AND UNDUE INFLUENCE**

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the decedent by John Jones, named in said writing as one-fourth heir, and by other persons whom Petitioner is at the present time unable to name, but expects to be able to identify in the course of discovery.

6. Decedent, as a consequence of severe and extended physical illnesses, including a stroke which occurred on September 1, 1989, was not of sound mind on May 1, 1990 and lacked testamentary capacity.
7. Decedent, while in a weakened mental and physical condition as set forth above, and also under the influence of medicines and drugs being administered to him, was induced and coerced to execute the writing dated May 1, 1990 by John Jones, who stood in a confidential relationship with decedent, was a stranger to his blood and was instrumental in procuring the writing which named himself as personal representative and a beneficiary of the estate.
8. The names and addresses of all parties in interest other than Petitioner are:

John Jones  
33 Milky Way  
Philadelphia, Pennsylvania

Sally Morgan  
88 Hummingbird Way  
Havertown, Pennsylvania

Stephen Morgan  
88 Hummingbird Way  
Havertown, Pennsylvania

Wherefore, Petitioner prays this Honorable Court to award a citation, under the provisions of Section 764 of the PEF Code, directed to the above-named parties in interest, to show cause why the appeal from the probate of the writing dated May 1, 1990 should not be sustained on the grounds of lack of testamentary capacity and undue influence.

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Thomas Morgan, Jr.

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

## ADMINISTRATION OF ESTATES AND TRUSTS

### 4.1

#### NOTICE OF BENEFICIAL INTEREST IN ESTATE UNDER RULE 5.6

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##### NOTICE OF ESTATE ADMINISTRATION

**THIS NOTICE DOES NOT MEAN THAT YOU WILL RECEIVE  
ANY MONEY OR PROPERTY FROM THIS ESTATE OR OTHERWISE**

Whether you will receive any money or property will be determined wholly or partly by the Decedent's Will. If the Decedent died without a Will, whether you will receive any money or property will be determined by the intestacy laws of Pennsylvania.

BEFORE THE REGISTER OF WILLS, COUNTY OF [County of Death]  
PENNSYLVANIA  
IN RE: Estate of [Decedent Name], Deceased  
No. [Register's File Number]

TO:

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(Name and Address)

Please take notice of the death of [Decedent's Name] and the Grant of Letters to the personal representative(s) named below.

The Decedent, [Decedent's Name], died on [Date of Death], at [County of Death], Pennsylvania.

\_\_\_\_\_ The Decedent died testate (with a Will); or  
\_\_\_\_\_ The Decedent died intestate (without a Will).

The Personal Representative(s) of the Decedent is/are [Executor], [Address, City, State].

#### 4.1

#### NOTICE OF BENEFICIAL INTEREST IN ESTATE UNDER RULE 5.6

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If the Decedent died testate, the Will has been filed with the Office of the Register of Wills of [County of Death],

Bucks County Courthouse [215-348-6265]  
55 East Court Street  
Doylestown, PA 18901

Chester County Courthouse [610-344-6335]  
2 North High Street, Suite #109  
P.O. Box 2748  
West Chester, PA 19380

Delaware County Courthouse [610-891-4000]  
Government Center Building  
201 West Front Street  
Media, PA 19063

Montgomery County Courthouse [610-278-3400]  
Airy and Swede Streets  
P.O. Box 311  
Norristown, PA 19404-0311

Philadelphia City Hall [215-686-6261]  
Room 180  
Philadelphia, PA 19107

If the Decedent died intestate, a Petition for the Grant of Letters of Administration was filed with the Office of the Register of Wills of [County of Death],

Bucks County Courthouse [215-348-6265]  
55 East Court Street  
Doylestown, PA 18901

Chester County Courthouse [610-344-6335]  
2 North High Street, Suite #109  
P.O. Box 2748  
West Chester, PA 19380

**4.1**

**NOTICE OF BENEFICIAL INTEREST IN ESTATE UNDER RULE 5.6**

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Delaware County Courthouse [610-891-4000]  
Government Center Building  
201 West Front Street  
Media, PA 19063

Montgomery County Courthouse [610-278-3400]  
Airy and Swede Streets  
P.O. Box 311  
Norristown, PA 19404-0311

Philadelphia City Hall [215-686-6261]  
Room 180  
Philadelphia, PA 19107

A copy of the Will or Petition may be obtained by contacting the Register of Wills and paying the charges for duplication.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

Capacity: \_\_\_\_\_ Personal Representative  
                  \_\_\_\_\_ Counsel-ID# [Attorney]

[Attorney Name]  
[Address, City, State]  
[Telephone]



**4.2**

**CERTIFICATION OF NOTICE UNDER RULE 5.6**

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**CERTIFICATION OF NOTICE UNDER RULE 5 6(a)**

NAME OF DECEDENT: [Decedent Name]  
DATE OF DEATH: [Date of Death]  
WILL NO. [Register's File Number] {as appropriate}  
ADMINISTRATION NO. [Register's File Number] {as appropriate}

TO THE REGISTER:

I certify that notice of estate administration required by Rule 5.6(a) of the Orphans' Court Rules was served on or mailed to the following beneficiaries of the above-captioned estate on [Date of service or mailing].

NAME ADDRESS

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Notice has now been given to all persons entitled thereto under Rule 5.6(a) except:

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Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

Capacity: \_\_\_\_\_ Personal Representative  
                  \_\_\_\_\_ Counsel-ID# [Attorney]

[Attorney Name]  
[Address, City, State]  
[Telephone]





**4.3**

**PETITION FOR LEAVE TO CONTINUE DECEDENT'S BUSINESS  
IN ACCORDANCE WITH 20 Pa. C.S.A. §3314**

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[SEE CAPTION AT 1. 3. 1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Jane R. Dunn, Administrator of the Estate of Joseph B. Dunn, Deceased, is authorized to continue the operation of the tavern at 4800 Chestnut Street, Philadelphia, Pennsylvania, 19104, owned by the Decedent, and to conduct the business of the Decedent for a period of one year commencing August 17, 2001, in accordance with the provisions of the Agreement as set forth in the annexed Petition.

Security is to be entered in the amount of \$\_\_\_\_\_ with corporate surety.

\_\_\_\_\_  
J.

*[Petition on following page]*

### 4.3

#### **PETITION FOR LEAVE TO CONTINUE DECEDENT'S BUSINESS IN ACCORDANCE WITH 20 Pa. C.S.A. §3314**

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[SEE CAPTION AT 1.3.2]

#### **PETITION**

The petition of Jane R. Dunn respectfully states that:

1. Joseph B. Dunn died on July 7, 2001, intestate, a resident of Philadelphia, Pennsylvania, and Letters of Administration were granted on his estate to Petitioner by the Register of Wills of Philadelphia County on July 16, 2001.
2. The only persons interested in Decedent's estate are Petitioner, who is the surviving spouse, and John Dunn, an adult son who joins in this Petition.
3. The estimated value of Decedent's estate is \$65,754.32.
4. There are no known debts of Decedent, except for the liabilities existing on uncompleted contracts as set forth hereinafter.
5. The Decedent was the proprietor of a tavern located at 4800 Chestnut Street, Philadelphia, Pennsylvania, 19104, which he operated with a liquor license.
6. Decedent derived a gross income of approximately \$2,000 each week from the business.
7. The value of the Decedent's business depends largely on its uninterrupted operation, and substantial liabilities exist with respect to purchases contracted for by the Decedent before his death.
8. The physical assets of the business, if sold at a forced sale, would not exceed \$10,000, which amount would be insufficient to meet existing contractual liabilities. However, the continuation of the business for a period of one year would permit the performance of uncompleted commitments and the orderly and uninterrupted transfer of the business to the Decedent's son, John Dunn.
9. Prior to the Decedent's death, John Dunn was actively engaged in the management of the tavern. John Dunn desires to continue the business and is prepared to accept the business at the expiration of a one-year period at a valuation of \$20,000 on

### 4.3

#### **PETITION FOR LEAVE TO CONTINUE DECEDENT'S BUSINESS IN ACCORDANCE WITH 20 Pa. C.S.A. §3314**

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account of his distributive share of the estate.

10. By the terms of a written agreement (a copy of which is attached hereto as Exhibit "A"), Petitioner and Decedent's son agreed that, subject to approval of this Court, during the period of August 18, 2001 to August 17, 2001, Decedent's son shall manage the tavern; any and all debts and liabilities incurred in the operation of the business, including all debts and liabilities presently outstanding, shall be paid as part of the operating expenses of the business to the extent that income shall be derived from the operation thereof, and to the extent that income shall prove insufficient, they shall be divided equally between John Dunn individually and Petitioner as Administrator of the Estate of Joseph B. Dunn, Deceased; and any and all profits derived from the operation of the business after deduction of debts and liabilities as above provided, shall be divided equally between the parties in their respective capacities, as heretofore stated.
11. The continuation of the business in the manner and for the period set forth herein will not prejudice the rights of any creditors or any persons interested in the estate.
12. For the reasons heretofore given, Petitioner is of the opinion that it will be to the best interest of the estate and the parties in interest to continue the business in the manner and for the period stated.
13. Under 20 Pa. C.S.A. §3314, the Court may authorize the personal representative to continue any business of the estate for the benefit of the estate.

Wherefore, Petitioner respectfully requests that she be authorized to continue the operation of the tavern at 4800 Chestnut Street, Philadelphia, Pennsylvania, 19104, owned by the Decedent, and to conduct the business of the Decedent for a period of one year commencing August 17, 2001, in accordance with the provisions of the Agreement as set forth in this Petition.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*[Joinder on following page]*

**4.3**  
**PETITION FOR LEAVE TO CONTINUE DECEDENT’S BUSINESS**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §3314**

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[SEE CAPTION AT 1.3.2]

**JOINDER**

I join in the above Petition as an heir-at-law and party to the agreement attached hereto as Exhibit “A.”

Signed on \_\_\_\_\_, 20\_\_\_\_      \_\_\_\_\_  
John Dunn

**4.4**  
**NOTICE OF CLAIM**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §3532(b)(2)**

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*[A printed form is available from the office of the Clerk of the Orphans' Court Division]*

Estate of \_\_\_\_\_, Deceased

No. \_\_\_\_\_ of 20\_\_\_\_

Notice of claim by \_\_\_\_\_  
filed pursuant to Section 3532(b)(2), of the PEF Code

To the Clerk of the Orphans' Court:

Enter the claim of \_\_\_\_\_ in  
*(Claimant)*

the amount of \$ \_\_\_\_\_, against the above referenced estate.

The Decedent, who resided at \_\_\_\_\_,  
*(Address)*

Philadelphia, died on \_\_\_\_\_. Written notice of this claim was given to  
*(Date)*

\_\_\_\_\_, if known to claimant, at  
*(Personal representative, or counsel)*

\_\_\_\_\_, on  
*(Address)*

\_\_\_\_\_.  
*(Date)*

\_\_\_\_\_  
*(Claimant)*  
*(Address)*

\_\_\_\_\_  
*(Claimant's Counsel)*  
*(Address)*

Note: *Claimant must file a letter to withdraw a claim that has been settled.*



**4.5**  
**PETITION FOR LEAVE TO COMPROMISE**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §3323**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Jane R. Dunn, Administrator of the Estate of Joseph B. Dunn, Deceased, is hereby authorized to compromise and settle the claim of Joseph B. Dunn, Deceased, against Richard Harrison under an Agreement dated March 8, 2001 for the aggregate amount of \$15,000 in full payment and settlement thereof, the amount of \$15,000 to be accounted for by Jane R. Dunn in her final account as Administrator, but without liability on her part for the difference between the amount of \$15,000 and the amount at which the Decedent's interest under the Agreement was stated in the inventory filed by her as Administrator in the Office of the Register of Wills.

\_\_\_\_\_  
J.

*[Petition on following page]*

**4.5**  
**PETITION FOR LEAVE TO COMPROMISE**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §3323**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Jane R. Dunn respectfully states that:

1. She is Administratrix of the Estate of Joseph B. Dunn, Deceased who died on July 7, 2001, and Letters of Administration were granted to her by the Register of Wills of Philadelphia County on July 16, 2001.
2. During his lifetime, Joseph B. Dunn entered into an Agreement dated March 8, 2001, with his partner, Richard Harrison, for the sale of his one-half interest in a partnership known as Dunn and Harrison. A copy of the Agreement is attached hereto as Exhibit "A."
3. By the terms of the Agreement, the amount of \$5,000 was paid to the Decedent on the date of the sale and, in the event that the gross income of the partnership exceeded the amount of \$50,000 during 1999, an additional amount of \$20,000 was payable to him on March 8, 2000.
4. A dispute has arisen as to whether the partnership's gross income exceeded \$50,000 during 2001 because of the manner in which the gross income was calculated based upon the accounting practices employed by the partnership.
5. Petitioner filed her Inventory of the Estate of Joseph B. Dunn, Deceased, in the Office of the Register of Wills on November 5, 2001, and included therein Decedent's interest under the Agreement at a value of \$20,000.
6. No payments on account of the balance of \$20,000 have been paid to Petitioner even though the amount became due on March 8, 2000, and even though repeated demands have been made by Petitioner therefor.
7. The parties in interest are Petitioner, who is entitled to the first \$30,000 and one-half of the balance of the estate, and the Decedent's and Petitioner's two minor children, James Dunn and Janet Dunn, each of whom is entitled to one-fourth of the balance of the estate.



**4.5**  
**PETITION FOR LEAVE TO COMPROMISE**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §3323**

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8. Harry James, Esquire, was appointed Guardian of the Estates of the Minors, James Dunn and Janet Dunn, by Decree of Jones, J., dated October 3, 2001.
9. Richard Harrison wishes to compromise the estate's claim by paying to Petitioner the amount of \$15,000, which Petitioner regards as a fair and just settlement in view of the uncertainties and expense of litigation; however, Petitioner and Harry James, Esquire, as Guardian of the Estates of James Dunn and Janet Dunn, are unwilling to undertake the settlement without court approval.
10. Under 20 Pa. C.S.A. §3323, whenever it shall be proposed to compromise any claim by an estate, the Court, on petition by the personal representative setting forth all of the facts and circumstances and after such notice as the Court shall direct, may enter a Decree authorizing the compromise or settlement to be made.

Wherefore, Petitioner respectfully requests this Court to authorize Petitioner to compromise and settle the claim of Joseph B. Dunn, Deceased, against Richard Harrison under an Agreement dated March 8, 2001, for the aggregate amount of \$15,000 in full payment and settlement thereof, the amount of \$15,000 to be accounted for by Jane R. Dunn in her final account as Administrator, but without liability on her part for the difference between the amount of \$15,000 and the amount at which Decedent's interest under the Agreement was stated in the Inventory filed by her as Administrator in the Office of the Register of Wills.

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Jane B. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*[Joinder on following page]*

**4.5**  
**PETITION FOR LEAVE TO COMPROMISE**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §3323**

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[SEE CAPTION AT 1.3.2]

**JOINDER**

I join in the above Petition on behalf of Decedent's minor children, James Dunn and Janet Dunn.

Signed on \_\_\_\_\_, 20\_\_\_\_  
Harry James, Guardian

Note: *This Petition should not be used for compromising wrongful death or survival claims. See Chapter 11.*

**4.6**

**DISCLAIMER IN ACCORDANCE WITH 20 Pa. C.S.A. §6201**

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[SEE CAPTION AT 1.3.21]

1. Jane R. Dunn died on March 29, 2001, without a Will, survived by her four children, James, John, William, and Mary Dunn. Her probate estate consists of real estate known as 54321 First Avenue, Philadelphia, Pennsylvania, valued at \$25,000, and other assets valued at \$10,000.
2. Her probate estate is subject to the payment of funeral expenses, administration expenses, debts and taxes totaling approximately \$5,000, leaving a net distributable estate of \$30,000.
3. Letters of Administration were granted by the Register of Wills of Philadelphia County on April 15, 2001 to William Dunn.
4. The intestate laws of the Commonwealth of Pennsylvania provide that where a person dies without a Will and leaves no surviving spouse, the surviving children shall be entitled to share the estate equally.
5. James and John Dunn are married, have no issue and have made homes of their own. William and Mary Dunn are unmarried and were members of Decedent’s household at the time of her death.
6. James and John Dunn desire to disclaim their intestate interests in their mother’s estate.

Therefore, intending to be legally bound hereby, we, the undersigned children of Jane R. Dunn, Deceased, do hereby disclaim the interest in the estate of Jane R. Dunn, Deceased, to which each of us is entitled under the intestate laws of the Commonwealth of Pennsylvania.

We have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Witness: \_\_\_\_\_ [SEAL]  
James Dunn

Witness: \_\_\_\_\_ [SEAL]  
John Dunn

4.6

DISCLAIMER IN ACCORDANCE WITH 20 Pa. C.S.A. §6201

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COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.  
COUNTY OF PHILADELPHIA )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the Commonwealth of Pennsylvania, personally appeared James and John Dunn, satisfactorily proven to me to be the persons described in the foregoing Disclaimer, who acknowledged that they executed the same for the purposes therein contained and that they desired it to be recorded as such.

\_\_\_\_\_  
Notary Public

Note: *An Affidavit must be attached to permit recording of Disclaimer affecting real estate. 20 Pa. C.S.A. §6204 governs filing, delivery and recording of Disclaimer. Reference should also be made to 20 Pa. C.S.A. §2204 (regarding Disclaimers resulting from spousal elections), 72 Pa. C.S.A. §1716(c) (regarding inheritance tax consequences of Disclaimer and time period), and Internal Revenue Code §2518 (regarding gift tax consequences of Disclaimer and time period.)*

**4.7**

**PETITION TO DIVIDE A TRUST INTO SEPARATE TRUSTS  
IN ACCORDANCE WITH 20 Pa. C.S.A. §7191**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_ upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that the Residuary Trust under the Will of Joseph B. Dunn, Deceased be divided into three separate Trusts, each to be composed of one-third of the present Trust; one Trust to be held for the benefit of each of Joseph B. Dunn, III, Mary E. Evans, and John J. Dunn.

\_\_\_\_\_  
J.

*[Petition on following page]*

#### 4.7

### PETITION TO DIVIDE A TRUST INTO SEPARATE TRUSTS IN ACCORDANCE WITH 20 Pa. C.S.A. §7191

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[SEE CAPTION AT 1.3.1]

#### PETITION

The Upstanding Trust Company respectfully states that:

1. It is the Surviving Trustee of the Residuary Trust under the Will of Joseph B. Dunn, Deceased who died on July 7, 2001. A copy of his Will is attached hereto as Exhibit "A."
2. There is presently pending before this Court Petitioner's First Account, which has been filed because of the death of Testator's widow, Jane R. Dunn, the life tenant and Co-Trustee, on January 12, 1999.
3. By ITEM 4.B.2. of his Will, the Testator directed that after the death of Jane R. Dunn, the Trust income is payable equally to his children, Joseph B. Dunn, III, Mary E. Dunn (now Mary E. Evans), and John J. Dunn. The Testator further provided that the Trustee may invade principal in an amount not to exceed \$20,000 for each child in order to allow the child to enter into a business enterprise.
4. By Item 4.B.3. of his Will, the Testator directed that one-third of the Trust is to be distributed to Joseph B. Dunn, III, when he attains 40 years of age or to his issue, *per stirpes*, in the event he dies before attaining age 40; one-third is to be distributed to John J. Dunn when he attains 40 years of age or to his issue, *per stirpes*, in the event he dies before attaining that age; and the remaining one-third is distributable upon the death of Mary E. Evans to her issue, *per stirpes*.
5. The Trustee has been requested to exercise its power to invade principal in the amount of \$20,000 in order to permit John J. Dunn to purchase a retail shoe store located at 14 E. Upland Street, Philadelphia, Pennsylvania.
6. The two remaining children, Joseph B. Dunn, III, an ordained minister, and Mary E. Evans, a college professor, are unlikely to request that the principal of the Trust be invaded to enable either to enter into a business enterprise.

4.7

**PETITION TO DIVIDE A TRUST INTO SEPARATE TRUSTS  
IN ACCORDANCE WITH 20 Pa. C.S.A. §7191**

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7. At present the parties in interest are as follows:

Joseph B. Dunn, III      Children:    None

Mary E. Evans            Children:    Mary Ann Evans, a minor (born 4/22/92)  
Joanne Evans, a minor (born 12/1/93)  
Peter Evans, a minor (born 5/1/96)

John J. Dunn             Children:    John J. Dunn, Jr., a minor (born 6/26/95)

8. Consents to the division of the Trust by all adult parties in interest and by Robert Jones, Esq., the Guardian and Trustee *ad litem* appointed to represent the interests of minors and unborn and unascertained remainder beneficiaries, are attached.

9. The reasons the division is desired are the following:

a. The invasion of principal will thereafter create an inequity with respect to the payment of income unless an adjustment is made to recognize the principal payment to John J. Dunn. The income beneficiaries are in disagreement as to the method of adjustment to be made.

b. Since the income beneficiaries are unable to agree about the future division of the income, the same conflict will arise when each share of trust principal is distributable as explained in paragraph 4 above.

c. Since two shares of the Trust principal are distributable to two income beneficiaries upon attaining 40 years of age and the third share is to remain in trust during the life of Mary E. Evans, it is desirable that different investment policies be followed for the several branches of the family to meet satisfactorily their separate present and future financial needs and plans.

d. If the Trust is divided, certain economies will be realized in the future upon the termination of each separate share in filing an account for that Trust alone.

Wherefore, Petitioner respectfully requests this Court to order the Residuary Trust under the Will of Joseph B. Dunn, Deceased be divided into three separate Trusts, each to

**4.7**

**PETITION TO DIVIDE A TRUST INTO SEPARATE TRUSTS  
IN ACCORDANCE WITH 20 Pa. C.S.A. §7191**

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be composed of one-third of the present Trust; one Trust to be held for the benefit of each of Joseph B. Dunn, III, Mary E. Evans and John J. Dunn.

UPSTANDING TRUST COMPANY

By: \_\_\_\_\_  
Title:

[SEE AFFIDAVIT AT 1.4.2 OR VERIFICATION AT 1.4.3]



**4.7**

**PETITION TO DIVIDE A TRUST INTO SEPARATE TRUSTS  
IN ACCORDANCE WITH 20 Pa. C.S.A. §7191**

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[SEE CAPTION AT 1.3.1]

**CONSENT TO DIVIDE TRUST**

I, Joseph B. Dunn, III, hereby consent to the division of the Residuary Trust under the Will of Joseph B. Dunn, Deceased into three separate Trusts, each to be composed of one-third of the present Trust; one Trust to be held for the benefit of each of Joseph B. Dunn, III, Mary E. Evans and John J. Dunn.

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Joseph B. Dunn, III

Note: *Amendments to 20 Pa. C.S.A. §7191 enacted in 1999 permit a trustee to divide a trust into separate trusts without court approval. Also, some governing instruments may so provide. Consents of all other parties in interest including the guardian and trustee ad litem are no longer mandated by statute but should be attached if available. This form may be adapted to a petition to combine trusts in accordance with 20 Pa. C.S.A. §7192, or to a petition for change of situs of a trust in accordance with 20 Pa. C.S.A. §725.*



**4.8**

**PETITION TO FIX THE AMOUNT OF ADDITIONAL SECURITY  
UPON SALE BY AN ADMINISTRATOR OF REAL PROPERTY  
IN ACCORDANCE WITH 20 Pa. C.S.A. §3351**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Jane R. Dunn, Administrator of the Estate of Joseph B. Dunn, Deceased, enter additional security in the amount of \$\_\_\_\_\_ with Fire Insurance Company as surety, and upon the entry of same the Administrator is authorized to receive the proceeds of sale of premises 47 Main Street, Philadelphia, Pennsylvania.

\_\_\_\_\_  
J.

*[Petition on following page]*

## 4.8

### **PETITION TO FIX THE AMOUNT OF ADDITIONAL SECURITY UPON SALE BY AN ADMINISTRATOR OF REAL PROPERTY IN ACCORDANCE WITH 20 Pa. C.S.A. §3351**

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[SEE CAPTION AT 1.3.2]

#### **PETITION**

The Petition of Jane R. Dunn respectfully states that:

1. Joseph B. Dunn died a resident of 47 Main Street, Philadelphia, Pennsylvania, on July 7, 2001, intestate.
2. Letters of Administration were granted to Petitioner by the Register of Wills of Philadelphia County on July 16, 2001.
3. The Inventory of the assets of the Decedent has not been filed, but the total estimated value of the estate is \$44,900 of which \$7,900 is the appraised value of premises 47 Main Street, Philadelphia, Pennsylvania.
4. Fire Insurance Company has filed its bond as surety on the bond of the Administrator in the amount of \$74,000.
5. Premises 47 Main Street, Philadelphia, Pennsylvania, were owned by the Decedent at the time of his death and contain a two-story dwelling of brick construction; the premises are now occupied by Jane R. Dunn; the current tax assessment is \$3,100.
6. On October 1, 2001, Petitioner executed an Agreement to sell the premises to John H. Doe, of 789 Main Street, Philadelphia, Pennsylvania, for \$7,900. A true and correct copy of the Agreement of Sale is attached hereto as Exhibit "A."
7. Attached hereto as Exhibit "B" is a schedule setting forth a computation of the estimated net proceeds which Petitioner will receive at the time of settlement (including an itemized list of estimated closing expenses) indicating that Petitioner will receive the net amount of \$7,200 at the time of settlement.
8. There are no mortgages, delinquent taxes, judgments, or any other liens of record with respect to the premises known to Petitioner.

**4.8**

**PETITION TO FIX THE AMOUNT OF ADDITIONAL SECURITY  
UPON SALE BY AN ADMINISTRATOR OF REAL PROPERTY  
IN ACCORDANCE WITH 20 Pa. C.S.A. §3351**

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9. The parties in interest in the Estate of Joseph B. Dunn, Deceased, all *sui juris*, are as follows:

Jane R. Dunn 47 Main Street Philadelphia, PA 19000	Widow and Administratrix
--	--------------------------

Mr. Joseph B. Dunn, Jr. 6 North Street Philadelphia, PA 19000	Son
---	-----

Miss Elaine S. Dunn 567 Main Street Philadelphia, PA 19000	Daughter
--	----------

Mrs. Ann Smith 201 Pine Street Philadelphia, PA 19000	Daughter
---	----------

10. The consents of all of the parties except Ann Smith are attached.
11. Notice of the filing of this Petition was mailed to Ann Smith on October 15, 2001, and a copy of the Notice is attached.
12. The Appraisal of 47 Main Street by John Q. Black, a qualified appraiser, is attached as Exhibit "C."
13. The sale is desirable for the proper administration and distribution of the estate because the real estate is inappropriate for distribution to four adult beneficiaries who maintain separate residences.

Wherefore, Petitioner respectfully requests that she, as Administratrix of the Estate of Joseph B. Dunn, be directed to enter such additional security as this Court determines, with Fire Insurance Company as surety, and upon entry of the same, she be authorized to

#### 4.8

**PETITION TO FIX THE AMOUNTS OF ADDITIONAL SECURITY  
UPON SALE BY AN ADMINISTRATOR OF REAL PROPERTY  
IN ACCORDANCE WITH 20 Pa. C.S.A. §3351**

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receive the proceeds of sale of premises 47 Main Street, Philadelphia, Pennsylvania, as more particularly described herein.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

Note: *See Philadelphia Rule 12.10.B, 20 Pa. C.S.A. §§3325, 3326, 3351 and 7141. If no bond was initially required because it was excused by the governing instrument or otherwise excused by 20 Pa. C.S.A. §3174, no additional security is required by 20 Pa. C.S.A. §3155 and no petition to fix or waive additional security is necessary.*

The following should be attached to the above Petition:

1. Certification of counsel that in the opinion of counsel the estate is solvent and that no objection to the sale of the premises by a party in interest is known. In the alternative, an appraisal by a qualified appraiser may be attached.
2. A copy of the Will, Deed of Trust or Decree by which Petitioner was appointed.
3. A copy of the Agreement of Sale.
4. Consents to the sale signed by any parties in interest who do not join in the Petition.
5. A copy of the Notice given to those parties who do not consent or join in the Petition, together with their addresses and the date on which Notice was mailed.
6. A schedule setting forth a computation of the estimated net proceeds Petitioner will receive at the time of settlement, including an itemized list of estimated closing expenses.

**4.9**

**PETITION TO TERMINATE TRUST UNDER 20 Pa. C.S.A. §6102**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, in consideration of the annexed Petition and Hearing held thereon, it is hereby ORDERED and DECREED that the Trust under Item FIFTH of the Will of Jane R. Dunn, Deceased is hereby terminated and the Trustee is ordered to file an Account of the administration of the Trust and upon confirmation of the Account is ordered to distribute the net balance of principal and income to James Dunn.

\_\_\_\_\_  
J.

*[Petition on following page]*

## 4.9

### PETITION TO TERMINATE TRUST UNDER Pa. C.S.A. §6102

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[SEE CAPTION AT 1.3.2]

#### PETITION

The Petition of James Dunn respectfully states that:

1. Jane R. Dunn died March 29, 2001, a resident of Philadelphia, Pennsylvania, leaving a last Will dated January 15, 2001, which was admitted to probate by the Register of Wills of Philadelphia County. Under the terms of Item FIFTH of the Will her residuary estate was left in trust for the life of her son, James Dunn, the Petitioner. Petitioner is entitled to receive all of the net income for his life and is given a general testamentary power of appointment over the Trust. In default of appointment the principal is distributable *per stirpes* to Petitioner's issue living at his death. A copy of the Will is attached as Exhibit "A."
2. The Residuary Trust under Will was funded with 500 shares of the stock of a closely held corporation known as Dunn & Smith Florist Shop, Inc. The remaining shares of the stock in the corporation were then owned by Testator's sister, Ann Smith, who is the Trustee of this Trust.
3. Testator's main purpose in establishing the Trust was to support Petitioner and to permit the continuance of the business by Testator's sister.
4. Because of ill health, Ann Smith has sold all of the stock of Dunn & Smith Florist Shop, Inc. and retired. She no longer wishes to serve as Trustee.
5. Petitioner is a successful businessman who does not rely on the Trust for support, whose separate income far exceeds the Trust income, and who is capable of managing his finances in a responsible manner.
6. The Trust principal now consists of \$100,000, being the proceeds of the sale of the stock, from which the annual income after expenses is \$3,500.
7. Petitioner requests the Court to terminate the Trust and to pay over the entire principal and any undistributed income after commissions and expenses to him individually under Section 6102(a) of the Probate, Estates and Fiduciaries Code because the original purpose of Testator to permit her sister to continue in business



**4.9**

**PETITION TO TERMINATE TRUST UNDER 20 Pa. C.S.A. §6102**

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has failed and termination of the Trust would more nearly approximate Testator's intent.

8. Other parties in interest in this Trust are Petitioner's minor children who are contingent remainder beneficiaries in default of appointment by Petitioner:
  - a. Peter Dunn, age 8
  - b. Pamela Dunn, age 5
9. It is respectfully suggested that no Guardian or Trustee *ad litem* need be appointed because of Petitioner's general power of appointment which has been exercised in his Will and which he intends to exercise by any future Will.
10. The Consent of the Trustee to the proposed termination is attached to this Petition.

Wherefore, Petitioner prays that this Honorable Court enter an Order terminating the Trust under Section 6102(a) of the Probate, Estates and Fiduciaries Code and directing the Trustee to file an Account and upon confirmation of the Account to make distribution outright to Petitioner of the entire net balances available for distribution.

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James Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

















**5.4**

**PETITION TO EXTEND THE TIME TO TAKE AN ELECTIVE SHARE  
IN ACCORDANCE WITH 20 PA. C.S.A. §2210(B)**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED AND DECREED that the time within which Jane R. Dunn may elect to take an elective share of the property of Joseph B. Dunn, Deceased, is extended to July 16, 2002.

\_\_\_\_\_  
J.

*[Petition on following page]*

5.4

**PETITION TO EXTEND THE TIME TO TAKE AN ELECTIVE SHARE  
IN ACCORDANCE WITH 20 Pa. C.S.A. §2210(b)**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Jane R. Dunn respectfully states that:

1. Joseph B. Dunn died on July 7, 2001, having resided at 261 Horse Hair Road, Philadelphia, Pennsylvania, and having left a Will dated March 30, 1999, which was admitted to probate by the Register of Wills of Philadelphia County on July 16, 2001. A copy of the Will is attached hereto as Exhibit "A."
2. Letters Testamentary thereon were granted to Harry Doe, as Executor, on July 16, 2001.
3. Petitioner is the surviving widow of Decedent and resides at 261 Horse Hair Road, Philadelphia, Pennsylvania, which was her residence on the date of Decedent's death. Petitioner married Decedent on June 26, 1976, at St. Mary's Church, Philadelphia, Pennsylvania, before Rev. Manus McKenzie.
4. Under Item SIXTH of his Will, the Decedent provided that his residuary estate be held by his son, John Dunn, as Trustee, to pay the net income to Petitioner during her lifetime, and upon Petitioner's death, this Trust is to terminate and the principal is distributable to Decedent's then living issue, *per stirpes*.
5. The names, addresses, and relationships of those interested in Decedent's estate, and the extent of their respective interests in the estate are as follows:

Jane R. Dunn 261 Horse Hair Road Philadelphia, PA 19199	Widow	Life tenant
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John Dunn 2 Main Street Philadelphia, PA 19199	Son	Contingent remainderman
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6. The Joinder of John Dunn, individually and as Trustee, to the extension of time

**5.4**

**PETITION TO EXTEND THE TIME TO TAKE AN ELECTIVE SHARE  
IN ACCORDANCE WITH 20 Pa. C.S.A. §2210(b)**

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requested in this petition is set forth below.

7. Under the provisions of 20 Pa. C.S.A. §2210(b), the time within which Petitioner must elect to take an elective share Will expire on January 16, 2002, unless an extension of time is granted.
8. No Inventory has been filed and the Executor has advised Petitioner that he Will be unable to determine the value of Decedent's estate until more than six months after the date of probate of Decedent's Will.
9. Petitioner is therefore unable to determine whether it is advantageous for her to elect to take an elective share within the period in which an election must be made.

Wherefore, Petitioner respectfully requests that this Court grant an extension to July 16, 2002, of the time within which she may elect to take an elective share of the property of the Decedent.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*[Joinder on following page]*

**5.4**

**PETITION TO EXTEND THE TIME TO TAKE AN ELECTIVE SHARE  
IN ACCORDANCE WITH 20 Pa. C.S.A. §2210(b)**

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**JOINDER**

The undersigned hereby joins in this Petition for an extension to July 16, 2002, of the time within which Jane R. Dunn may elect to take an elective share of the property of Joseph B. Dunn.

Signed on: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
John Dunn, Individually and as  
Trustee of the Trust under Item SIXTH  
of the Will of Joseph B. Dunn, Deceased

Note: *See Philadelphia Rule 12.3.C.*

**5.5**

**PETITION TO ENFORCE THE RIGHTS OF AN ELECTING SPOUSE  
IN ACCORDANCE WITH 20 Pa. C.S.A. §2211(c)**

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[SEE CAPTION AT 1.3.1]

**PRELIMINARY DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that a Citation is awarded, directed to Sarah James to show cause why she should not be required to pay the sum of \$10,000 to Jane R. Dunn.

The Citation is returnable the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in Room \_\_\_\_\_, City Hall, Philadelphia, Pennsylvania, at \_\_\_\_\_ .m.

\_\_\_\_\_  
J.

*[Decree on following page]*

**5.5**

**PETITION TO ENFORCE THE RIGHTS OF AN ELECTING SPOUSE  
IN ACCORDANCE WITH 20 Pa. C.S.A. §2211(c)**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition,  
it is hereby ORDERED and DECREED that Sarah James shall pay the sum of \$10,000 to  
Jane R. Dunn.

\_\_\_\_\_  
J.

*[Petition on following page]*

**5.5**  
**PETITION TO ENFORCE THE RIGHTS OF AN ELECTING SPOUSE**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §2211(c)**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Jane R. Dunn respectfully states that:

1. Joseph B. Dunn died on July 7, 2001, having resided at 261 Horse Hair Road, Philadelphia, PA 19199.
2. Petitioner resides at 261 Horse Hair Road, Philadelphia, PA 19199, where she resided at the time of Decedent's death.
3. Petitioner is the surviving spouse of Decedent and married to Decedent on June 26, 1976, at St. Mary's Church, Philadelphia, PA 19199, before Rev. Manus McKenzie.
4. Decedent left a Will dated March 30, 1999, and Letters Testamentary thereon were granted on July 16, 2001, to Harry Doe of 999 West Avenue, Philadelphia, PA 19199, by the Register of Wills of Philadelphia County.
5. The approximate value of all assets that may be subject to the spouse's election is \$350,000.
6. An election to take an elective share was filed with the Clerk on August 1, 2001, and copy of said election was transmitted to the Executor by letter dated August 1, 2001.
7. Respondent is Sarah James of 714 East Street, Philadelphia, PA 19199, a sister of the Decedent.
8. On May 10, 2001, Decedent made a gift to Sarah James of \$33,000, which was paid by Decedent's personal check.
9. Respondent is obliged to pay to Petitioner the sum of \$10,000 to satisfy her elective share against the above gift pursuant to 20 Pa. C.S.A. §2203(a)(6).

Wherefore, Petitioner requests that a Citation be awarded directed to the Respondent,

## 5.5

### PETITION TO ENFORCE THE RIGHTS OF AN ELECTING SPOUSE IN ACCORDANCE WITH 20 Pa. C.S.A. §2211(c)

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Sarah James, to show cause why she should not be required to pay the sum of \$10,000 to Jane R. Dunn.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

Note: *Refer to Philadelphia Rule 12.3.A for exhibits to be annexed to the petition and service requirements. The service requirements will vary depending on whether the issuance of a citation is required. Where a citation is not required, there is no need for a preliminary decree. Petitions relating to the safeguard and enforcement of an electing spouse's rights are governed by 20 Pa. C.S.A. §2211. The statutory provisions should be thoroughly reviewed before proceeding. Special attention should be given to §2211(e) & (f), which render protection to fiduciaries and transferees for value against the claim of an electing spouse. In many cases, immediate action will be required by the electing spouse to restrain transfers of property that may be subject to the election; see Philadelphia Rule 12.3.B and 5.6.*



**5.6**

**PETITION TO RESTRAIN THE PAYMENT OR TRANSFER OF PROPERTY  
IN ACCORDANCE WITH 20 Pa. C.S.A. §2211(d)**

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[SEE CAPTION AT 1.3.1]

**PRELIMINARY DECREE**

Now \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition it is hereby ORDERED and DECREED that a Citation is awarded, directed to Old Faithful Bank and Harry Doe, Co-Trustees, to show cause why they should not be restrained from making any further payments or distributions to Trust beneficiaries and from selling or otherwise conveying any Trust assets until further Order of the Court.

The citation is returnable the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ in Room \_\_\_\_\_, City Hall, Philadelphia, Pennsylvania, at \_\_\_\_\_ .m.

\_\_\_\_\_  
J.

*[Decree on following page]*

**5.6**

**PETITION TO RESTRAIN THE PAYMENT OR TRANSFER OF PROPERTY  
IN ACCORDANCE WITH 20 Pa. C.S.A. §2211(d)**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that the Old Faithful Bank and Harry Doe, Co-Trustees, are restrained from making any further payments or distributions to Trust beneficiaries and from selling or otherwise conveying any Trust assets until further Order of the Court.

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J.

*[Petition on following page]*

## 5.6

### **PETITION TO RESTRAIN THE PAYMENT OR TRANSFER OF PROPERTY IN ACCORDANCE WITH 20 Pa. C.S.A. §2211(d)**

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[SEE CAPTION AT 1.3.2]

#### **PETITION**

The Petition of Jane Dunn respectfully states that:

1. Joseph B. Dunn died on July 7, 2001, having resided at 261 Horse Hair Road, Philadelphia, PA 19199.
2. Petitioner resides at 261 Horse Hair Road, Philadelphia, PA 19199, where she resided at the time of Decedent's death.
3. Petitioner is the surviving spouse of Decedent and married Decedent on June 26, 1976, at St. Mary's Church, Philadelphia, PA 19199, before Rev. Manus McKenzie.
4. Decedent left a Will dated March 30, 1999, and Letters Testamentary thereon were granted on July 16, 2001, to Harry Doe of 999 West Avenue, Philadelphia, PA 19199, by the Register of Wills of Philadelphia County.
5. An Election has not yet been filed by Petitioner.
6. On January 15, 1990, Decedent placed certain property into trust including real estate known as premises 505 East Street, Philadelphia, PA 19199, (having a present fair market value of approximately \$150,000) and approximately \$75,000 in various bank accounts.
7. By the terms of the Deed of Trust, copy of which is annexed hereto as Exhibit "A," all of the income was payable to Decedent for life. Upon his death, the Trust was to terminate absolutely and the assets distributed to James Dunn, Decedent's brother.
8. The Trustees of the aforesaid Trust are the Old Faithful Bank, 10 Main Street, Philadelphia, PA 19199 and Harry Doe, 999 West Avenue, Philadelphia, PA 19199.
9. The assets of the aforesaid Trust are likely to be subject to Petitioner's right to elect pursuant to 20 Pa. C.S.A. §2203.

## 5.6

### PETITION TO RESTRAIN THE PAYMENT OR TRANSFER OF PROPERTY IN ACCORDANCE WITH 20 Pa. C.S.A. §2211(d)

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10. Failure to restrain further distributions from the Trust or the sale or conveyance of any Trust assets is likely to result in irreparable injury to Petitioner.

Wherefore, Petitioner requests that a Citation be awarded, directed to Old Faithful Bank and Harry Doe, Co-Trustees, to show cause why they should not be restrained from making any further payments or distributions to Trust beneficiaries and from selling or otherwise conveying any Trust assets until further Order of the Court.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

Note: *Refer to Philadelphia Rule 12.3.2 for list of exhibits to be annexed to the Petition. Proof of service of a copy or copies of the citation and the return of the original Citation to the Court, is made at the hearing just as it is in proceedings involving incapacitated persons. In the case of real estate, a certified copy of the Court's order restraining the sale should be promptly recorded in the proper office of recording deeds. See 20 Pa. C.S.A. §2211(f).*

5.7

**PETITION FOR SETTLEMENT OF SMALL ESTATE  
IN ACCORDANCE WITH 20 Pa. C.S.A. §3102**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, the following property of the Estate of Joseph B. Dunn, Deceased, namely:

ABC Sanatorium - refund	\$ 9.80
Public School Employees' Retirement Board - annuity checks	467.80
Cash on deposit - Old Faithful Bank	7,276.85
Cash held by William Dunn from sale of books owned by Decedent	<u>135.02</u>
Total	\$ 7,889.47

is hereby ordered to be distributed and is hereby awarded as follows:

Jones & Jones - counsel fee	\$ 300.00
Local Hospital - debt of Decedent	105.30
John Goodheart, M.D. - debt of Decedent	63.44
Mrs. Sally Roe - debt of Decedent	200.00
William Dunn - reimbursement for payments on behalf of estate and distribution of entire balance of estate	<u>7,220.73</u>
Total	\$ 7,889.47

William Dunn is hereby authorized to receive, collect and distribute the property as hereinabove set forth, and to make any and all necessary assignments and transfers.

\_\_\_\_\_  
J.

*[Petition on following page]*

5.7

**PETITION FOR SETTLEMENT OF SMALL ESTATE  
IN ACCORDANCE WITH 20 Pa. C.S.A. §3102**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of William Dunn respectfully states that:

1. Joseph B. Dunn died on July 7, 2001, a patient at ABC Sanatorium, 123 Elm Street, Philadelphia, PA 19199.
2. Decedent was not married and was not survived by issue.
3. Decedent died intestate and no Letters of Administration have been issued.
4. The name of the only person having any interest as an heir or next of kin is William Dunn, of 100 Main Street, Philadelphia, PA 19199, the Petitioner herein, who is the son of a deceased brother, Henry Dunn, and who is of age and *sui juris*.
5. Petitioner was not a member of the Decedent's household at the time of his death.
6. The assets of Decedent total less than \$25,000 and are as follows:

a. ABC Sanatorium refund	\$ 9.80
b. Public School Employees' Retirement Board - annuity checks	467.80
c. Cash on deposit - Old Faithful Bank	7,276.85
d. Cash held by William Dunn from sale of books owned by Decedent	<u>135.02</u>
Total	\$7,889.47

7. The following creditors, who are all of the creditors of the estate of whom Petitioner has knowledge, are unpaid:

5.7

**PETITION FOR SETTLEMENT OF SMALL ESTATE  
IN ACCORDANCE WITH 20 Pa. C.S.A. §3102**

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a. Local Hospital - blood for transfusions	\$ 105.30
b. John Goodheart, M.D. - professional services	63.44
c. Mrs. Sally Roe - loan during illness	200.00
d. William Dunn - reimbursement for bill of Friendly Undertaker	<u>342.84</u>
Total	\$ 711.58

All of the above items are admitted.

8. A Pennsylvania Transfer Inheritance Tax Return has been filed with the Register of Wills, and inheritance tax has been paid in the amount of \$1,076 by Petitioner on April 7, 1996. The inheritance tax receipt is attached hereto as Exhibit "A."
9. Decedent was not a fiduciary of another estate and was not a surety on the bond of a fiduciary.
10. All of the above-named parties in interest have joined in this Petition, and their Joinders are set forth below.

Wherefore, Petitioner respectfully requests that this Court award Decedent's estate as follows:

1. Costs of administration
  - a. Jones & Jones - counsel fee in connection with the settlement of the estate \$300.00
  - b. William Dunn - cost of 3 certified copies of Decree 6.00
  - c. William Dunn - transportation to Philadelphia in connection with administration of estate - two trips 22.00 \$328.00

5.7

**PETITION FOR SETTLEMENT OF SMALL ESTATE  
IN ACCORDANCE WITH 20 Pa. C.S.A. §3102**

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2.	Costs of funeral and burial and medical care within six months of Decedent's death				
	a.	Local Hospital	\$105.30		
		b.	John Goodheart, M.D.	63.44	
		c.	William Dunn - reimbursement for payment to Friendly Undertaker	<u>324.84</u>	493.58
3.	Other debts				
		a.	Mrs. Sally Roe - loan during illness	200.00	
4.	Balance				
			William Dunn (including reimbursement for payment of inheritance tax in amount of \$1,076)		<u>\$6,867.89</u>
			Total		\$7,889.47

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William Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

Note: *Check 20 Pa. C.S.A. §3102 for possible changes in the size of estates for which this procedure is available. Also, refer to Philadelphia Rule 7.3, particularly subparagraph (b) thereof, for a list of exhibits to be attached to the petition. This procedure is used when no letters are granted. An alternative procedure (available one year after the first complete advertisement of the grant of letters) is governed by 20 Pa. C.S.A. §3531. Unlike §3102, this procedure covers real and personal property. The form of petition is similar in many respects with the following main differences:*

- 1. An averment covering the grant of letters;*
- 2. An averment that at least one year has passed since the first advertisement;*
- 3. An accounting and proposed distribution is to be attached as an exhibit; and*

*The prayer of the petition will request the discharge of the personal representative.*



**5.8**  
**PETITION FOR SETTLEMENT OF INSOLVENT ESTATE**  
**UNDER 20 Pa. C.S.A. §3392**

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[SEE CAPTION AT 1.3.2]

**PETITION**

To the Honorable, the Judges of Said Court:

The Petition of William Dunn in the Estate of Joseph B. Dunn, Deceased respectfully states that:

1. Joseph B. Dunn (the “Decedent”) died on July 7, 2001, a resident of 261 Horse Hair Road, Philadelphia, Pennsylvania.
2. The Decedent left a Will dated March 30, 1994, which was admitted to probate on July 16, 2001 by the Register of Wills of Philadelphia County, Pennsylvania at the above number and term. A copy of the Will is attached hereto and made a part hereof as Exhibit “A.”
3. On July 16, 2001, Letters Testamentary were duly granted to William Dunn, and complete advertisement of same was first made in *The Legal Intelligencer* on August 1, 2001, and in the *Daily News* on August 2, 2001. Proofs of Publication are attached hereto and made a part hereof as Exhibits “B-1” and “B-2.”
4. William Dunn the duly appointed Executor of the Estate, is the sole legatee named in the Will, attached as Exhibit “A,” and is *sui juris*.
5. Decedent was not survived by a spouse, nor did he have any children.
6. The probate estate of which Decedent died seized consisted of the following property valued as of the Decedent’s date of death:

A. 5 shares XYZ, Inc. common	\$ 10.00
B. Old Faithful Bank - Checking account	5.00
C. Tangible personal property	1,000.00

5.8

**PETITION FOR SETTLEMENT OF INSOLVENT ESTATE  
UNDER 20 Pa. C.S.A. §3392**

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D. IRS - refund payment	<u>1,200.00</u>
	\$ 2,215.00

The Decedent did not own any interest in real estate.

7. At the time of his death, Decedent had an interest as a joint tenant in the following accounts titled in the name of the Decedent and William Dunn, as joint tenants with right of survivorship:

A. Certificates of Deposit:

(1) No. 1234	\$ 2,514.53	
(2) No. 1235	2,514.53	
(3) No. 1236	5,029.07	
(4) No. 1237	<u>5,029.07</u>	\$15,087.20

B. Old Faithful Bank–Checking  
account

<u>445.63</u>
\$15,532.83

The surviving joint tenant paid all Pennsylvania Inheritance Tax due on said joint accounts. The Estate of Joseph B. Dunn, Deceased, joint owner, has applied for a refund of the overpayment of such tax.

8. There is no partial intestacy as to the estate.
9. The family exemption has not been claimed since there are no heirs who were members of the Decedent's household.
10. The following administration expenses, debts and taxes are claims against the estate:

A. Costs of Administration:

(1) William Dunn - Executor's fee	\$ 250.00
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**5.8**  
**PETITION FOR SETTLEMENT OF INSOLVENT ESTATE**  
**UNDER 20 Pa. C.S.A. §3392**

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(2) William Dunn - advances for probate costs, short certificates, postage, duplicating charges, advertising letters, etc.	237.40
B. Funeral and burial expenses: Susan Roe—reimbursement for funeral and burial expenses	5,404.98
C. Claims of U. S. Government Internal Revenue Service income tax 1996 through 1997, plus penalty and interest	3,606.60
D. Unpaid rent six months prior to death	
(1) Rent due at 261 Horse Hair Road, Philadelphia, PA	546.25
E. Other Claims:	
(1) City of Philadelphia-city wage taxes, plus penalty and interest	878.64
(2) Commonwealth of Pennsylvania - income taxes, 1996 through 1997, plus penalty and interest	831.09
(3) Old Faithful Bank Visa - balance due, at date of death	1,002.50
(4) ABC Credit Co. - balance due at date of death	2,080.73
(5) Friendly Real Estate Services outstanding advances	9,403.00

**5.8**  
**PETITION FOR SETTLEMENT OF INSOLVENT ESTATE**  
**UNDER 20 Pa. C.S.A. §3392**

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(6) ABC Utility - balance due at date of death	<u>243.79</u>
	\$24,484.98

The Decedent also owed \$2,932.23 to All County Financial Services on a personal loan he made prior to his death. This debt was paid in full by insurance carried by Joseph B. Dunn.

11. Susan Roe, a friend of the Decedent, has advanced \$5,404.98 from funds she received as the named beneficiary of School Employees' Insurance Policy owned by the Decedent in payment of funeral service expenses.
12. The only disbursements paid prior to filing this Petition were Old Faithful Bank service charges in the amount of \$4.00 debited by the bank against the Decedent's checking account balance.
13. Petitioner is aware of no claims against the estate which are not admitted.
14. The assets of the estate totaling \$2,215.00, as set forth in Paragraph 5, are insufficient to pay all proper charges and claims against the estate totaling \$24,484.98, as set forth in Paragraph 9. Pursuant 20 Pa. C.S.A. §3392, payment should be made as follows:

A. Costs of Administration:

(1) William Dunn - Executor's fee	\$ 250.00
(2) William Dunn - advances for probate costs, short certificates, postage, duplicating charges, advertising letters, etc.	237.40

B. Funeral and burial expenses:

(1) Susan Roe - reimbursement for funeral and burial expenses	1,727.60
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C. Claims of U. S. Government - Internal Revenue  
Service - income tax 1996 through 1997, plus

**5.8**  
**PETITION FOR SETTLEMENT OF INSOLVENT ESTATE**  
**UNDER Pa. C.S.A. §3392**

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penalty and interest 0.00

D. Unpaid rent six months prior to death -  
 Rent due at 261 Horse Hair Road  
 Philadelphia, Pennsylvania 0.00

E. Other Claims:

(1) City of Philadelphia - wage taxes,  
 plus penalty and interest 0.00

(2) Commonwealth of Pennsylvania -  
 income taxes, 1996 through 1997,  
 plus penalty and interest 0.00

(3) Old Faithful Bank Visa - balance  
 due, at date of death 0.00

(4) ABC Credit Co. - balance due at  
 date of death 0.00

(5) Friendly Real Estate Services -  
 outstanding advances 0.00

(6) DEF Utility - balance due at  
 date of death 0.00

\$ 2,215.00

15. Certain of the creditors have consented to this Petition. Their signed consents are attached hereto and made part hereof as Exhibits "C-1" through "C-6."
16. A statement from the Agent for the Commonwealth of Pennsylvania consenting to the grant of this Petition is attached hereto, made part hereof and marked Exhibit "D."
17. Notice of the presentation of this Petition has been given by first class mail to all parties or to all counsel known to Petitioners to have or represent an interest in or claim against the estate who have not joined in this Petition.

**5.8**  
**PETITION FOR SETTLEMENT OF INSOLVENT ESTATE**  
**UNDER 20 Pa. C.S.A. §3392**

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Wherefore, your Petitioners pray your Honorable Court to approve payment of all proper charges and claims against the estate as set forth in the foregoing Petition and discharge William Dunn from his duties as Executor.

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William Dunn, Executor of the  
Estate of Joseph B. Dunn, Deceased

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

**5.9**  
**PETITION FOR FINDING OF DEATH**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5701**

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[SEE CAPTION AT 1.3.1]

**PRELIMINARY DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, and in accordance with 20 Pa. C.S.A. §5704, the Court orders the Petitioner to proceed with advertisement in a newspaper of general circulation in Philadelphia County and in *The Legal Intelligencer*, once a week for four successive weeks, advertising the fact of the application for a Decree that Joseph B. Dunn be declared a presumed Decedent and that the Register of Wills of Philadelphia County is authorized to probate the Will of Joseph B. Dunn dated March 30, 1979, and to issue Letters Testamentary thereon to the person thereto entitled. Said advertisement shall include notice that on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_m. in Room \_\_\_\_\_, City Hall, Philadelphia, Pennsylvania, the Court will hear evidence concerning the alleged absence including the circumstances and duration thereof.

At least 20 days written notice shall also be given to the next of kin who are *sui juris*, personally or by certified mail.

\_\_\_\_\_  
J.

[Decree on following page]

**5.9**  
**PETITION FOR FINDING OF DEATH**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5701**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition and after a hearing on \_\_\_\_\_, it is hereby ORDERED and DECREED that Joseph B. Dunn died on July 30, 2000, and that the Register of Wills of Philadelphia County is authorized to probate the Will of Joseph B. Dunn, Deceased dated March 30, 1979, and to issue Letters Testamentary thereon.

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J.

*{Petition on following page}*



**5.9**  
**PETITION FOR FINDING OF DEATH**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5701**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Jane R. Dunn respectfully states that:

1. Joseph B. Dunn (“presumed Decedent”) resided at 261 Horse Hair Road, Philadelphia, Pennsylvania.
2. The presumed Decedent left his residence on July 7, 2000, and has been absent and unheard of since that date.
3. Petitioner is the wife of the presumed Decedent.
4. The presumed Decedent told Petitioner when he left his residence that he would return later that day. The following day, Petitioner received written and telephoned demands for payment of a ransom for the return of the presumed Decedent. No such payments were made. Unidentified individuals then threatened to kill the presumed Decedent if the demands were not met by July 30, 2000.
5. Petitioner has attempted without success to locate the presumed Decedent by contacting and cooperating with the Philadelphia Police and the Federal Bureau of Investigation.
6. Copies of newspaper accounts and reports of the investigation are attached hereto as Exhibit “A.”
7. Petitioner accordingly believes the presumed Decedent died on or about July 30, 2000.
8. The presumed Decedent left a Will dated March 30, 1979, a copy of which is attached hereto as Exhibit “B.”
9. The presumed Decedent’s estate consists of cash and marketable securities worth approximately \$650,000.

**5.9**

**PETITION FOR FINDING OF DEATH  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5701**

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Wherefore, Petitioner respectfully requests that this Court direct the advertising of the filing of this Petition and fix a hearing date and thereafter, pursuant to 20 Pa. C.S.A. §5701, enter a Decree finding that Joseph B. Dunn died on July 30, 2000, and authorizing the Register of Wills of Philadelphia County to probate Joseph B. Dunn's Will dated March 30, 1979, and to issue Letters Testamentary thereon.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

Note: *The advertisement of the hearing on this Petition may be in the following form:*

To: *Joseph B. Dunn, late of  
261 Horse Hair Road  
Philadelphia, PA 19000,  
his heirs, and all persons interested in his estate or having any knowledge of his whereabouts:*

*Notice is hereby given that Jane R. Dunn has petitioned the Orphans' Court Division of the Court of Common Pleas of Philadelphia County to enter a Decree finding that JOSEPH B. DUNN died on or about July 30, 2000, and authorizing the Register of Wills of Philadelphia County to receive his last Will for probate and to issue Letters Testamentary thereon. The Court will hear testimony and receive evidence concerning the presumed death of JOSEPH B. DUNN at 10:00 A.M., on July 5, 2001, in Room 314, City Hall, Philadelphia, Pennsylvania.*

*All persons who have any knowledge of JOSEPH B. DUNN are asked to attend the Court hearing or to contact the undersigned at once.*

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*John Trustworthy  
343 Court Street  
Philadelphia, PA 19000  
Counsel to Jane R. Dunn, Petitioner*

## CHAPTER 6

# INVENTORY, ACCOUNTS AND DISTRIBUTION

## 6.1 INVENTORY

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Note: *A printed form of Inventory is supplied by the Register of Wills; however, in most counties, one prepared to contain the same information and properly acknowledged or verified may be accepted for filing (generally two or three copies are required to be filed. Consult the Register's Office). Under 20 Pa. C.S.A. §3301, a personal representative is required to file an inventory with the Register of Wills upon the earlier of the date the Account is filed or the due date, including extensions, for filing the inheritance tax return.*

*See Register's form on following page.*

FILE IN DUPLICATE

Will Adm. No. \_\_\_\_\_ 20 \_\_\_\_\_

Filed \_\_\_\_\_

REGISTER OF WILLS

COMMONWEALTH OF PENNSYLVANIA }
} ss.
COUNTY OF \_\_\_\_\_ }

INVENTORY

Personal Representative(s) of the Estate of \_\_\_\_\_

Deceased, being duly sworn according to law, depose(s) and say(s) that the items appearing in the following inventory include all of the personal assets wherever situate and all of the real estate in the Commonwealth of Pennsylvania of said decedent, that the valuation placed opposite each item of said inventory represents its fair value as of the date of the decedent's death, and that decedent owned no real estate outside of the Commonwealth of Pennsylvania except that which appears in a memorandum at the end of this inventory.

I verify that the statements made in this Inventory are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Attorney - (Name) \_\_\_\_\_ (Sup. Ct. I.D. No.)
(Address) \_\_\_\_\_

Table with 3 columns: DATE OF DEATH, LAST RESIDENCE, DECEDENT'S SOCIAL SECURITY NUMBER. The table is mostly empty with a large blank space for entries.

NOTE: The Memorandum of real estate outside the Commonwealth of Pennsylvania may, at the election of the personal representative(s) include the value of each item, but such figures should not be extended into the total of the Inventory. (See Section 3301(b) or PEF Code of 1972)
This form to be used only in estates of persons dying on or after February 23, 1956.

**6.2**  
**PETITION FOR CITATION TO SHOW CAUSE**  
**WHY AN INVENTORY SHOULD NOT BE FILED**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §3301**

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[SEE CAPTION AT 1.3.1]

**PRELIMINARY DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_ upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that a Citation is awarded, directed to Jane R. Dunn, Executrix of the Estate of Joseph B. Dunn, Deceased, to show cause why she should not be required to prepare an Inventory of all of the personal assets wherever located and all of the real estate in the Commonwealth of Pennsylvania of the Decedent and file the same in the Office of the Register of Wills of Philadelphia County.

The Citation is returnable *sec. leg.*

\_\_\_\_\_  
J.

*[Petition on following page]*

## 6.2

### **PETITION FOR CITATION TO SHOW CAUSE WHY AN INVENTORY SHOULD NOT BE FILED IN ACCORDANCE WITH 20 Pa. C.S.A. §3301**

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[SEE CAPTION AT 1.3.2]

#### **PETITION**

The Petition of Harvey White respectfully states that:

1. On February 7, 2000, Joseph B. Dunn died a resident of Philadelphia, Pennsylvania.
2. Letters Testamentary were granted by the Register of Wills of Philadelphia County to Jane R. Dunn, 47 Main Street, Philadelphia, PA 19199 on February 15, 2000.
3. Petitioner is a party in interest in the Estate of Joseph B. Dunn, Deceased, being a creditor in the amount of \$5,000.
4. On March 10, 2001, Petitioner requested the Executrix to file an Inventory. A copy of that request is attached as Exhibit "A."
5. More than three months have expired since the granting of Letters Testamentary and more than thirty days have expired since Petitioner requested the Executrix to file an Inventory. The Executrix has failed to file an Inventory as required by 20 Pa. C.S.A. §3301.

Wherefore, Petitioner respectfully requests that a Citation be awarded, directed to Jane R. Dunn, Executrix of the Estate of Joseph B. Dunn, Deceased, to show cause why she should not be required to prepare an Inventory of the assets of the Decedent and file the same in the Office of the Register of Wills of Philadelphia County.

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Harvey White

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

### **6.3**

#### **EXECUTOR'S AND TRUSTEE'S ACCOUNTS**

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Philadelphia Orphans' Court Division Rule 6.1.A. governs the form of Account for both Executors and Trustees. Pursuant to this Rule, an Account must be stated in conformity with the Uniform Fiduciary Accounting Principles and accompanying commentaries, illustrations and forms of Account recommended by the Committee on National Fiduciary Accounting Standards in collaboration with the National Center for State Courts or in such other form of Account as may be approved by the Supreme Court of this Commonwealth. The Supreme Court has adopted the former as its approved form by Rule 6.1.





**6.3.1**  
**EXECUTOR'S ACCOUNT**

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[SEE CAPTION AT 1.3.2]

FIRST AND FINAL ACCOUNT OF

William C. Doe, Executor

For

ESTATE OF John Doe, Deceased

Date of Death:	November 14, 2001
Date of Executor's Appointment:	November 24, 2001
Date of First Advertising:	November 30, 2001
Accounting for the Period:	November 24, 2001 to November 30, 2002
Social Security Number:	000-00-0000

Purpose of Account: William C. Doe, Executor, offers this Account to acquaint interested parties with the transactions that have occurred during his administration. *[This Account also indicates the proposed distribution of the estate. ❖]* It is important that the account be carefully examined. Requests for additional information or questions or objections can be discussed with:

[Name of Executor, Counsel or other  
appropriate person]  
[address and telephone number]  
[ID ## of counsel listed above]

Note: *If the Decedent had been adjudged incapacitated, this should be indicated with the Orphans' Court number and the name of the Hearing Judge assigned.*

❖ *Optional-for use if applicable.*

### 6.3.1

#### EXECUTOR'S ACCOUNT

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#### SUMMARY OF ACCOUNT

	<i>Page</i>	<i>Value as of 11/30/2002</i>	<i>Fiduciary Acquisition Value</i>
❖ Proposed Distribution to Beneficiaries	15	<u>\$ 99,474.56</u>	<u>\$ 87,313.96</u>
<b>Principal</b>			
Receipts	3		\$160,488.76
Net Gain (or Loss) on Sales or Other Disposition	5		<u>2,662.00</u> \$163,150.76
Less Disbursements:			
Debts of Decedent	6	\$ 485.82	
Funeral Expenses	6	1,375.00	
Administration Expenses	6	194.25	
Family Exemption	6	3,500.00	
Federal and State Taxes	6-7	5,962.09	
Fees and Commissions	7	<u>11,689.64</u>	<u>23,206.80</u>
Balance before Distributions			\$139,943.96
Distribution to Beneficiaries	8		<u>52,630.00</u>
Principal Balance on Hand	9		\$ 87,313.96
For Information:			
Investments Made	10		
Changes in Investment Holdings	11		
<b>Income</b>			
Receipts	12		\$ 2,513.40
Less Disbursements	13		<u>178.67</u>
Balance Before Distributions			\$ 2,334.73
Distributions to Beneficiaries	14		<u>2,334.73</u>
Income Balance on Hand			0.00
Combined Balance on Hand			<u>\$ 87,313.96</u>
Affidavit	16		
❖ <i>Optional - for use if applicable</i>			

**6.3.1**  
**EXECUTOR'S ACCOUNT**

**RECEIPTS OF PRINCIPAL**

<i>Assets Listed in Inventory (Valued as of Date of Death)</i>	<i>Fiduciary Acquisition Value</i>
<b>Cash:</b>	
First National Bank-checking account	\$ 516.93
Prudent Saving Fund Society-savings account	2,518.16
Cash in possession of Decedent	<u>42.54</u> \$ 3,077.63
<b>Tangible Personal Property:</b>	
Jewelry	
1 gold watch	515.00
Furniture	
1 antique highboy	\$ 2,000.00
1 antique side table	60.00
1 antique chair	<u>55.00</u> 2,115.00
<b>Stocks:</b>	
200 Shs. Home Telephone & Telegraph Co., common	\$ 25,000.00
50 Shs. Best Oil Co., common	5,000.00
1,000 Shs. Central Trust Co., capital	50,850.00
151 Shs. Electric Data Corp., common	1,887.50
50 Shs. Fabulous Mutual Fund	1,833.33
200 Shs. XYZ Corporation, common	<u>6,000.00</u> 90,570.83
<b>Realty:</b>	
Residence - 86 Norwood Road, Philadelphia, PA	<u>50,000.00</u>
<b>TOTAL INVENTORY</b>	<b>\$146,278.46</b>

Note: *To facilitate preparation, the accountant may prefer to detail the starting balance by attaching a copy of the inventory as an exhibit. (This would be inappropriate if the inventory is prepared in a form that includes substantial extraneous material or does not list assets in an orderly manner.) The opening entry would then read:*

*"Assets Listed in Inventory per copy attached \$146,278.46"*

*Of course, should the attached inventory require adjustment to accurately account for the estate, further entries would explain the change in total value (See what follows).*

**6.3.1**  
**EXECUTOR'S ACCOUNT**

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**RECEIPTS OF PRINCIPAL (Continued)**

		<i>Fiduciary Acquisition Value</i>
FORWARD		\$ 146,278.46
<i>Receipts Subsequent to Inventory (Valued When Received)</i>		
2/22/02 Proceeds of Sale-Best Oil Co., rights to subscribe received 2/15/02 ❖	\$ 50.00	
3/12/02 Fabulous Mutual Fund, capital gains dividend received in cash	32.50	
5/11/02 Refund of overpayment of Final Life Period Federal Income Tax	127.80	
9/25/02 From Richard Roe, Ancillary Administrator, net proceeds on sale of oil and gas leases in Jefferson Parish, Louisiana	<u>10,000.00</u>	\$ 10,210.30
<b>Adjustment to Carrying Values</b>		
Increased value of 200 Shs. XYZ Corporation, common stock upon audit of Federal Estate Tax Return:		
Adjusted value upon audit	\$ 10,000.00	
Value per Inventory	<u>6,000.00</u>	<u>4,000.00</u>
TOTAL RECEIPTS OF PRINCIPAL		<u>\$ 160,488.76</u>

❖ *Proceeds of sale of rights may be treated as an additional receipt, as illustrated here, or may be applied in reduction of carrying value as illustrated on page 11 in the Trustee's Account. Either method, consistently applied, is acceptable.*

**6.3.1**  
**EXECUTOR'S ACCOUNT**

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**GAINS AND LOSSES ON SALES OR OTHER DISPOSITIONS**

		<i>Gain</i>	<i>Loss</i>
2/07/02	100 Shs. Home Telephone & Telegraph Co., common		
	Net Proceeds	\$ 14,025.00	
	Fiduciary Acquisition Value	<u>12,500.00</u>	\$ 1,525.00
3/15/02	1,000 Shs. Central Trust Co., capital		
	Net Proceeds	27,467.00	
	Fiduciary Acquisition Value	<u>25,425.00</u>	2,042.00
3/15/02	200 Shs. XYZ Corporation, common		
	Net Proceeds	9,000.00	
	Fiduciary Acquisition Value	<u>10,000.00</u>	\$ 1,000.00
5/21/02	35 Shs. Electric Data Corp., common		
	Net Proceeds	530.00	
	Fiduciary Acquisition Value	<u>437.50</u>	92.50
7/01/02	\$10,000 U.S. Treasury Bonds, 3%, due 7/1/02, matured		
	Net Proceeds	10,000.00	
	Fiduciary Acquisition Value	<u>9,997.50</u>	<u>2.50</u>
	<b>TOTAL GAINS AND LOSSES</b>	<u>\$ 3,662.00</u>	<u>\$ 1,000.00</u>
	<b>NET GAIN TRANSFERRED TO SUMMARY</b>		<u>\$ 2,662.00</u>

**6.3.1****EXECUTOR'S ACCOUNT**

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**DISBURSEMENTS OF PRINCIPAL**

<b>Debts of Decedent</b>		
1/25/02	John T. Hill, M.D., Professional Services	\$ 250.00
1/25/02	Thomas Pharmacy, prescriptions	23.82
2/01/02	Sanders Hardware, purchases per bill dated 12/15/01	56.00
4/12/02	PA Department of Revenue, balance Final Life Period Income Tax	<u>156.00</u> \$ 485.82
<b>Funeral Expenses</b>		
1/10/02	Smith Funeral Home, services	\$ 1,200.00
2/15/02	Jones Memorials, grave marker	<u>175.00</u> 1,375.00
<b>Administration Expenses</b>		
11/24/01	Register of Wills, probate fee	\$ 72.00
12/06/01	Legal advertising	56.00
02/22/02	Henry Smith, appraisal of jewelry and antiques	50.00
11/16/02	Arden, Miles & Solomon, disbursements	<u>16.25</u> 194.25
<b>Family Exemption</b>		
05/15/02	Janet Doe	3,500.00
<b>Federal and State Taxes</b>		
08/13/02	Register of Wills, Agent PA Transfer Inheritance Tax	\$ 2,501.33
08/13/02	United States Treasury Federal Estate Tax	2,663.29
11/15/02	United States Treasury Federal Fiduciary Income Tax for fiscal year ending 7/31/02 (attributable to capital gains)	<u>283.84</u>
	FORWARD	\$ 5,448.46 \$ 5,555.07

**6.3.1**  
**EXECUTOR'S ACCOUNT**

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**DISBURSEMENTS OF PRINCIPAL (Continued)**

	FORWARD	\$ 5,448.46	\$ 5,555.07
<b>Federal and State Taxes (Continued)</b>			
11/23/02	United States Treasury Deficiency in Federal Estate Tax	\$ 505.24	
	Interest 8/14/02 to 11/24/02	<u>8.39</u>	5,962.09
		<u>513.63</u>	
<b>Fees and Commissions</b>			
11/16/02	Albert Schryver, Esquire, fee as Guardian <i>ad Litem</i>	\$ 375.00	
11/16/02	William C. Doe, Executor's principal commission	6,314.64	
11/16/02	Arden, Miles & Solomon, attorneys' fees	<u>5,000.00</u>	<u>11,689.64</u>
	TOTAL DISBURSEMENTS OF PRINCIPAL		<u>\$ 23,206.80</u>

Note: *In all cases fees and commissions shall be shown under a separate heading. Other disbursements, including the family exemption, need not be separated unless the estate is insolvent in which case disbursements shall be classified as provided by Section 3392 of the Probate, Estates and Fiduciaries Code. Also, check 20 Pa.C.S.A. §3121, because the amount of the family exemption is revised periodically.*

**6.3.1**  
**EXECUTOR'S ACCOUNT**

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**DISTRIBUTIONS OF PRINCIPAL TO BENEFICIARIES**

	TO: Janet Doe, in satisfaction of gift under Article FIRST of Will		
12/01/01	1 gold watch	\$ 515.00	
	1 antique highboy	2,000.00	
	1 antique side table	60.00	
	1 antique side chair	<u>55.00</u>	\$ 2,630.00
12/01/01	TO: Janet Doe, in satisfaction of devise under Article SECOND of Will Residence: 86 Norwood Road Philadelphia, PA		<u>50,000.00</u>
	TOTAL DISTRIBUTIONS OF PRINCIPAL TO BENEFICIARIES		<u>\$ 52,630.00</u>



**6.3.1**  
**EXECUTOR'S ACCOUNT**

---

**PRINCIPAL BALANCE ON HAND**

	<i>Value as of 11/30/02 or as noted</i>	<i>Fiduciary Acquisition Value</i>
Cash	\$ 1,805.63	\$ 1,805.63
Stocks:		
50 Shs. Best Oil Co., common	4,500.00	5,000.00
1,000 Shs. Central Trust Co., capital value at most recent sale, 9/18/02	32,168.76	25,425.00
116 Shs. Electric Data Corp., common-not traded, value per company books, 12/29/01	1,684.00	1,450.00
50 Shs. Fabulous Mutual Fund	4,016.17	1,833.33
200 Shs. Home Telephone & Telegraph Co., common	16,000.00	12,500.00
\$40,000 U.S. Treasury Bills due 12/14/03	<u>39,300.00</u>	<u>39,300.00</u>
 PRINCIPAL BALANCE ON HAND	 <u>\$ 99,474.56</u>	 <u>\$ 87,313.96</u>

**6.3.1**

**EXECUTOR'S ACCOUNT**

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**PRINCIPAL INVESTMENTS MADE**

		<i>Fiduciary Investment Value</i>
02/01/02	\$10,000 U.S. Treasury Bonds 3%	\$ 10,022.50
	Less accrued interest collected 6/29/94	<u>25.00</u>
		\$ 9,997.50
09/14/02	\$40,000 U.S. Treasury Bills, due 12/14/02	39,300.00

**6.3.1**  
**EXECUTOR'S ACCOUNT**

---

**CHANGES IN PRINCIPAL HOLDINGS**

			<i>Fiduciary Investment Value</i>
<b>Central Trust Co.</b>			
11/14/01	1,000 Shs.	Capital stock par \$5 inventoried	\$ 50,850.00
01/15/02	1,000 Shs.	Additional received in 2-1 split, par reduced to \$2.50	<u>0.00</u>
	2,000 Shs.	Par \$2.50 carried at	50,850.00
03/15/02	1,000 Shs.	Sold, carried at	<u>25,425.00</u>
	1,000 Shs.	Remaining, carried at	<u><u>\$ 25,425.00</u></u>
<b>Home Telephone &amp; Telegraph Co.</b>			
11/14/01	200 Shs.	Common par \$10, inventoried	\$ 25,000.00
02/07/02	100 Shs.	Sold, carried at	<u>12,500.00</u>
	100 Shs.	Remaining, carried at	12,500.00
03/30/02	100 Shs.	Additional received in 2-1 split, par reduced to \$5	<u>0.00</u>
	200 Shs.	Par \$5 carried at	<u><u>\$ 12,500.00</u></u>

### 6.3.1

#### EXECUTOR'S ACCOUNT

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#### RECEIPTS OF INCOME

##### Dividends

Best Oil Co., common 1/2/02 to 10/2/02		\$	20.00		
Central Trust Co., common 1/15/02 - 2,000 Shs. 1,000 Shs	\$	600.00 <u>900.00</u>		1,500.00	
Electric Data Corp., common 12/29/01 to 3/30/02 - 151 Shs. 6/29/02 to 9/28/02 - 116 Shs.	\$	30.20 <u>23.20</u>		53.40	
Fabulous Mutual Fund 3/12/02 to 9/12/02 - 50 Shs.				140.00	
Home Telephone & Telegraph Co., common 2/1/02 - 200 Shs. 5/1/02 to 11/1/02 - 200 Shs.	\$	225.00 <u>450.00</u>	<u>675.00</u>		\$ 2,388.40
<b>Interest</b> U.S. Treasury Bonds, 3%, due 7/1/02 6/29/02 - \$10,000 Less: accrued interest	\$	150.00 <u>(25.00)</u>	<u>125.00</u>		<u>125.00</u>
TOTAL RECEIPTS OF INCOME					<u>\$ 2,513.40</u>

**6.3.1**  
**EXECUTOR'S ACCOUNT**

---

**DISBURSEMENTS OF INCOME**

11/15/02 United States Treasury - Fiduciary Income Tax for fiscal year ended 7/31/02 (allocable to income)	\$ 53.00
To be paid: William C. Doe - Executor's income commission, 5% on \$2,513.40	<u>125.67</u>
TOTAL DISBURSEMENTS OF INCOME	<u>\$ 178.67</u>

**6.3.1**  
**EXECUTOR'S ACCOUNT**

---

**DISTRIBUTIONS OF INCOME TO BENEFICIARIES**

11/16/02 TO: William C. Doe, Trustee under Article FOURTH (A) of Will FBO Walter Doe Cash	\$ 1,167.37
11/16/02 TO: Sharon Doe, per Article FOURTH (B) of Will Cash	<u>1,167.36</u>
TOTAL	<u>\$ 2,334.73</u>

**6.3.1**  
**EXECUTOR'S ACCOUNT**

---

**PROPOSED DISTRIBUTIONS TO BENEFICIARIES**

	<i>Current Value 11/30/02 or as noted</i>	<i>Fiduciary Acquisition Value</i>
Per Article FOURTH (A) of Will:		
TO: William C. Doe, Trustee for Walter Doe		
25 Shs. Best Oil Co., common	\$ 2,250.00	\$ 2,500.00
500 Shs. Central Trust Co., capital ❖	16,084.38	12,712.50
58 Shs. Electric Data Corp., common ❖❖	842.00	725.00
25 Shs. Fabulous Mutual Fund	2,008.09	916.67
100 Shs. Home Telephone & Telegraph Co., common	8,000.00	6,250.00
\$20,000 U.S. Treasury Bills, due 12/14/03	19,650.00	19,650.00
Cash	<u>902.81</u>	<u>902.81</u>
	\$ 49,737.28	\$ 43,656.98

Per Article FOURTH (B) of Will:  
 TO: Sharon Doe

25 Shs. Best Oil Co., common	\$ 2,250.00	\$ 2,500.00
500 Shs. Central Trust Co., capital ❖	16,084.38	12,712.50
58 Shs. Electric Data Corp., common ❖❖	842.00	725.00
25 Shs. Fabulous Mutual Fund	2,008.09	916.67
100 Shs. Home Telephone & Telegraph Co., common	8,000.00	6,250.00
\$20,000 U.S. Treasury Bills, due 12/14/03	19,650.00	19,650.00
Cash	<u>902.81</u>	<u>902.81</u>
	\$ 49,737.28	\$ 43,656.98

TOTAL \$ 99,474.56 \$ 87,313.96

❖ *Central Trust Co. - valued at most recent sale, 9/17/02.*

❖❖ *Electric Data Corp. - not traded, valued per company books, 12/29/01.*





**6.3.2**  
**TRUSTEE'S ACCOUNT**

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[SEE CAPTION AT 1.3.2]

**FIRST AND FINAL ACCOUNT**

For the "Residual Trust" Established under the Will of John H. Doe, Deceased

Stated by UPSTANDING TRUST COMPANY, Surviving Trustee  
and Mary W. Doe (Deceased Trustee Died December 30, 1999)  
presented on her behalf by  
UPSTANDING TRUST COMPANY,  
as Executor of her Estate

John H. Doe, Died	January 30, 1975
Date of Trustee's first receipt of funds	February 11, 1977
Account Stated for the Period	February 11, 1977 to May 15, 2000
Tax I.D. No.	00-000000

Purpose of Account: The Trustees offer this account to acquaint interested parties with the transactions that have occurred during their administration of the Trust.

It is important that the Account be carefully examined. Requests for additional information or questions can be discussed with:

[Name of Trustee, Counsel or other  
appropriate person]  
[address and telephone number]  
[ID## of all counsel listed above]

## 6.3.2

### TRUSTEE'S ACCOUNT

#### SUMMARY OF ACCOUNT

	<i>Page</i>	<i>Value as of 11/30/2002</i>	<i>Fiduciary Acquisition Value</i>
❖ Proposed Distribution to Beneficiaries	17	<u>\$293,572.79</u>	<u>\$ 261,006.44</u>
<b>Principal</b>			
Receipts	3		\$ 158,259.02
Net Gain (or Loss) on Sales or Other Disposition	4-5		<u>113,549.47</u>
			\$ 271,808.49
General Disbursements:	6	\$ 77.36	
Fees	6	<u>4,300.00</u>	<u>4,377.36</u>
Balance before Distributions			\$ 267,431.13
Distributions to Beneficiaries	7		<u>10,703.79</u>
Principal Balance on Hand	8		\$ 256,727.34
For Information:			
Investments Made	9		
Changes in Investment Holdings	10-12		
<b>Income</b>			
Receipts (see note on page 13 about waiver)	13		\$ 5,907.25
Less Disbursements	14		<u>227.96</u>
Balance before Distributions			\$ 5,679.29
Distributions to Beneficiaries	15		<u>\$ 1,400.19</u>
Income Balance on Hand	16		\$ 4,279.10
Combined Balance on Hand			<u>\$ 261,006.44</u>
Affidavit	18		
❖ <i>Optional - for use if applicable</i>			

**6.3.2**  
**TRUSTEE'S ACCOUNT**

---

**RECEIPTS OF PRINCIPAL**

Assets awarded to Trustee by Adjudication dated January 30, 1977, of Smith, J., upon the First Account of the Executors and the Schedule of Distribution pursuant thereto:

1. Premises 789 Main Street Media, PA	\$ 10,000.00	
2. \$7,000 face value, Bethlehem PA General Bonds, 1.75%, due 4/1/1978	6,965.00	
3. \$20,000 face value, Ohio Turnpike Commission Project One Bonds, 3.25%, due 6/1/2000	18,025.00	
4. 352 Shs. American Telephone & Telegraph Co., capital	54,340.00	
5. 703 Shs. XYZ & Co., common	67,663.75	
6. 5 Shs. Southwest Rodeo Oil Co., common	1.00	
7. Checking Account, Upstanding Trust Company	<u>264.27</u>	\$157,259.02
Other Receipts: 03/15/77 Adjustment of Sewer Assessment		<u>1,000.00</u>
TOTAL RECEIPTS OF PRINCIPAL		<u>\$ 158,259.02</u>

Note: *To facilitate preparation, the accountant may prefer to detail the starting balance by attaching as an exhibit a copy of the closing balance from the last Account, Schedule of Assets in the Deed, etc., as appropriate. The opening entry would then read:*

*"Assets awarded by Adjudication dated January 30, 1977, of Smith, J., upon the First Account of the Executors per Schedule of Distribution pursuant thereto, copy attached, \$157,259.02"*

**6.3.2**

**TRUSTEE'S ACCOUNT**

**GAINS AND LOSSES ON SALES OR OTHER DISPOSITIONS**

		<i>Gain</i>	<i>Loss</i>
07/02/77	103 Shs. XYZ & Co., common		
	Net Proceeds	\$ 25,614.54	
	Fiduciary Acquisition Value	<u>9,913.75</u>	\$ 15,700.79
07/11/77	5 Shs. Southwest Rodeo Oil Co., common		
	Company declared bankrupt	0.00	
	Fiduciary Acquisition Value	<u>1.00</u>	\$ 1.00
04/06/78	100 Shs. XYZ & Co., common		
	Net Proceeds	22,226.25	
	Fiduciary Acquisition Value	<u>9,625.00</u>	12,601.25
12/29/84	\$20,000 face value, Ohio Turnpike Commission Project One Bonds, due 6/1/2000		
	Net Proceeds	18,450.00	
	Fiduciary Acquisition Value	<u>18,025.00</u>	425.00
06/19/88	500 Shs. XYZ & Co., common		
	Net Proceeds	56,337.21	
	Fiduciary Acquisition Value	<u>1.00</u>	56,336.21
08/09/88	\$50,000 Commercial Credit Co., demand note		
	Repaid	50,000.00	
	Fiduciary Acquisition Value	<u>50,000.00</u>	
09/22/88	852 Shs. American Telephone & Telegraph Co., capital		
	Net Proceeds	39,503.92	
	Fiduciary Acquisition Value	<u>19,816.70</u>	19,687.22
11/17/88	\$70,000 U.S. Treasury Bills		
	Matured	70,000.00	
	Fiduciary Acquisition Value	<u>70,000.00</u>	
	FORWARD	\$104,750.47	\$ 1.00

**6.3.2**  
**TRUSTEE'S ACCOUNT**

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**GAINS AND LOSSES ON SALES OR OTHER DISPOSITIONS (Continued)**

		<i>Gain</i>	<i>Loss</i>
	FORWARD	\$104,750.47	\$ 1.00
11/17/88 Premises 789 Main Street, Media, PA Sold, receiving:			
Purchase Money			
Mortgage	\$ 15,000.00		
Cash	<u>5,000.00</u>		
	Total	<u>20,000.00</u>	
Less expenses of Sale:			
Commission	\$1,000.00		
Transfer Tax	<u>200.00</u>	<u>1,200.00</u>	
Balance		18,800.00	
Fiduciary Acquisition Value		<u>10,000.00</u>	<u>8,800.00</u>
			<u>          </u>
	TOTAL GAINS AND LOSSES	<u>\$113,550.47</u>	<u>\$ 1.00</u>
	NET GAIN TRANSFERRED TO SUMMARY		<u>\$ 113,549.47</u>

**6.3.2****TRUSTEE'S ACCOUNT**

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**DISBURSEMENTS OF PRINCIPAL**

<b>General Disbursements</b>			
05/15/88	Acme Fire Insurance Co., 789 Main Street, Media, PA	\$	50.00
06/15/99	Reimbursement to Smith, Jones and Brown, Esquires, for Miscellaneous expenses, 2/11/77 to date		
	Postage and Insurance	\$	26.21
	Telephone	<u>1.15</u>	<u>27.36</u>
	TOTAL		\$77.36
<b>Fees</b>			
06/15/99	Smith, Jones and Brown, Esquires Attorneys' Fee	\$	<u>4,300.00</u>
	TOTAL DISBURSEMENTS OF PRINCIPAL	\$	<u><u>4,377.36</u></u>

**6.3.2**  
**TRUSTEE'S ACCOUNT**

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**DISTRIBUTIONS OF PRINCIPAL TO BENEFICIARIES**

	TO: Mary W. Doe		
07/01/77	\$7,000 face value, Bethlehem, PA General Bonds, 1.75%, due 4/1/85	\$ 6,965.00	
07/02/77	Cash	<u>238.79</u>	\$ 7,203.79
	TO: XYZ Charity		
05/04/99	Advance Distribution, cash		<u>3,500.00</u>
	<b>TOTAL DISTRIBUTIONS OF PRINCIPAL TO BENEFICIARIES</b>		<b><u>\$ 10,703.79</u></b>

**6.3.2****TRUSTEE'S ACCOUNT**

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**PRINCIPAL BALANCE ON HAND**

	<i>Value as of 11/30/02 or as noted</i>	<i>Fiduciary Acquisition Value</i>
\$20,000 face value, Indiana Toll Road Commission East/West Revenue Bonds, 3.5%, due 1/1/2002	\$ 13,600.00	\$ 17,275.00
1,260 Shs. American Telephone & Telegraph Company, capital	50,015.00	29,306.40
680 Shs. ABC Corp., common	56,355.00	48,124.00
Mortgage, 789 Main Street, Media, PA, face amount \$15,000 reduced to	14,750.00	14,750.00
\$120,000 face value, ABC Corp., demand note	120,000.00	120,000.00
Checking Account, Upstanding Trust Company	<u>27,271.94</u>	<u>27,271.94</u>
TOTAL PRINCIPAL BALANCE ON HAND	<u>\$281,991.94</u>	<u>\$256,727.34</u>



**6.3.2**  
**TRUSTEE'S ACCOUNT**

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**INFORMATION SCHEDULES - PRINCIPAL**

	<i>Fiduciary Investment Value</i>
Investment Made	
12/28/84 \$20,000 Indiana Toll Rd. Comm. East/West Revenue Bonds, 3.5%, due 1/1/2002; bought at face value	\$ 17,275.00
06/29/88 \$50,000 Commercial Credit Co., demand note	50,000.00
08/18/88 \$70,000 U.S. Treasury Bills, due 11/1/98	68,000.00
09/28/88 \$120,000 ABC Corp., demand note	120,000.00

### 6.3.2

#### TRUSTEE'S ACCOUNT

#### CHANGES IN PRINCIPAL HOLDINGS

			<i>Fiduciary Investment Value</i>
<b>American Telephone &amp; Telegraph Company, common</b>			
02/11/77	352 Shs.	Awarded	\$ 55,340.00
04/24/77	<u>704</u> Shs.	Received in three-for-one split	<u>0.00</u>
	1,056 Shs.	Carried at	54,340.00
03/22/79		1,056 Rights to subscribe to additional stock sold for ❖	<u>1,484.41</u>
			\$ 52,855.59
03/12/82		1,056 Rights to subscribe to additional stock sold for	<u>2,507.00</u>
			\$ 50,348.59
06/22/82	<u>1,056</u> Shs.	Received in two-for-one split	<u>0.00</u>
	2,112 Shs.	Carried at	\$ 50,348.59
05/05/88		2,112 Rights to subscribe to additional stock sold for ❖	<u>1,225.49</u>
			\$ 49,123.10
09/22/88	852 Shs.	Sold for	\$ 39,503.92
		Less Gain on Sale	<u>19,687.22</u>
	<u>1,260</u> Shs.	Carried at	<u>\$ 29,306.40</u>
<b>XYZ &amp; Co., common</b>			
02/11/77	703 Shs.	Awarded	\$ 67,663.75
07/02/77	<u>103</u> Shs.	Sold for	\$ 25,614.54
		Less Gain on Sale	<u>15,700.79</u>
	600 Shs.	Carried at	\$ 57,750.00
04/06/78	<u>100</u> Shs.	Sold for	\$ 22,226.25
		Less Gain on Sale	<u>12,601.25</u>
	500 Shs.	Carried at	48,125.00

❖ *Proceeds of sale of rights may be applied in reduction of carrying value as illustrated here, or may be treated as an additional receipt, as illustrated in the Executor's Account. Either method, consistently applied, is acceptable.*

**6.3.2**

**TRUSTEE'S ACCOUNT**

**CHANGES IN PRINCIPAL HOLDINGS (Continued)**

			<i>Fiduciary Investment Value</i>
<b>XYZ &amp; Co., common (Continued)</b>			
07/09/80	250 Shs.	ABC Corp., common received @ 47.6875 in one-half-for-one divestment distribution	<u>11,921.88</u>
			\$ 36,203.12
01/06/82	180 Shs.	ABC Corp., common received @79 in a 0.36 share-for-one divestment distribution	<u>14,220.00</u>
			\$ 21,983.12
01/04/83	250 Shs.	ABC Corp., common received @ 96.0625 in a one-half-for-one divestment distribution, normally \$24,015.62, of which the following was applied to account value ❖❖	<u>21,982.12</u>
			\$ 1.00
06/19/88	<u>500</u> Shs.	Sold for	\$ 56,337.21
		Less Gain on Sale	<u>56,336.21</u>
	<u>0</u>	No Longer Held	<u>1.00</u>
			<u>\$ 0.00</u>
<b>ABC Corp., common</b>			
07/09/80	250 Shs.	Received in distribution on 500 Shs. XYZ & Co., common	\$ 11,921.88
01/06/82	180 Shs.	Received in similar distribution	<u>14,220.00</u>
	430 Shs.	Carried at	26,141.88
01/04/83	250 Shs.	Received in similar distribution	<u>\$ 21,982.12</u>
06/15/89	34 Shs.	Received as 5% stock dividend, transferred to income	
	<u>680</u> Shs.	Carried at	<u>\$ 48,124.00</u>

❖❖ This example is included to illustrate treatment of a case where the value of distribution exceeds carrying value.

**6.3.2**

**TRUSTEE'S ACCOUNT**

**CHANGES IN PRINCIPAL HOLDINGS (Continued)**

		<i>Fiduciary Investment Value</i>
<b>789 Main Street, Media, PA</b>		
02/11/77	Awarded	\$ 10,000.00
11/17/88	Sold for purchase money mortgage of \$15,000 and cash of \$5,000	\$ 20,000.00
	Less settlement costs itemized in principal account	<u>1,200.00</u>
	Balance	\$ 18,800.00
	Less Gain on Sale	<u>8,800.00</u> <u>\$ 10,000.00</u>
	No Longer Held	<u>\$ 0.00</u>
<b>Mortgage on 789 Main Street, Media, PA</b>		
11/17/88	\$15,000 Mortgage received on sale of said premises	\$ 15,000.00
06/15/89	<u>250</u> Principal received on account	<u>250.00</u>
	\$14,750 Balance remaining	<u>\$ 14,750.00</u>
<b>Southwest Rodeo Oil Co., common ABC Corp., common</b>		
12/11/77	5 Shs. Awarded	\$ 1.00
07/11/77	Company Declared Bankrupt	<u>1.00</u>
	<u>0</u>	<u>\$ 0.00</u>

**6.3.2**

**TRUSTEE'S ACCOUNT**

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**RECEIPTS OF INCOME**

**Waiver of Income Accounting**

An income accounting having been waived for the period February 11, 1977 to May 30, 1999, a limited schedule of receipts of income follows:

06/01/99	Balance per last income statement rendered	\$ 1,773.25
	<b>Dividend</b>	
06/08/02	ABC Corp. on 680 Shs.	578.00
06/15/99	34 Shs. ABC Corp., 5% stock dividend @ \$79.00	2,686.00
	<b>Interest</b>	
06/01/99	Indiana Toll Road Commission	350.00
06/15/02	ABC Corp., demand note	<u>520.00</u>
	<b>TOTAL RECEIPTS OF INCOME</b>	<u><u>\$ 5,907.25</u></u>

**6.3.2**

**TRUSTEE'S ACCOUNT**

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**DISBURSEMENTS OF INCOME**

06/01/02	Patrick Green, Tax Collector 1994 Personal Property Tax	\$	155.00	
06/15/02	Upstanding Trust Co., 5% commission on income collected 3/30/02-05/31/02		<u>72.40</u>	\$ <u>227.96</u>
	TOTAL DISBURSEMENTS OF INCOME			\$ <u>277.96</u>

**6.3.2**

**TRUSTEE'S ACCOUNT**

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**DISTRIBUTIONS OF INCOME TO BENEFICIARIES**

06/01/02	TO: Upstanding Trust Co., Executor under the Will of Mary w. Doe, Deceased, on income arising before 01/01/2002		
	Cash	\$ 650.19	
06/15/99	TO: XYZ Charity		
	Cash	<u>750.00</u>	<u>\$ 1,400.19</u>

**6.3.2**

**TRUSTEE'S ACCOUNT**

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**BALANCE OF INCOME ON HAND**

	<i>Current Value</i>	<i>Fiduciary Acquisition Value</i>
06/15/02 Cash	\$ 1,593.10	\$ 1,593.10
06/15/02 34 Shs. ABC Corp., common	<u>2,987.75</u>	<u>2,686.00</u>
TOTAL BALANCE OF INCOME	<u>\$ 4,580.85</u>	<u>\$ 4,279.10</u>



**6.3.2**  
**TRUSTEE'S ACCOUNT**

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**PROPOSED DISTRIBUTIONS TO BENEFICIARIES**

Per Article FIFTH of Will:

Mary W. Doe, not having exercised her general power of appointment granted to her over the assets of the Marital Trust, the entire fund on hand is to be distributed pursuant to the terms of Article FIFTH of the Will to XYZ charity.

	<i>Current Value 11/30/02 or as noted</i>	<i>Fiduciary Acquisition Value</i>
<b>PRINCIPAL:</b>		
\$20,000 face value, Indiana Toll Road Commission East/West Revenue Bonds, 3.5%, due 1/1/2002	\$ 13,600.00	\$ 17,275.00
1,260 Shs. American Telephone & Telegraph Company, capital	57,015.00	29,306.40
680 Shs. ABC Corp., common	56,355.00	48,124.00
Mortgage, 789 Main Street, Media, PA, face amount \$15,000, reduced to	14,750.00	14,750.00
\$120,000 face value, ABC Corp., demand note	120,000.00	120,000.00
Checking Account, Upstanding Trust Company	<u>27,271.94</u>	<u>27,271.94</u>
TOTAL PRINCIPAL	\$288,991.94	\$256,727.34
<b>INCOME:</b>		
06/15/02 Cash	\$ 1,593.10	\$ 1,593.10
06/15/02 34 Shs. ABC Corp.	<u>2,987.75</u>	<u>\$ 2,686.00</u>
TOTAL INCOME	\$ 4,580.85	\$ 4,279.10
COMBINED PRINCIPAL AND INCOME TOTAL	<u>\$293,572.79</u>	<u>\$261,006.44</u>

**6.3.2**

**TRUSTEE'S ACCOUNT**

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COMMONWEALTH OF PENNSYLVANIA :  
: ss.  
COUNTY OF PHILADELPHIA :

WALTER TRUST, Vice President of Upstanding Trust Company, Surviving Trustee under the Will of JOHN H. DOE, Deceased and Executor under the Will of Mary C. Doe, Deceased, Trustee under the Will of John H. Doe, hereby declares under oath that such Trustees have fully and faithfully discharged the duties of their office; that the foregoing First and Final Account is true and correct, and fully discloses all significant transactions occurring during the accounting period; that all known claims against the Trust have been paid in full; that, to his knowledge, there are no claims now outstanding against the trust; and that all taxes presently due from the trust have been paid.

\_\_\_\_\_  
Walter Trust

Subscribed and sworn to by  
Walter Trust before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

Note: *Accounts should be signed by all accountants and verified by at least one of them. Under Philadelphia Local Orphans' Court Rule 2.3.A., verification may be made by affidavits sworn to or affirmed before a notary public or other officer authorized to administer oaths or a verified statement which shall set forth that it is subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).*

**6.3.2**  
**TRUSTEE'S ACCOUNT**

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**Waiver of Income Accounting**

[SEE CAPTION AT 1.3.2]

**WAIVER OF INCOME ACCOUNTING**  
**FROM 02/11/97 TO 03/30/00**

For the "Residual Trust" Established under the Will of John H. Doe, Deceased

Upstanding Trust Company, Executor under the Will of Mary C. Doe, Deceased, the income beneficiary, has reviewed the periodic statements of the Trust provided by the Trustees and the First and Final Account of the Trust and hereby waives an income accounting from February 11, 1997, the date of the prior Adjudication of Judge Goodenov of the Orphans' Court of Philadelphia County, Pennsylvania, to December 31, 1999, the date of the last trust statement provided, through her death on December 30, 1999.

Upstanding Trust Company,  
Executor under the Will of  
Mary C. Doe, Deceased,

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Walter Trust, Vice-President

Note: *A more common example follows. Corporate trust administrators often procure waivers without assistance of counsel. Like any waiver, applicability to the situation at hand is always an appropriate inquiry, even though review, let alone restatement of many years of income receipts and disbursements could be burdensome.*

**6.3.2**

**TRUSTEE'S ACCOUNT**

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**Another Form of Income Waiver**

[SEE CAPTION AT 1.3.2]

**WAIVER OF INCOME ACCOUNTING  
FROM 02/11/97 TO 03/30/00**

For the "Residual Trust" Established under the Will of John H. Doe, Deceased

The undersigned, being the Executive Director of XYZ Charity, and being authorized to do so on behalf of XYZ Charity, successor beneficiary, hereby waive an Accounting of Income receipts, disbursements and distributions with respect to the referenced Deed of Trust, for the period of December 30, 1999, the date of the death of the life tenant, and March 30, 2000, having been satisfied that all such income was accounted for and distributed to it during this period.

XYZ Charity

By: \_\_\_\_\_  
Ivan Dungoody, Executive Director

## 6.4

### PRELIMINARY AUDIT STATEMENT

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Before the advent of the current procedure requiring audit papers to be pre-filed rather than submitted at the call of the list, and for some time thereafter, the Court required a printed form to supply certain information preliminary to receipt of the audit papers. This is not currently the practice; however, the following note is retained in this edition for cautionary value.

Note: *Counsel who prepares the preliminary audit statement should be aware that if item 7(a) ("Is trustee willing to accept confirmation without prejudice") is answered in the affirmative the appointment of an ad litem may be waived. See 6.6. However, an adjudication entered without prejudice will not discharge the accountant as to the interests of all persons who are then minors, or otherwise not sui juris, or who may come into being prior to the next accounting. The informed consent of the accountant is therefore essential before an affirmative answer is given.*



**6.5**  
**PETITION FOR APPOINTMENT**  
**OF GUARDIAN AD LITEM AND TRUSTEE AD LITEM**  
**IN ACCORDANCE WITH RULE 12.4.A**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, \_\_\_\_\_ is appointed Guardian *ad Litem* for Joseph B. Dunn, III, Mary E. Dunn and John J. Dunn, the minors named in the within Petition, and Trustee *ad Litem* for all unborn or unascertained persons who may be interested in the income or principal of the Residuary Trust under ITEM 4 of the Will of Joseph B. Dunn, Deceased, with authority to represent the said minors and unborn or unascertained persons in all matters relating to the audit of the First and Final Account of Upstanding Trust Company and Jane R. Dunn, Deceased, Trustees, which Account is now pending for audit before this Court.

\_\_\_\_\_  
J.

*[Petition on following page]*

## 6.5

### PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM AND TRUSTEE AD LITEM IN ACCORDANCE WITH RULE 12.4.A

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[SEE CAPTION AT 1.3.2]

#### PETITION

The Petition of Upstanding Trust Company, Surviving Trustee under the Will of Joseph B. Dunn, Deceased, respectfully states that:

1. Joseph B. Dunn died on July 7, \_\_\_\_\_, leaving a Will dated April 3, \_\_\_\_\_, which was probated by the Register of Wills of Philadelphia County on July 14, \_\_\_\_\_.
2. By ITEM 4 of his Will, Testator directed that his residuary estate be held in trust by Upstanding Trust Company and Jane R. Dunn, to pay the income therefrom to his wife, Jane R. Dunn, during her lifetime. He further directed that upon her death the principal continue in trust, so much of the net income and principal to be distributed to his children as the Trustee deems advisable, until Testator's youngest child attains the age of 25 years, at which time the principal is distributable to Testator's issue then living, *per stirpes*.
3. The First and Final Account of Upstanding Trust Company and Jane R. Dunn, Trustees under the Will of Joseph B. Dunn, Deceased, has been filed because of the death of Jane R. Dunn, the income beneficiary and Co-Trustee, on January 12, 1999.
4. Testator's children living at the death of his widow are Joseph B. Dunn, III (born April 7, 1992), Mary E. Dunn (born November 12, 1994) and John J. Dunn (February 16, 1996).

Wherefore, Petitioner respectfully requests this Court to appoint a Guardian *ad Litem* for Joseph B. Dunn, III, Mary E. Dunn and John J. Dunn, the aforesaid minors, and a Trustee *ad Litem* for all unborn or unascertained persons who may be interested in the income or



**6.5**  
**PETITION FOR APPOINTMENT**  
**OF GUARDIAN AD LITEM AND TRUSTEE AD LITEM**  
**IN ACCORDANCE WITH RULE 12.4.A**

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principal of said trust estate, with authority to represent them in all matters relating to the audit of the First and Final Account of Upstanding Trust Company and Jane R. Dunn, Trustees under the Will of Joseph B. Dunn, Deceased.

UPSTANDING TRUST COMPANY

By: \_\_\_\_\_  
Title:

[SEE AFFIDAVIT AT 1.4.2 OR VERIFICATION AT 1.4.3]

Note: *See Philadelphia Rule 12.4.A.*



## 6.6

### WAIVER OF AD LITEM APPOINTMENT

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Note *There is **no** court-approved form, but some members of the bar have developed the practice of writing to the Court to request such waiver in order to avoid the expense and delay of an ad litem appointment when, for example, the minors' interests are fully and virtually represented by that of a parent who is also a party. This request should be signed by the attorney who will appear for the accountant at the audit and should be submitted to the auditing judge with the audit papers or, at least, well before the audit date; otherwise, the case will be continued. It may also be incorporated into the Statement of Proposed Distribution/Petition for Adjudication [usually as a rider, setting forth the facts and describing the capacity of the representative party or parties] in which case, it is, of course submitted over the signature of the accountant(s). Such request should be made only when warranted by the facts of the case and should not be used in every situation. It may be desirable to seek appointment of a permanent guardian. See Chapter 7.*

ESTATE OF ELLA B. DUNN, DECEASED  
TRUST FOR THE BENEFIT OF DON D. DUNN  
Request for Waiver of Guardian and Trustee *Ad Litem*

Accountants respectfully request that the Court waive the appointment of a Guardian and Trustee *ad Litem*. In support thereof, Accountants assert that the interest of minors and unborn or unascertained beneficiaries are virtually represented and adequately protected by those persons who are *sui juris* with similar interests. In particular, Accountants assert that the remaindermen listed below are of sufficient age, maturity, training, education, and intellect to represent not only themselves, but also the minors and unborn persons or ascertained persons whom a Guardian or Trustee *ad Litem* would otherwise serve to represent.

There are three grandchildren of Ella B. Dunn named as remaindermen:

1. Helen T. Dunn, age 48, resides at 20 West 104th Street, Gotham, NY. She went to Gotham College and works as a consultant in Gotham City. She is unmarried and has no children.
2. Margery G. Whizz, age 45, resides at 24 Tomtom Road, Mohawk, NJ. She graduated from the University of Pennsylvania, *cum laude*, and works as real estate agent. She is married to Stephen E. Whizz, and has two children, Jason Whizz, age 23, also a graduate of the University of Pennsylvania, and Ginny Whizz, age 18, a first-year student at the University of Pennsylvania.
3. Sue Dunn, age 53, resides at 255 Fisher Ave., Seaport, MA. She graduated from Wellesley College, received an MBA from Stanford University, and works as a bank officer. She is divorced and has one child, Louis Loveless, age 14.

Accountants assert that Helen T. Dunn, Margery G. Whizz, and Sue Dunn are

## 6.6

### WAIVER OF AD LITEM APPOINTMENT

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well-qualified to represent the interests of any minor and unborn or unascertained parties in interest in this Trust and notice of the audit has been given to them.

Finally, Accountants assert that no Guardian and Trustee *ad Litem* need be appointed because no distributions will be made at this time. The Trust assets are requested to be awarded to Upstanding Trust Company, Surviving Co-Trustee, for the continuing purposes of the Trust.

Accordingly, Accountants respectfully request the Court to waive the appointment of a Guardian and Trustee *ad Litem* in the above matter.

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I. M. Trustworthy, Esquire  
Counsel for the Accountants

## 6.7

### NOTICE OF CHARITABLE GIFT

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Note: *This printed form is supplied by the Clerk of the Orphans' Court Division, and must be used in every matter involving a charitable gift, vested or contingent [with certain **de minimus** exceptions. Consult the form and Orphans' Court Rule 5.5. Use only the most current form available.*

### COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY ORPHANS' COURT DIVISION

Estate of \_\_\_\_\_

Settlor  
Deceased

NO. \_\_\_\_\_ of 20\_\_\_\_

#### NOTICE OF CHARITABLE GIFT (In Accordance with O.C. Rule 5.5)

Charitable Trusts and  
Organizations Section  
Office of the Attorney General  
21 South 12th Street, Third Floor  
Philadelphia PA 19107-3603

Date: \_\_\_\_\_

Dear Sir:

Notice is given of charitable gift with respect to which report\* is made as follows:

1. The nature of the present proceedings is:
  - (a) An account which has been or will be listed for audit in the ORPHANS' Court on \_\_\_\_\_ in City Hall, Philadelphia. (Time and Courtroom need not be given).
  - (b) If proceedings other than an account, state nature of proceedings and the place, date and time fixed for hearing:
  
2. Charitable gifts are made as follows:
  - (a) Give full names and addresses of charities, and names and addresses of counsel, if any.
  
  - (b) If pecuniary legacies, state exact amounts and indicate whether legacies will be or have been paid in full; if not give reasons therefor.
  
  - (c) If gifts are in trust, state nature, terms and approximate amounts. If a future interest, state whether vested or contingent, and when it will come in to possession. If it is unlikely that the charitable gift will come into possession, explain why.

\* If more space is required, attach additional sheets.  
11-22

- (d) If residuary gift, state nature of share.
3. A brief statement of all pertinent questions to be submitted to the Court for Adjudication.
  4. The names and addresses of the fiduciaries are (State whether executors and/or trustees):
  5.
    - (a) A copy of the instrument creating the gift is attached hereto.
    - (b) If gift is other than pecuniary legacy which will be paid in full, there is attached hereto:
      - (1) A copy of the account, if one has been filed
      - (2) A copy of any other relevant documents
      - (3) A statement of all compensation which has been paid or is being claimed by the fiduciary and his counsel

Very truly yours,

.....  
 Attorney for Fiduciary and I.D. No.  
 .....  
 .....  
 Address  
 .....  
 Telephone Number

**INSTRUCTIONS**

The Pennsylvania Supreme Court has ruled in *Pruner Estate*, 390 PA 529, and *Garrison Estate*, 391 PA. 234, that notice must be given to the Attorney General in all proceedings involving charitable trusts. This has been interpreted to apply to all charitable gifts, whether outright or in trust.  
 In the case of an account, this notice must be sent at least fifteen (15) days before the date fixed for audit or hearing. It need not be sent by Registered or Certified Mail. A copy of the notice must be submitted to the court at the audit or hearing.  
 If a Clearance Certificate is issued by the Attorney General's office, this should also be submitted to the court.  
 This notice and supporting documents should be forwarded to the office of the Attorney General in Philadelphia.

11-22 (Reverse)

## 6.8 AUDIT NOTICE LETTER

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*[ON ATTORNEY LETTERHEAD]*

[Date]

RE: Estate of Joseph B. Dunn, Deceased

TO ALL PARTIES IN INTEREST:

### AUDIT NOTICE

The First and Final Account of Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, has been filed with the Clerk of the Orphans' Court of Philadelphia County and will be called for audit before the Honorable John Smith, Judge of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County, on Monday, December \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ .m. in Room 426, City Hall, Philadelphia, Pennsylvania.

Your interest in the estate consists of a one-sixth share of the residuary estate.

The Court will be asked to approve the Account of the Executrix and to make awards in accordance with the provisions of the Will of Joseph B. Dunn, Deceased. Copies of the Account and the Will are enclosed.

The Court will also be asked to deny the claim of Harvey White in the amount of \$5,000 because the debt in question was incurred by Joseph B. Dunn in his capacity as President of Joseph B. Dunn, Inc., and not in his individual capacity.

Finally, the Court will also be asked to approve the payment of \$1,000 to counsel for the estate as fees in addition to those shown on page 4 of the Account. The request for additional fees covers extraordinary services in representing the estate in the audit of the Pennsylvania Inheritance Tax Return, which has been successfully concluded.

It is not necessary that you or your counsel appear at the audit. However, if you have any objection to any items in the Account, or if you disagree with the position of the accountant as to the said claim, it is necessary to state these in writing, in accordance with the Rules of this Court and that you appear at the time and place mentioned, in person or by counsel, to present your contention; otherwise the Court will assume you have no objection and may approve the Account and adopt the accountant's position as stated.

**6.8**  
**AUDIT NOTICE LETTER**

---

If you have any questions with respect to the contents of this letter, the Account of the Executrix, or the Will of Joseph B. Dunn, Deceased, please contact the undersigned.

Very truly yours,

John K. Trustworthy

Note: *See Philadelphia Rule 6.3.A. for alternate provisions regarding court room and time of audit, furnishing of Will and Account, and other matters. The form above is obviously limited to a matter where "ALL PARTIES IN INTEREST" includes only one claimant and some residuary beneficiaries. In each case, the wording must be tailored to suit the circumstances [e.g., notice may be given to specific legatees with a notation that their legacy has been paid, if that be so, and they would not receive copies of the Will or Account].*



**6.9**

**APPEARANCE SLIP**

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Note: *This is a printed form which is supplied by the Clerk of the Orphans' Court Division. See also the Case Initiation Cover Sheet and the Petition/Pleading Cover Sheet also supplied by the Clerk.*

**ORPHANS' COURT DIVISION  
COURT OF COMMON PLEAS OF PHILADELPHIA**

Estate of \_\_\_\_\_

TO THE AUDITING JUDGE: \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Enter my appearance for:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

N.B. - COUNSEL FOR THE ACCOUNTANT will state any additional debits and credits.

OTHER COUNSEL will make a concise statement of their claim, the amount thereof and calculation of interest if claimed.

***(COUNSEL ACTUALLY PRESENT, KINDLY SIGN AND ALSO PRINT YOUR NAME, ADDRESS, POSTAL ZONE, AND TELEPHONE NUMBER)***





**6.10**

**PETITION FOR ADJUDICATION  
AND STATEMENT OF PROPOSED DISTRIBUTION - DECEDENT'S ESTATE**

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1. Name(s), address(es) and capacity(ies) of petitioner(s):

Jane R. Dunn, Executrix

who aver:

2. Decedent died on July 7, 2000. Letters were granted to petitioners on July 15, 2000.

*For testate decedent.*

Date of Will: April 3, 1995

Date(s) of codicil(s) if any: \_\_\_\_\_

Date of probate (if different from date Letters granted): \_\_\_\_\_

3. Was decedent survived by a spouse?       Yes       No

If yes, name of the surviving spouse: \_\_\_\_\_

4. Has the surviving spouse filed to take an elective share?       Yes       No

*(See Section 2201 et seq. of the Probate, Estates and Fiduciaries Code)*

If yes, date of election: \_\_\_\_\_

5. The decedent's surviving children or surviving issue of deceased children are *(if none, so state)*:

Joseph B. Dunn, Jr., Mary E. Dunn and John J. Dunn, children

6. Did decedent marry after execution of Will?       Yes       No

Did decedent marry after execution of codicil(s)?       Yes       No

Were any children born to decedent after execution of decedent's will or codicil?       Yes       No

If yes, give names and dates of birth:

7. Written notice of the audit as required by Rule 6.3 and Local Rule 6.3.A. has been or will be given to all parties in interest listed in item 8 below, all unpaid creditors and all claimants listed in item 10 below. In addition, notice of any questions requiring adjudication as discussed in item 15 below has been or will be given to all persons affected thereby.

A. If notice has been given, attach a copy of the notice as well as a list of the names and addresses of the parties receiving such notice.

**6.10**

**PETITION FOR ADJUDICATION**

**AND STATEMENT OF PROPOSED DISTRIBUTION - DECEDENT’S ESTATE**

- B. If notice is yet to be given, a copy of the notice as well as a list of the names and addresses of the parties receiving such notice shall be submitted at the audit together with a statement executed by petitioner or petitioner’s counsel certifying that such notice has been given.
  - C. If any person entitled to notice is not *sui juris* (e.g., minors or incapacitated persons), notice of the audit has been or will be given to the appropriate representative on such party’s behalf as required by Rule 5.2 and Local Rule 5.2.A.
  - D. If any charitable interest is involved, notice of the audit has been or will also be given to the Attorney General as required under Rule 5.5 (see form notice of charitable gift authorized by the Court of Common Pleas of Philadelphia County, Orphans’ Court Division). In addition, the Attorney General’s clearance certificate (or proof of service of notice and a copy of such notice) must be submitted herewith or at the audit.
8. List all parties (charitable and non-charitable) of whom petitioner has notice or knowledge, having or claiming any interest in the estate. This list shall:
- A. State each party’s relationship to the decedent and the nature of each party’s interest;
  - B. Identify each party who is not *sui juris* (e.g., minors or incapacitated persons.) For each such party, give date of birth, the name of each guardian and how each guardian was appointed. If no guardian has been appointed, identify the next of kin of such party, giving the name, address and relationship of each; and
  - C. If distribution is to be made to the personal representative of a deceased party, state date of death, date and place of grant of Letters and type of Letters granted.

<i>Name and Address of Each Party in Interest</i>	<i>Relationship and Comments (If Any)</i>	<i>Interest</i>
If notice has been given, attach a copy of the notice as well as a list of the names and addresses of		
<i>Jane R. Dunn, 250 Horse Hair Road</i>	<i>Spouse</i>	<i>Personal Effects</i>
<i>Philadelphia, PA</i>		
<i>Upstanding Trust Company</i>	<i>Trustee</i>	<i>Marital &amp; Residuary</i>

- 9. If any party entitled to distribution is a non-resident, foreign or unknown distributee subject to the provisions of Local Rules 6.9.D., and 13.3.A., explain and attach or submit at audit the additional documentation required under the applicable Local Rules.
- 10. The names and addresses of the claimants (other than any family exemption claimant under item 12 below), and the amounts of their claims, in the order of preference under Section 3392 of the Probate, Estates and Fiduciaries Code (with a notation whether or not preference is claimed and whether or not the claim and preference are admitted), are as follows (*if none, so state*):

Hilltop Hospital, \$5,000; admitted  
 XYZ Charitable Foundation, \$10,000 pledge; admitted  
 Desmond Deadbeat, \$1,000 claim; denied

**6.10**

**PETITION FOR ADJUDICATION  
AND STATEMENT OF PROPOSED DISTRIBUTION - DECEDENT'S ESTATE**

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11. A. State why a petition for guardian/trustee ad litem has or has not been filed for this audit (see Rule 12.4 and Local Rule 12.4.A.):

The contingent remaindermen of the marital and residuary trusts are decedent's minor great-grandchildren, who are remote takers and adequately represented by their parents under the principle of virtual representation.

- B. If a waiver of the appointment of a guardian/trustee ad litem is requested, state whether confirmation of the account will be accepted in whole or in part without prejudice (see Rule 12.4 and Local Rule 12.4.A.):

Yes

12. We family exemption claimed?       Yes       No      Allowed?       Yes       No

Family exemption claimant's name and relationship: Jane R. Dunn, Surviving Spouse

13. The amount of Pennsylvania Transfer Inheritance Tax and additional Pennsylvania Estate Tax paid, the date(s) of payment(s), and the interest(s) upon which paid, are as follows:

Pennsylvania inheritance tax was paid in the amount of \$22,321 on April 7, 2002.

14. In the date of death, the decedent was not a fiduciary of another estate, nor surety on the bond of a fiduciary, except as stated (*if so, state caption of estate and indicate whether account has been confirmed absolutely and all awards performed; if not, state "no objections"*):

15. Describe any questions requiring adjudication:

None.

16. If petitioner has knowledge that a share has been assigned, renounced, disclaimed or attached, provide a copy of the assignment, renunciation, disclaimer or attachment, together with any relevant supporting documentation.

17. Was decedent adjudicated an incapacitated person?       Yes       No

If yes, attach a copy of the Order, if available; otherwise state Court, term, number, date and name of Hearing Judge:



**6.10**

**PETITION FOR ADJUDICATION  
AND STATEMENT OF PROPOSED DISTRIBUTION - DECEDENT'S ESTATE**

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**Verification of Petitioner**

*(Verification must be by at least one petitioner. Local Rule 6.9.B)*

The undersigned hereby verified [that (s)he is \_\_\_\_\_ of the above-named \_\_\_\_\_ and]\* that the facts set forth in the foregoing Petition for Adjudication and Statement of Proposed Distribution which are within the personal knowledge of the petitioner are true, and as to facts based on the information of others, the petitioner, after diligent inquiry, believes them to be true, and that any false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

\_\_\_\_\_  
*Signature of Petitioner*

\* *Corporate petitioners must complete bracketed information.*

**Certification of Counsel**

The undersigned counsel hereby certifies that the foregoing Petition for Adjudication and Statement of Proposed Distribution is a true and accurate reproduction of the form petition authorized by the Court of common Pleas of Philadelphia County, Orphans' Court Division, and that no changes to the form have been made beyond that responses herein.

\_\_\_\_\_  
*Signature of Counsel for Petitioner(s)*



## 6.11 OBJECTIONS TO ACCOUNT

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[SEE CAPTION AT 1.3.2]

### OBJECTION TO ACCOUNT

The objection of Harvey White to the First and Final Account of Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, is filed for the following reason:

The accountant has failed to pay to Harvey White, the objectant, the sum of \$5,000 owed by the Decedent on a promissory note of the Decedent dated January 2, 2000 and delivered to objectant on the same date. The entire amount of the note with interest thereon from the date of the promissory note was due and unpaid by the Decedent at the time of his death. A copy of the note is attached as Exhibit "A."

Objectant respectfully requests this Court to award to Harvey White the full amount of his claim of \$5,000 with interest from January 2, 2000, the date of the note.

---

Harvey White

I, HARVEY WHITE, verify that I am the Objectant in the foregoing Objection; that I am a creditor of Joseph B. Dunn, Deceased, the aforesaid Decedent; that the Objection above set forth is not filed for the purpose of delay, but because it is believed that it raises a proper question regarding the assets and liabilities of Decedent's estate and the balance available for distribution to the parties fairly entitled thereto, and in order to prevent injustice in the administration and distribution of Decedent's estate.

---

Harvey White

[SEE AFFIDAVIT AT 1.4.2 OR VERIFICATION AT 1.4.3]

Note: See Philadelphia Rule 6.10.A for the rules governing objections.



## 6.12 EXCEPTION TO ADJUDICATION

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[SEE CAPTION AT 1.3.2]

The exception of Harvey White to the Adjudication of the Honorable John Smith dated January 30, 2002, is filed for the following reason:

The Auditing Judge erred in his finding that Joseph B. Dunn did not owe the sum of \$5,000 in his individual capacity to the exceptant.

Respectfully submitted,

---

Harvey S. Brown  
Attorney for Exceptant

Note: *The Rules do not require the exceptant to sign the exceptions to the Adjudication. See Philadelphia Rule 7.1.A. for the rules governing exceptions.*



**6.13**  
**SCHEDULE OF DISTRIBUTION**

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[SEE CAPTION AT 1.3.1]

TRUST UNDER DEED OF GEORGE S. DUNN, (DECEASED)  
 DATED FEBRUARY 28, 1975

**SCHEDULE OF DISTRIBUTION**

In accordance with the First Account of Mary A. Dunn and I. M. Trustworthy, Esq., Trustees, stated to October 24, 1999:

**PRINCIPAL**

Balance of Principal per Account		\$1,002,020.51
To which add:		
Increase in value of securities reappraised as of October 23, 1999, per Schedule "A" attached:		
Reappraised Value	\$ 512,312.50	
Account Value	<u>498,203.50</u>	<u>14,109.00</u>
	<b>TOTAL</b>	<b><u>\$1,016,129.51</u></b>

Which is awarded as follows:

To: Mary A. Dunn and I. M. Trustworthy,  
 Esq., Trustees Under Deed of Trust of  
 George S. Dunn dated February 28, 1975 –  
 Marital Trust (40.9524%)

	<u>Tax Cost</u>	
\$40,000 U.S. Treasury Note, 6.5%, due 4/30/2003	\$ 40,002.00	<u>\$ 40,450.00</u>
FORWARD		\$ 40,450.00

**6.13****SCHEDULE OF DISTRIBUTION****PRINCIPAL (Continued)**

FORWARD		\$ 40,450.00
	<u>Tax Cost</u>	
\$40,000 U.S. Treasury Note, 6.5%, due 8/15/2003	\$ 39,704.00	40,512.50
\$40,000 U.S. Treasury Note, 6.75% due 6/30/2002	39,875.00	41,137.50
\$40,000 U.S. Treasury Note, 6.875% due 7/31/2002	40,000.00	41,325.00
\$40,000 U.S. Treasury Note, 6.985% due 3/31/2003	39,700.00	41,500.00
122,857.200 shares Vanguard Admiral U.S. Treasury Portfolio	122,857.20	122,857.20
Cash		<u>88,347.31</u> \$ 416,129.51

To: Mary A. Dunn and I. M.  
Trustworthy, Esq., Trustees, Under Deed  
of Trust of George S. Dunn dated  
February 28, 1975 – Residuary Trust  
(59.0476%)

	<u>Tax Cost</u>	
\$60,000 U.S. Treasury Note, 6.5% due 4/30/2003	\$ 60,004.00	\$ 60,675.00
\$60,000 U.S. Treasury Note, 6.5% due 8/15/2003	59,556.00	60,768.75
\$60,000 U.S. Treasury Note, 6.75% due 6/30/2002	59,812.50	61,706.25
\$60,000 U.S. Treasury Note, 6.875% due 7/31/2002	60,000.00	<u>61,987.50</u>
FORWARD		\$ 245,137.50

**6.13**  
**SCHEDULE OF DISTRIBUTION**

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**PRINCIPAL (Continued)**

FORWARD		\$ 245,137.50	\$ 416,129.51
	<u>Tax Cost</u>		
\$60,000 U.S. Treasury Note, 6.875% due 3/31/2003	\$ 59,550.00	62,250.00	
177,142.800 shares Vanguard Admiral U.S. Treasury Portfolio	177,142.80	177,142.80	
Cash		115,469.70	<u>600,000.00</u>
	TOTAL		<u>\$1,016,129.51</u>

**6.13**  
**SCHEDULE OF DISTRIBUTION**

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**INCOME**

Balance of Income per Account: \$ 309.00

Which is awarded as follows:

To: Mary A. Dunn and I. M.  
Trustworthy, Esq., Trustees Under Deed  
of Trust of George S. Dunn dated  
February 28, 1975 – Marital Trust

Cash \$ 309.00

TOTAL \$ 309.00



**6.13**  
**SCHEDULE OF DISTRIBUTION**

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**SCHEDULE A – REAPPRAISAL OF ASSETS**

	<u>Account</u> <u>Value</u>	<u>Value as of</u> <u>10/23/99</u>
\$100,000 U.S. Treasury Note, 6.5%, due 4/30/2003	\$ 100,006.00	\$ 101,125.00
\$100,000 U.S. Treasury Note, 6.5%, due 8/15/2000	99,260.00	101,281.25
\$100,000 U.S. Treasury Note, 6.75%, due 6/30/2002	99,687.50	102,843.75
\$100,000 U.S. Treasury Note, 6.875%, due 7/31/2002	100,000.00	103,312.50
\$100,000 U.S. Treasury Note, 6.875%, due 3/31/2000	<u>99,250.00</u>	<u>103,750.00</u>
TOTAL	<u>\$ 498,203.50</u>	<u>\$ 512,312.50</u>

**6.13**  
**SCHEDULE OF DISTRIBUTION**

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[SEE CAPTION AT 1.3.1]

ESTATE OF GEORGE I. DUNN, DECEASED

**CERTIFICATION**

I hereby certify that the foregoing Schedule of Distribution is correct and in conformity with the Adjudication filed and that due notice of the filing thereof was given to the parties-in-interest by mailing the attached notice letter to their last known address as required by Rule 6.11C. of the Court.

\_\_\_\_\_  
Justus Trustworthy, Esquire

Note: *Examples are for different matters used for form only, but whether Schedule is prepared by counsel or fiduciary, it must be certified and notice given in conformity with the Rules of Court.*

## 6.14

### NOTICE OF FILING OF SCHEDULE OF DISTRIBUTION

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*[ON ATTORNEY LETTERHEAD]*

[Date]

Re: Estate of Joseph B. Dunn, Deceased

TO ALL AFFECTED PARTIES IN INTEREST:

My letter of November 15, \_\_\_\_\_, advised you that the First and Final Account of Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, would be called for audit by the Orphans' Court Division of the Court of Common Pleas of Philadelphia County on December 5, \_\_\_\_\_. The Account was audited by the Court on that date and the Court's Adjudication directed that a Schedule of Distribution setting forth the awards of the distributive shares of principal and income be filed. A copy of the Schedule of Distribution which will be filed with the Court on February 17, \_\_\_\_\_ is enclosed.

Any party who objects to the Schedule must file objections within twenty days of its filing; otherwise the Court will assume there are no objections and may approve the Schedule as filed.

Very truly yours,

John K. Trustworthy

Note: *Notice of the filing of the Schedule of Distribution must be given to the parties in interest, unless that party's consent is attached to the Schedule when filed. See Philadelphia Rule 6.11.A.*







**6.16**  
**PETITION FOR ORDER TO PAY AWARD**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, \_\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, pay to Elaine S. Dunn the sum of \$1,000 awarded by Adjudication of Smith, J., dated January 30, 2000 within ten days after personal service of this order upon her.

\_\_\_\_\_  
J.

[SEE CAPTION AT 1.3.2]

*[Petition on following page]*

**6.16**

**PETITION FOR ORDER TO PAY AWARD**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Elaine S. Dunn respectfully states that:

1. Petitioner is a party in interest in the Estate of Joseph B. Dunn, Deceased, being a legatee of the sum of \$1,000.
2. By Adjudication of Smith, J., dated January 30, \_\_\_\_\_, the sum of \$1,000 was awarded to Petitioner.
3. Executrix refuses to pay Petitioner the amount of her award, although Petitioner has made demand upon Executrix for the payment thereof.

Wherefore, Petitioner respectfully requests this Court to enter an Order directing Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, to pay to Elaine S. Dunn the amount of her award.

\_\_\_\_\_  
Elaine S. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]



**6.17**  
**SATISFACTION OF AWARD**

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[SEE CAPTION AT 1.3.2]

To the Clerk of the Orphans' Court Division:

I hereby authorize and direct you to mark satisfied of record the Award to Joseph B. Dunn, Jr., of \$1,000, as per adjudication filed January 30, 2002 with respect to the Account of Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased, the same having been paid to me by the Executrix.

I hereby consent that the discharge of the said Jane R. Dunn as Executrix may be granted by the Court.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Joseph B. Dunn, Jr.

\_\_\_\_\_  
Witness



**6.18**  
**RECEIPT, RELEASE, REFUNDING**  
**AND INDEMNIFICATION AGREEMENT**

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[SEE CAPTION AT 1.3.2]

The undersigned, a beneficiary entitled to receive one-fifth of the residuary estate of the Estate of Joseph B. Dunn, Deceased, does hereby:

1. Acknowledge that I have examined and approve the attached First and Final Account of Jane R. Dunn, Executrix, with the same force and effect as if such account had been filed with, and audited, adjudicated, and confirmed absolutely by, the Philadelphia Orphans' Court Division;
2. Waive the filing of the Account;
3. Acknowledge receipt of the one-fifth share of the residuary estate in the amount of \$15,000 as shown in the Account;
4. Release Jane R. Dunn, both individually and in her capacity as Executrix of the Will of Joseph B. Dunn, Deceased, and her heirs, successors, and assigns, from all liability that she may have by reason of her administration of the estate;
5. To the extent of the distribution received, agree to refund to Executrix any portion of the distribution to which I am not properly entitled even if distributed through negligence, to indemnify her for claims made against her as Executrix, and to reimburse her for all expenses and costs incurred in connection with any such claims; and
6. Declare that this instrument shall be governed by the law of Pennsylvania and shall be legally binding upon me and upon my heirs, successors and assigns.

In Witness Whereof, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
John Dunn

\_\_\_\_\_  
Witness

Note: *Counsel should consider whether it is appropriate to settle an estate or trust on the basis of an agreement such as the foregoing. Although this process may be less demanding of the services of counsel and more quickly accomplished, the protection afforded the fiduciary is considerably less than a Court filing. Longer, more complete forms of such an agreement, with an accounting and appropriate exhibits may be used.*



CHAPTER 7

**PROCEEDINGS INVOLVING MINORS**

**7.1**

**PETITION FOR THE APPOINTMENT OF A GUARDIAN  
OF THE ESTATE OF A MINOR UNDER THE AGE OF 14 YEARS  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5111(a)**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, \_\_\_\_ upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Henry Doe is appointed Guardian of the Estate of John Dunn, a Minor.

The Guardian shall post bond, with corporate surety, in the amount of \$\_\_\_\_\_.

\_\_\_\_\_  
J.

*[Petition on following page]*

## 7.1

### **PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE ESTATE OF A MINOR UNDER THE AGE OF 14 YEARS IN ACCORDANCE WITH 20 Pa. C.S.A. §5111(a)**

---

---

[SEE CAPTION AT 1.3.2]

#### **PETITION**

The Petition of Peter Dunn respectfully states that:

1. Petitioner is the uncle of John Dunn, being his late father's brother.
2. The Minor, John Dunn, was born on January 1, 1993, and he resides at 275 Horse Hair Road, Philadelphia, PA 19199, with Petitioner.
3. The Minor is the child of Jane R. Dunn, who died on January 12, 2001, and Joseph B. Dunn, who died on July 7, 2001.
4. It is necessary that a Guardian of the Estate be appointed because the Minor has an interest in the Estate of his mother, Jane R. Dunn, who died intestate.
5. No other Guardian has been appointed for the Estate of the Minor.
6. The proposed Guardian, Henry Doe, is 40 years of age and resides at 10 Main Street, Philadelphia, PA 19199. The Consent of the proposed Guardian is attached hereto as Exhibit "A."
7. The proposed Guardian is a cousin of John Dunn and has no interest adverse to him.
8. The Minor's estate is composed of the above said interest in the Estate of Jane R. Dunn, Deceased, valued at approximately \$50,000, which is currently held by Upstanding Trust Company as Administrator.
9. The estimated gross annual income of such interest is \$1,500. The said Minor is also receiving a monthly Social Security benefit in the amount of \$250.
10. No Notice to the United States Veterans' Administration is required.

**7.1**  
**PETITION FOR THE APPOINTMENT OF A GUARDIAN**  
**OF THE ESTATE OF A MINOR UNDER THE AGE OF 14 YEARS**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5111(a)**

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Wherefore, Petitioner respectfully requests this Court to appoint Henry Doe as Guardian of the Estate of John Dunn, a Minor.

\_\_\_\_\_  
Peter Dunn

[SEE AFFIDAVIT AT 1.4.1. OR VERIFICATION AT 1.4.3]

*[Consent of Guardian on following page]*

**7.1**

**PETITION FOR THE APPOINTMENT OF A GUARDIAN  
OF THE ESTATE OF A MINOR UNDER THE AGE OF 14 YEARS  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5111(a)**

---

---

[SEE CAPTION AT 1.3.1]

**CONSENT OF GUARDIAN**

I hereby consent to act as Guardian of the Estate of John Dunn, a Minor.

I reside at 10 Main Street, Philadelphia, PA 19199, and am a loan officer with Old Faithful Bank.

I am a citizen of the United States and can speak, read and write the English language.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Henry Doe

Note: *See Rule 12.5, Philadelphia Rules 12.5.1 and 12.5.2 for additional requirements. Amounts of \$25,000 or less may be distributed under an estate's or trust's schedule of distribution to a minor or the minor's parent without the appointment of a guardian. At times, the Court may also agree to establishment of a restricted account in the minor's name, not to be disbursed without leave of Court until majority. See also 7.4, below. Consult 20 Pa. C.S.A. §§5101-5103.*



## 7.2

### **PETITION FOR THE APPOINTMENT OF A GUARDIAN OF THE ESTATE OF A MINOR UNDER THE AGE OF 14 YEARS IN ACCORDANCE WITH 20 Pa. C. S.A. §5111(a) TO BRING LITIGATION ❖**

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[SEE CAPTION AT 1.3.1]

#### **DECREE**

Now, \_\_\_\_\_ 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Henry Doe is appointed Guardian of the Estate of John Dunn, a Minor, for all purposes, including nominating the person who will receive Letters of Administration on the Estate of Jane R. Dunn, Deceased and bringing litigation on behalf of the Minor. Upon receiving any property on behalf of the Minor, the Guardian shall apply to the Court to set the appropriate bond in this matter.

---

J.

*[Petition on following page]*

- ❖ *In an earlier edition of this book, this form of petition included an allegation that the appointment of a guardian was necessary to nominate the Administrator of the estate of the minor's parent who died intestate. In accordance with Granato Estate, 17 Fiduc. Rep. 2d 267 (O.C. Bucks, 1997), affirmed 723 A. 2d 240 (1998), this is no longer the practice. Because the minor is disqualified from serving as Administrator pursuant to 20 Pa. C.S. §3156, the person entitled to the grant of letters of administration, pursuant to §3155 (b)(3) is not the designee of or the guardian of the minor, but the individual or individuals who would be entitled under the intestate law if the minor had not survived the decedent.*

**7.2**

**PETITION FOR THE APPOINTMENT OF A  
GUARDIAN OF THE ESTATE OF A MINOR  
UNDER THE AGE OF 14 YEARS IN ACCORDANCE  
WITH 20 Pa. C. S.A. §5111(a) TO BRING LITIGATION**

---

---

[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Peter Dunn respectfully states that:

1. Petitioner is the uncle of John Dunn, being his late father's brother.
2. John Dunn was born on January 1, 1993, and resides at 275 Horse Hair Road, Philadelphia, PA 19199, with Petitioner.
3. The Minor is the child of Jane R. Dunn, who died on January 12, 2001, and Joseph B. Dunn, who died on July 7, 2001.
4. It is necessary that a Guardian of the Estate be appointed because John Dunn may have a cause of action against James Jones for personal injuries John Dunn incurred in a traffic accident.
5. No other Guardian has been appointed for the Estate of the Minor.
6. The proposed Guardian, Henry Doe, is 40 years of age and resides at 10 Main Street, Philadelphia, PA 19199. The Consent of the proposed Guardian is attached hereto as Exhibit "A."
7. The proposed Guardian is a cousin of the said John Dunn and has no interest adverse to him.
8. The Minor's estate is composed of the litigation claim, which is valued at \$50,000.
9. No notice to the United States Veterans' Administration is required.

**7.2**  
**PETITION FOR THE APPOINTMENT OF A**  
**GUARDIAN OF THE ESTATE OF A MINOR**  
**UNDER THE AGE OF 14 YEARS IN ACCORDANCE**  
**WITH 20 Pa. C. S.A. §5111(a) TO BRING LITIGATION**

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---

Wherefore, Petitioner respectfully requests this Court to appoint Henry Doe as Guardian of the Estate of John Dunn, a Minor.

---

Peter Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

Note: *The Consent of the Guardian to serve should be attached to the Petition, in the same form as it appears in 7.1 above. Philadelphia Rule 12.5.B*



**7.3**

**PETITION FOR THE APPOINTMENT OF A GUARDIAN  
OF THE PERSON OF A MINOR UNDER THE AGE OF 14 YEARS  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5111 (a)**

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---

[SEE CAPTION AT 1.3. 1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition,  
it is hereby ORDERED and DECREED that Henry Doe is appointed Guardian of the Person  
of John Dunn, a Minor.

\_\_\_\_\_  
J.

*[Petition on following page]*

**7.3**

**PETITION FOR THE APPOINTMENT OF A GUARDIAN  
OF THE PERSON OF A MINOR UNDER THE AGE OF 14 YEARS  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5111 (a)**

---

---

[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Peter Dunn respectfully states that:

1. The Petitioner, Peter Dunn, is the uncle of John Dunn, being his late father's brother.
2. John Dunn was born on January 1, 1993, and he resides at 275 Horse Hair Road, Philadelphia, PA 19199, with Petitioner.
3. John Dunn is the child of Jane R. Dunn, who died on January 12, 2000, and Joseph B. Dunn, who died on July 7, 2001.
4. John Dunn is in need of corrective surgery as described in the report of his physician annexed hereto as Exhibit "A," and ABC Hospital requires that a Guardian of his Person consent to such surgery.
5. No other Guardian has been appointed for the Person of the Minor.
6. The proposed Guardian, Henry Doe, is 40 years of age and resides at 10 Main Street, Philadelphia, PA 19199. The Consent of the proposed Guardian is attached hereto as Exhibit "A."
7. The proposed Guardian is a cousin of John Dunn and has no interest adverse to him.
8. The parents of John Dunn were, and the proposed Guardian is, Roman Catholic.
9. No notice to the United States Veterans' Administration is required.

**7.3**

**PETITION FOR THE APPOINTMENT OF A GUARDIAN  
OF THE PERSON OF A MINOR UNDER THE AGE OF 14 YEARS  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5111 (a)**

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Wherefore, Petitioner respectfully requests this Court to appoint Henry Doe as Guardian of the Person of John Dunn, a Minor.

\_\_\_\_\_  
Peter Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

Note: *The Consent of the Guardian to serve should be attached to the Petition, in the same form as it appears in 7.1 above. Philadelphia Rule 12.5.B.*





**7.4**

**PETITION FOR THE APPOINTMENT OF A GUARDIAN  
OF THE ESTATE OF A MINOR OVER THE AGE OF 14 YEARS  
IN ACCORDANCE WITH 20 Pa. C. S.A. §5111(a),  
AND FOR THE  
DEPOSIT OF FUNDS INTO A RESTRICTED BANK ACCOUNT  
IN LIEU OF THE ENTRY OF SECURITY  
IN ACCORDANCE WITH PHILADELPHIA RULE 12.5.C.(3)**

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---

[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20 \_\_\_\_\_, upon consideration of the annexed Petition, it is hereby decreed that Henry Doe is appointed Guardian of the Estate of John Dunn, a Minor.

In lieu of the entry of security, the Guardian is authorized and directed to invest the funds belonging to the Minor as follows:

1. To purchase a savings certificate in the sum of \$35,000 from XYZ Savings Institution, Philadelphia, Pennsylvania, in his name as Guardian of the Estate of the Minor, to be marked: "Not to be redeemed except for renewal in its entirety, nor to be withdrawn, assigned, negotiated, or otherwise alienated before January 1, 2011, except on Order of Court."
2. To deposit the sum of \$10,000, in the AB Savings Institution, Philadelphia, Pennsylvania, in a savings account, in his name as Guardian of the Estate of the above-named Minor, to be marked: "Not to be withdrawn before January 1, 2011, except for the payment of state and federal income taxes on the interest earned by the certificate and the account or on Order of Court."
3. Each deposit shall be fully insured by FDIC or FSLIC.

The Guardian is further authorized and directed to deposit interest received from the savings certificate or other income belonging to the Minor, if any, in the aforesaid savings account opened under paragraph (2), pursuant to this Decree.

**7.4**

**PETITION FOR THE APPOINTMENT OF A GUARDIAN  
OF THE ESTATE OF A MINOR OVER THE AGE OF 14 YEARS  
IN ACCORDANCE WITH 20 Pa. C. S.A. §5111(a),  
AND FOR THE  
DEPOSIT OF FUNDS INTO A RESTRICTED BANK ACCOUNT  
IN LIEU OF THE ENTRY OF SECURITY  
IN ACCORDANCE WITH PHILADELPHIA RULE 12.5.C.(3)**

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Within thirty (30) days from the date of this Decree, counsel for the Petitioner shall file an Affidavit with the Clerk of Orphans' Court, certifying compliance with this Decree. Copies of the savings account and/or savings certificate, containing the required restrictions, shall be attached as Exhibits to the Affidavit of counsel.

The Guardian is directed to file an Inventory within ninety (90) days of the date of this Decree, in accordance with the provisions of 20 Pa. C.S.A. §5142.

The Guardian is not permitted to expend the principal of the minor's estate without permission of this Court, in accordance with the provisions of 20 Pa. C.S.A. §5164.

Henry Doe, Guardian of the Estate of John Dunn, a Minor, shall not receive any additional funds or property, except on further Order of this Court.

The Guardian shall file a Petition for Discharge pursuant to Phila. O.C. Rule 12.5.C.(3)(b) when John Dunn attains his majority.

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J.

Note: *There are a variety of situations which may prompt the petition for the appointment of a guardian for a minor, and petitions and proposed decrees should be tailored as needed. Based upon the Court's preferences and to remind the Guardian of the applicable statutes and court rules, the following paragraphs should be added to the proposed Decree in appropriate cases:*

*When guardian is needed to apply for letters of administration when minor is intestate heir:*

*The said guardian shall not nominate himself/herself to serve as personal representative of the Estate of \_\_\_\_\_, Deceased.*

*When a guardian is needed to handle litigation involving a minor:*

*The said Guardian shall not enter into any settlement of any claim or cause of action without prior approval of this court. In the event of a settlement of any claim or cause of action, this court reserves the right to remove the guardian and appoint a corporate guardian.*

**7.4  
PETITION FOR THE APPOINTMENT OF A GUARDIAN  
OF THE ESTATE OF A MINOR OVER THE AGE OF 14 YEARS  
IN ACCORDANCE WITH 20 Pa. C. S.A. §5111(a),  
AND FOR THE  
DEPOSIT OF FUNDS INTO A RESTRICTED BANK ACCOUNT  
IN LIEU OF THE ENTRY OF SECURITY  
IN ACCORDANCE WITH PHILADELPHIA RULE 12.5.C.(3)**

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*Phila. O.C. Rule 12.5.C.(3) makes the following provisions for termination of the guardianship when the minor attains majority:*

*When the minor's estate is valued at less than \$12,000, payment may be made by the financial institution on the joint application of the guardian and the late minor. The following paragraph is appropriate:*

*If no withdrawals (other than the payment of income taxes) are made from the investments authorized by this Decree, the depository may pay over the balances on deposit when the Minor attains his majority, upon the joint order of the Guardian and the late Minor, without further Order of this Court.*

*If the minor's estate is greater than \$12,000, or if there have been principal allowances pursuant to Court order, the guardian must file a petition for discharge when the minor attains majority. The petition should have the following attachments: (1) statement in the nature of an account; and (2) affidavit of guardian that he has received no additional assets belonging to the minor, and that all claims known to the guardian have been paid.*

*[Petition on following page]*

**7.4**

**PETITION FOR THE APPOINTMENT OF A GUARDIAN  
OF THE ESTATE OF A MINOR OVER THE AGE OF 14 YEARS  
IN ACCORDANCE WITH 20 Pa. C. S.A. §5111(a),  
AND FOR THE  
DEPOSIT OF FUNDS INTO A RESTRICTED BANK ACCOUNT  
IN LIEU OF THE ENTRY OF SECURITY  
IN ACCORDANCE WITH PHILADELPHIA RULE 12.5.C.(3)**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Jane R. Dunn respectfully states that:

1. Petitioner is the mother of John Dunn, a Minor born on January 1, 1987, who resides at 261 Horse Hair Road, Philadelphia, PA 19199, with Petitioner.
2. A Guardian of the Minor's Estate is required because the Minor is entitled to the remainder of the Trust under the Will of Horace Dunn, Deceased, which consists of cash in the amount of \$45,000 and which is now distributable to the Minor.
3. No other Guardian has been appointed for the Estate of the Minor.
4. The proposed Guardian is Henry Doe, age 40, who resides at 10 Main Street, Philadelphia, PA 19199.
5. The proposed Guardian is a cousin of the minor and has no interest adverse to him.
6. The Minor's Consent is attached to the Petition.
7. The Minor's Estate is composed of the above interest in the Trust under Will of Horace Dunn, Deceased, consisting of cash in the amount of approximately \$45,000, which is currently held by Upstanding Trust Company as Trustee.
8. The estimated gross annual income from estate is approximately \$2,700.

Wherefore, Petitioner respectfully requests this Court to appoint Henry Doe as Guardian of the Estate of John Dunn and to authorize him to invest the funds distributable

**7.4**

**PETITION FOR THE APPOINTMENT OF A GUARDIAN  
OF THE ESTATE OF A MINOR OVER THE AGE OF 14 YEARS  
IN ACCORDANCE WITH 20 Pa. C. S.A. §5111(a),  
AND FOR THE  
DEPOSIT OF FUNDS INTO A RESTRICTED BANK ACCOUNT  
IN LIEU OF THE ENTRY OF SECURITY  
IN ACCORDANCE WITH PHILADELPHIA RULE 12.5.C.(3)**

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---

to the minor in a restricted savings certificate and in a restricted savings account, in lieu of the entry of security.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

**7.4  
PETITION FOR THE APPOINTMENT OF A GUARDIAN  
OF THE ESTATE OF A MINOR OVER THE AGE OF 14 YEARS  
IN ACCORDANCE WITH 20 Pa. C. S.A. §5111(a),  
AND FOR THE  
DEPOSIT OF FUNDS INTO A RESTRICTED BANK ACCOUNT  
IN LIEU OF THE ENTRY OF SECURITY  
IN ACCORDANCE WITH PHILADELPHIA RULE 12.5.C.(3)**

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[SEE CAPTION AT 1.3.1]

**CONSENT OF MINOR**

John Dunn, a Minor over the age of 14 years who resides at 261 Horse Hair Road, Philadelphia, PA 19199, accepts notice of the foregoing Petition and consents to the appointment of Henry Doe as Guardian of his Estate.

Dated: \_\_\_\_\_

\_\_\_\_\_  
John Dunn

Note: *The Consent of the Guardian to serve should be attached to the Petition, in the same form as it appears in 7.1 above. Philadelphia Rule 12.5.B. See Philadelphia Rule 12.5.3(e) for the authorization of the payment of income taxes from the restricted account without Court approval. See also 20 Pa. C.S.A. §5113 re consent of minor over 14 years of age.*

**7.5**  
**PETITION FOR DISTRIBUTION OF PRINCIPAL**  
**FOR THE EDUCATION OF A MINOR**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5164**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Henry Doe, Guardian of the Estate of John Dunn, a Minor, is authorized to expend the principal sum of \$4,000 for the education of John Dunn.

\_\_\_\_\_  
J.

*[Petition on following page]*

**7.5**

**PETITION FOR DISTRIBUTION OF PRINCIPAL  
FOR THE EDUCATION OF A MINOR  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5164**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Henry Doe respectfully states that:

1. The Minor, John Dunn, was born on January 1, 1987.
2. John Dunn's father died on July 7, 2001.
3. John Dunn presently resides with his mother Jane R. Dunn at 261 Horse Hair Road, Philadelphia, PA 19199.
4. By Decree of Jones, J., dated April 1, 2001, Petitioner was appointed Guardian of the Estate of John Dunn, a Minor over the age of 14 years.
5. The estate of John Dunn is composed of a savings account at XYZ Association, having a balance of \$20,000.
6. The annual interest generated by the account is \$500.
7. John Dunn has now entered AB University as a freshman and is in need of \$4,000 to defray the cost of tuition and other expenses in connection with his education, which expenses are detailed in Schedule "A" attached hereto.
8. The Minor's mother is unable to provide him with financial assistance because all of her income and earnings are required for the maintenance of the home in which she and the said minor reside and for other costs of living.
9. No previous allowance has been made on behalf of John Dunn.

Wherefore, Petitioner respectfully requests this Court to authorize Petitioner to



**7.5**  
**PETITION FOR DISTRIBUTION OF PRINCIPAL**  
**FOR THE EDUCATION OF A MINOR**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5164**

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expend the principal sum of \$4,000 for John Dunn's education.

\_\_\_\_\_  
Henry Doe

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*{Consents on following page}*

**7.5  
PETITION FOR DISTRIBUTION OF PRINCIPAL  
FOR THE EDUCATION OF A MINOR  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5164**

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[SEE CAPTION AT 1.3.1]

**CONSENTS**

Jane R. Dunn, mother and natural Guardian of John Dunn, hereby consents to the foregoing Petition.

Dated: \_\_\_\_\_  
Jane R. Dunn

John Dunn hereby consents to the foregoing Petition.

Dated: \_\_\_\_\_  
John Dunn

Note: *See Philadelphia Rule 12.5.5(b).*

**7.6**

**PETITION FOR THE APPOINTMENT OF A SUCCESSOR CUSTODIAN  
UNDER THE PENNSYLVANIA UNIFORM TRANSFERS TO MINORS ACT  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5318(d)**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20 \_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Jane R. Dunn is appointed successor Custodian for John Dunn, a Minor, under the Pennsylvania Uniform Transfers to Minors Act with respect to 10 shares of the common stock of AA Corporation.

\_\_\_\_\_  
J.

*[Petition on following page]*

**7.6**

**PETITION FOR THE APPOINTMENT OF A SUCCESSOR CUSTODIAN  
UNDER THE PENNSYLVANIA UNIFORM TRANSFERS TO MINORS ACT  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5318(d)**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Jane R. Dunn respectfully states that:

1. Petitioner is the mother of John Dunn, a Minor, who was born on January 1, 1993.
2. John Dunn resides with Petitioner at 261 Horse Hair Road, Philadelphia, PA 19199.
3. Petitioner's father, Joseph Dunn, died on June 2, 2001.
4. At the time of his death, Joseph Dunn was serving as Custodian for John Dunn under the Pennsylvania Uniform Transfers to Minors Act with respect to 10 shares of the common stock of AA Corporation.
5. Joseph Dunn did not designate a successor Custodian of such property, and no Guardian has been appointed for John Dunn.
6. Petitioner is over 18 years of age.

Wherefore, Petitioner respectfully requests this Court to appoint her as successor Custodian of the above described property for John Dunn under the Pennsylvania Uniform Transfers to Minors Act.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

Note: *If a Minor is over age 14 and has no Guardian, the Minor may designate a successor Custodian without petitioning the Court. Consult the statute for details.*

CHAPTER 8

**PROCEEDINGS INVOLVING  
INCAPACITATED PERSONS**

**8.1**

**PETITION FOR ADJUDICATION OF INCAPACITY  
AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE  
AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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[SEE CAPTION AT 1.3.1]

**PRELIMINARY DECREE**

Now, this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition to Adjudicate Jane R. Dunn an Incapacitated Person and to Appoint a Plenary Guardian of her Person and Estate, it is hereby ORDERED and DECREED as follows:

1. A Citation is awarded, directed to Jane R. Dunn, to show cause why:
  - a. She should not be adjudged an Incapacitated Person;
  - b. Why Joan Smith should not be appointed Plenary Guardian of her Person; and
  - c. Why Henry Doe should not be appointed Plenary Guardian of her Estate.
2. The hearing on the said Petition shall be held in Courtroom \_\_\_\_\_, City Hall, Philadelphia, Pennsylvania, on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .m.
3. Petitioners shall cause to be served (by personal service) the Citation with Notice and Petition, pursuant to the provisions of 20 Pa. C.S.A. §5511(a), upon Jane R. Dunn, the alleged incapacitated person, at least twenty (20) days prior to the court hearing. The contents and terms of the Citation with Notice and Petition shall be read and explained to the maximum extent possible in language and terms the alleged incapacitated person is most likely to understand in accordance with the provisions of 20 Pa. C.S.A. §5511(a). An Affidavit of Service containing specific averments as to the above requirements shall be presented at the beginning of the court hearing.
4. At least twenty (20) days prior notice of the court hearing, together with a copy of the

## 8.1

### PETITION FOR ADJUDICATION OF INCAPACITY AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511

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Petition, shall be given personally or by certified mail to all persons who are *sui juris* and who would be entitled to share in the estate of the alleged incapacitated person if she died intestate at this time, to the person believed to be an agent under the alleged incapacitated person's limited power of attorney, and to the institution providing residential services to the alleged incapacitated person, as follows:

Joan Smith  
1200 Locust Way  
Philadelphia, PA 19103

Henry Doe  
P.O. Box 1234  
Boston, MA 12345

Barbara Friend  
9 Wondering Place  
Philadelphia, PA 19103

The Best Nursing Home  
900 Lombard Street  
Philadelphia, PA 19103

in accordance with the provisions of 20 Pa. C.S.A. §5511(a).

5. Petitioners and/or counsel for Petitioners shall notify the Court, in writing, at least seven (7) days prior to the court hearing if counsel has not been retained by or on behalf of the alleged incapacitated person in accordance with the provision of 20 Pa. C.S.A. §5511(a). This notice shall also contain all pertinent information which would indicate to the Court whether or not counsel should be appointed to represent the interests of the alleged incapacitated person.
6. The alleged incapacitated person shall be present at the court hearing unless it is established by clear and convincing medical evidence that her physical or mental condition would be harmed by her presence in court, in accordance with the

**8.1**  
**PETITION FOR ADJUDICATION OF INCAPACITY**  
**AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE**  
**AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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provisions of 20 Pa. C.S.A. §5511(a). Petitioners may retain a physician for a physical and mental examination.

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J.

Note: *The Court may direct that notice be given to other parties, such as other service providers.*

*[Decree on following page]*

## 8.1

### **PETITION FOR ADJUDICATION OF INCAPACITY AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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[SEE CAPTION AT 1.3.1]

#### **DECREE**

Now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the Petition and after hearing held following due service of the Citation with Notice and a copy of the Petition, upon Jane R. Dunn, this Court finds by clear and convincing evidence that:

1. Jane R. Dunn is 60 years of age and is a domiciliary of the City and County of Philadelphia.
2. Jane R. Dunn suffers from stroke and senile dementia which totally impairs her capacity to receive and evaluate information effectively and to make and communicate decisions concerning management of her financial affairs or to meet essential requirements for her physical health and safety.
3. She is totally dependent upon others for assistance in her daily activities.

Accordingly, it is hereby ORDERED and DECREED that Jane R. Dunn is adjudged a totally incapacitated person and the Henry Doe is appointed Plenary Guardian of the Estate and Joan Smith is appointed Plenary Guardian of the Person of Jane R. Dunn.

The said Guardian shall enter security, with corporate surety, in the amount of \$100,000.

In the event said incapacitated person has a safe deposit box, an Official Examiner of this Court shall be in attendance when said safe deposit box is opened. The Certificate of the Official Examiner of his examination of the assets in such safe deposit box shall be submitted to the Court, and, when approved by the hearing Judge, shall be filed with the record in this case. The amount and manner of compensation for these services of the Official Examiner shall be determined by the hearing Judge.

The said Guardian of the Estate is directed to file an Inventory within ninety (90) days of the date of this decree in accordance with the provisions of 20 Pa. C.S.A. §5521(b) and §5142.



## **8.1**

### **PETITION FOR ADJUDICATION OF INCAPACITY AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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The said Guardian is not permitted to expend the principal of the incapacitated person's estate without permission of the Court in accordance with the provisions of 20 Pa. C.S.A. §5536.

Any existing general power of attorney, limited power of attorney and/or health care power of attorney executed by the incapacitated person is hereby specifically revoked and rendered null and void.

Counsel for the incapacitated person is directed to supply this Court, directly to the undersigned Judge, with the incapacitated person's last Will, and a copy thereof.

Furthermore, the said Guardians shall each file a Report at least once within the first twelve months of his or her appointment and at least annually thereafter in accordance with the provisions of 20 Pa. C.S.A. §5521 (c)(1)(i) and (ii).

Within sixty (60) days after the death of the incapacitated person or an adjudication of capacity, the Guardians shall each file a Final Report with the Court pursuant to 20 Pa. C.S.A. §5521(c)(2).

Jane R. Dunn was not present at the hearing and was not represented by counsel. The Court finds from clear and convincing medical evidence that Jane R. Dunn's physical and mental health would have been harmed by requiring her presence at the hearing. Accordingly, counsel for the Petitioner shall cause to be served upon and read to Jane R. Dunn a copy of this Decree and the Statement of Rights, a copy of which is attached to this Decree as Exhibit "A," and file proof of such service with the Clerk of the Orphans' Court within ten (10) days.

Exceptions to this Decree may be filed within twenty (20) days from the entry of the Decree. An appeal from this Decree may be taken to the appropriate appellate court

**8.1**  
**PETITION FOR ADJUDICATION OF INCAPACITY**  
**AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE**  
**AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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within thirty (30) days from the entry of the Decree. See Phila. O.C. Rule 7.1.A and Pa. O.C. Rule 7.1, as amended, and, Pa. R.A.P. 902 and 903.

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J.

Note: *The specimen Decree should be submitted fir the Court's consideration. Ordinarily, the Court will fashion its own Decree following the hearing to adjudicate incapacity.*

*[Petition on following page]*

**8.1**  
**PETITION FOR ADJUDICATION OF INCAPACITY**  
**AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE**  
**AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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**STATEMENT OF RIGHTS**

AN ORDER HAS BEEN ENTERED WHEREBY YOU HAVE BEEN ADJUDICATED AN INCAPACITATED PERSON AND UNABLE TO CARE FOR YOURSELF AND/OR MANAGE YOUR PERSONAL AFFAIRS. YOU HAVE THE RIGHT TO FILE EXCEPTIONS TO THE COURT'S DECISION WITHIN TWENTY (20) DAYS OF THE COURT'S ORDER **OR** YOU HAVE THE RIGHT TO APPEAL THE COURT'S DECISION WITHIN THIRTY (30) DAYS OF THE COURT'S ORDER.

YOU MAY PETITION THE COURT AT ANY FURTHER TIME TO MODIFY OR TO TERMINATE THE GUARDIANSHIP IF THERE IS A CHANGE IN YOUR CAPACITY OR IF YOUR GUARDIAN FAILS TO PERFORM HIS/HER DUTIES IN ACCORDANCE WITH THE COURT'S ORDER.

IF YOU WISH TO APPEAL THE COURT'S ORDER OR PETITION THE COURT TO MODIFY OR TERMINATE THE GUARDIANSHIP, YOU ARE ENTITLED TO BE REPRESENTED BY AN ATTORNEY.

EXHIBIT "A"

## 8.1

### **PETITION FOR ADJUDICATION OF INCAPACITY AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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[SEE CAPTION AT 1.3.2]

#### **PETITION**

To the Honorable, the Judges of the said Court:

Petitioners, Jane R. Dunn, Joan Smith and Lawrence Smith, respectfully submit this Petition to the Court to adjudicate Jane R. Dunn an Incapacitated Person and to appoint a Plenary Guardian of the Person and Estate of Jane R. Dunn, an alleged Incapacitated Person, and in support thereof aver the following:

Jurisdiction and Venue:

1. The alleged incapacitated person, Jane R. Dunn, was born on November 16, 1940, is 60 years of age, and is single; she has no children.
2. The alleged incapacitated person is domiciled in Philadelphia, Pennsylvania, having resided for many years at 261 Horse Hair Road, Philadelphia, Pennsylvania, until her stroke; she is presently receiving residential services from The Best Nursing Home at Lombard Street, Philadelphia, Pennsylvania 19103.
3. Pursuant to 20 Pa. C.S.A. §5512(a) this Court has jurisdiction over and is the proper venue for the appointment of guardians of the person and estate of the alleged incapacitated person.
4. No other court has ever assumed jurisdiction in any proceeding to determine the capacity of the alleged incapacitated person and no guardian has ever been appointed for the estate or person of the alleged incapacitated person.

Interested Parties:

5. Jane R. Dunn was married to Richard Dunn on September 1, 1960, from whom she was divorced on or about July 4, 1975; she has no children or other dependents and her parents are deceased.
6. To the best of Petitioners' knowledge, information and belief, Petitioners, all of

## 8.1

### PETITION FOR ADJUDICATION OF INCAPACITY AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511

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whom are *sui juris* adults, are the only persons who would be entitled to the alleged incapacitated person's estate if she died intestate at this time; their names, addresses and relationships to the alleged incapacitated person are as follows:

Joan Smith 1200 Locust Way Philadelphia, PA 19103	Sister
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Henry Doe P.O. Box 1234 Boston, MA 12345	Brother
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7. To the best of Petitioners' knowledge, information and belief, the following individual, a friend of the alleged incapacitated person, is the alleged incapacitated person's agent under a power of attorney:

Barbara Friend  
9 Wondering Place  
Philadelphia, PA 19103

8. As noted above, the alleged incapacitated person now resides at The Best Nursing Home, 900 Lombard Street, Philadelphia, Pennsylvania 19103.
9. The alleged incapacitated person was never a member of the armed services of the United States and is not receiving benefits from the United States Veterans' Administration.
10. Petitioners are without information as to whether or not the alleged incapacitated person has a valid Will currently in effect.

#### Proposed Plenary Guardians:

11. Petitioners seek to have Petitioner Joan D. Smith, the alleged incapacitated person's sister, appointed Plenary Guardian of the Person of the alleged incapacitated person. Petitioner Joan D. Smith is 55 years of age and is a resident of Philadelphia, Pennsylvania. Petitioner Joan D. Smith is concerned for her sister's welfare, is a housewife, and is the person best equipped to handle the personal care decisions of the alleged incapacitated person.

## 8.1

### **PETITION FOR ADJUDICATION OF INCAPACITY AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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12. Petitioners seek to have Petitioner Henry Doe, the alleged incapacitated person's brother, appointed Plenary Guardian of the Estate of the alleged incapacitated person. Petitioner Henry Doe, is 53 years of age and is a resident of Boston, Massachusetts. He is a certified public accountant and has a college degree. He is the person best equipped to handle the financial decisions of the alleged incapacitated person.
13. The proposed guardians have no interest adverse to the alleged incapacitated person, although it is acknowledged that Petitioners would be the intestate heirs of the alleged incapacitated person if she were to die intestate at this time.

#### Factual Background / Limitations of Alleged Incapacitated Person:

14. Because of her mental and/or physical condition, the alleged incapacitated person is totally unable to manage her financial affairs, property and business and to make and communicate responsible decisions relating thereto, including the ability to communicate her need for assistance in these areas. She does not understand the concept of money and verbalizes so little that it is not possible to determine what she does and does not understand. She is not oriented to time.
15. Because of her impairment mental and/or physical condition, the alleged incapacitated person lacks the capacity to make or communicate responsible decisions concerning her person and is unable to walk, feed herself, clean herself, or perform the usual daily functions. She is emotionally volatile and does not understand her medical condition or the consequences of accepting or rejecting options for her care.
16. Barbara Friend, who Petitioners believe to be the alleged incapacitated person's agent under a general power of attorney, is 80 years of age and lives in California. Petitioners aver that it is impractical, if not impossible, for Barbara Friend to serve properly and fully on behalf of the alleged incapacitated person as her agent.
17. Petitioners aver that the alleged incapacitated person executed a Living Will by which she designated in writing her wishes with regard to health care, including the use or refusal of life-sustaining treatment, which Living Will is still in effect.

#### No Less Restrictive Alternative:

18. The severity of the alleged incapacitated person's mental and/or physical condition and the lack of viable, less restrictive alternatives necessitate that a Plenary Guardian

## 8.1

### **PETITION FOR ADJUDICATION OF INCAPACITY AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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of her Estate be appointed to manage and handle all aspects of the alleged incapacitated person's estate, specifically including, but not limited to: all issues relating to her cash, checks, and any bank or savings accounts held in her name, her stocks and bonds, her personal property, her real estate, her life and other insurance of which she is a beneficiary, her entitlement to any governmental and non-governmental benefit plans, federal, state and local taxes, claims made or to be made on behalf of her or against her, the execution of documents, entry into contracts affecting her and the payment of reasonable compensation or costs to provide services for her.

19. The following alternatives to the appointment of a guardian of the person have been considered: (a) power of attorney, and (b) advance health care directive, but these alternatives are ineffective for the following reason: The alleged incapacitated person does not understand the nature of the documents.
20. The severity of the alleged incapacitated person's mental and/or physical condition and the lack of viable, less restrictive alternatives necessitate that a Plenary Guardian of her Person be appointed to handle all issues relating to the person of the alleged incapacitated person, specifically including, but not limited to: her living arrangements, her medical and psychiatric care, the administration of medication to her, and the employment and discharge of physicians, psychiatrists, dentists, nurses, therapists and other professionals for her physical and mental treatment and care.

#### Assets and Income:

21. The exact nature and amount of the alleged incapacitated person's assets are not known, but the following is noted:
  - a. The alleged incapacitated person owns her home at 1200 Locust Way, Philadelphia, Pennsylvania 19103.
  - b. The alleged incapacitated person receives a pension from her husband's former employer of approximately \$800 a month and social security of \$900 a month.
22. To the best of Petitioners' knowledge, information and belief, the alleged incapacitated person is not a beneficiary of any trust created by another for her benefit.

**8.1**

**PETITION FOR ADJUDICATION OF INCAPACITY  
AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE  
AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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Wherefore, Petitioners respectfully request that this Court award a Citation directed to Jane R. Dunn, the alleged incapacitated person, and to such other persons as this Court may direct, to show cause why Jane R. Dunn, should not be adjudged a fully incapacitated person, why Joan Smith should not be appointed Plenary Guardian of her Person and why Henry Doe should not be appointed Plenary Guardian of her Estate.

Respectfully submitted,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joan Smith, Petitioner

Dated: \_\_\_\_\_

\_\_\_\_\_  
Henry Doe, Petitioner

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*[Consent of Guardian of Person on following page]*



**8.1  
PETITION FOR ADJUDICATION OF INCAPACITY  
AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE  
AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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[SEE CAPTION AT 1.3.1]

**CONSENT OF GUARDIAN OF PERSON**

I hereby consent to act as Limited or Plenary Guardian of the Person of Jane R. Dunn, an alleged incapacitated person.

I reside at 1200 Locust Way, Philadelphia, Pennsylvania 19103, and am a housewife.

I am a citizen of the United States and can speak, read and write the English language.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joan Smith

*[Consent of Guardian of Estate on following page]*

**8.1**

**PETITION FOR ADJUDICATION OF INCAPACITY  
AND FOR APPOINTMENT OF GUARDIAN OF THE ESTATE  
AND PERSON IN ACCORDANCE WITH 20 PA. C.S.A. §5511**

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[SEE CAPTION AT 1.3.1]

**CONSENT OF GUARDIAN OF ESTATE**

I hereby consent to act as Limited or Plenary Guardian of the Estate of Jane R. Dunn, an alleged incapacitated person.

I reside at P.O. Box 1234, Boston, Massachusetts 12345, and am a certified public accountant and college graduate.

I am a citizen of the United States and can speak, read and write the English language.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Henry Doe

## 8.2

### **PETITION FOR APPOINTMENT OF EMERGENCY GUARDIAN OF THE PERSON IN ACCORDANCE WITH 20 Pa. C.S.A. §5513**

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[SEE CAPTION AT 1.3.1]

#### **PRELIMINARY DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that a Citation is awarded, directed to Jane R. Dunn, to show cause why Joan Smith should not be appointed Emergency Guardian of her Person for the purpose of authorizing any surgical or other medical procedures necessary in her opinion for the health and welfare of Jane R. Dunn; the hearing thereon to be held in Room \_\_\_\_\_, City Hall, Philadelphia, Pennsylvania, on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .m.

Petitioner shall cause to be served (by personal service) the Citation with Notice and Petition, pursuant to the provisions of 20 Pa. C.S.A. §5511(a) upon the alleged incapacitated person at least \_\_\_\_\_ hours prior to the court hearing. The contents and terms of the Citation with Notice and Petition shall be explained to the maximum extent possible in language and terms of the alleged incapacitated person is most likely to understand in accordance with the provisions of 20 Pa. C.S.A. §5511(a). An Affidavit of Service containing specific averments as to the above requirements shall be presented at the beginning of the court hearing.

If any next of kin can be located, at least \_\_\_\_\_ hours notice of the court hearing, together with a copy of the Petition shall be given personally, by telegram, or, by overnight mail to all persons who are *sui juris* and would be entitled to share in the estate of the alleged incapacitated person if she died intestate, to the person or institution providing residential services to the alleged incapacitated person, in accord with the provisions of 20 Pa. C.S.A. §5511(a).

The alleged incapacitated person shall be present at the court hearing unless it is established by clear and convincing medical evidence that her physical and mental condition

**8.2**  
**PETITION FOR APPOINTMENT**  
**OF EMERGENCY GUARDIAN OF THE PERSON**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5513**

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would be harmed by her presence in court in accordance with the provisions of 20 Pa. C.S.A. §5511(a).

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J.

*[Decree on following page]*

**8.2**  
**PETITION FOR APPOINTMENT**  
**OF EMERGENCY GUARDIAN OF THE PERSON**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5513**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, after hearing held following Notice as directed by the Court, the Court finds that Jane R. Dunn currently lacks sufficient mental capacity to make or communicate responsible decisions concerning her person, and that failure to appoint an Emergency Guardian will result in irreparable harm to her person; it is therefore ORDERED and DECREED that Henry Doe is appointed Emergency Guardian of the person of Jane R. Dunn and may authorize any surgical or other medical procedures necessary in his opinion for the health and welfare of Jane R. Dunn.

Such guardianship is to be in effect for a period of seventy-two (72) hours from the date of this Decree or until further order of Court.

\_\_\_\_\_  
J.

*[Petition on following page]*

## 8.2

### **PETITION FOR APPOINTMENT OF EMERGENCY GUARDIAN OF THE PERSON IN ACCORDANCE WITH 20 Pa. C.S.A. §5513**

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[SEE CAPTION AT 1.3.2]

#### **PETITION**

The Petition of Harriet Dunn respectfully states that:

1. Petitioner is the sister of Jane R. Dunn (the “alleged incapacitated person”).
2. The alleged incapacitated person was born August 16, 1924, is a widow, and resides alone at 261 Horse Hair Street, Philadelphia, Pennsylvania.
3. The following persons are all of the alleged incapacitated person’s living next-of-kin:

Joan Smith	Sister
1200 Locust Way	
Philadelphia, PA 19103	

Henry Doe	Brother
P.O. Box 1234	
Boston, MA 12345	

4. Because of advanced age, physical illness and senility, the alleged incapacitated person lacks sufficient capacity to make or communicate responsible decisions concerning her person.
5. Petitioner is advised by medical personnel that the alleged incapacitated person is in need of immediate surgical or other medical procedures necessary for her health and welfare, including to repair a pulmonary aneurism, to avoid irreparable physical deterioration and damage to her health.
6. The proposed guardian of the alleged incapacitated person is Joan Smith, the sister of the alleged incapacitated person, of 1200 Locust Way, Philadelphia, Pennsylvania.
7. The proposed guardian has no interest adverse to the alleged incapacitated person.

**8.2**  
**PETITION FOR APPOINTMENT**  
**OF EMERGENCY GUARDIAN OF THE PERSON**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5513**

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8. No other court has ever assumed jurisdiction in any proceeding to determine the competency of the alleged incapacitated person.
9. No other guardian has been appointed for the estate or person of the alleged incapacitated person.

Wherefore, Petitioner respectfully requests this Court to award a Citation, directed to the alleged incapacitated person, with notice thereof to be given to her next of kin and to such other persons as this Court may direct, to show cause why Joan Smith should not be appointed as Emergency Guardian of her Person for the purpose authorizing any surgical or other medical procedures necessary for the health and welfare of Jane R. Dunn.

Respectfully submitted,

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Joan Smith

Note: *Under 20 Pa. C.S.A. §5513, “only such notice of the petition and hearing shall be required as shall appear to the court to be feasible in the circumstances...”*

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*[Consent of Guardian on following page]*

**8.2**  
**PETITION FOR APPOINTMENT**  
**OF EMERGENCY GUARDIAN OF THE PERSON**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5513**

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[SEE CAPTION AT 1.3.1]

**CONSENT OF GUARDIAN**

I hereby consent to act as Emergency Guardian of the Person of Jane R. Dunn, an alleged incapacitated person, for the purpose of authorizing any surgical or other medical procedures necessary for the health and welfare of Jane R. Dunn.

I reside at 1200 Locust Way, Philadelphia, Pennsylvania, and am a housewife and the sister of the alleged incapacitated person.

I am a citizen of the United States and can speak, read and write the English language.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joan Smith



**8.3**

**ANNUAL REPORT OF  
GUARDIAN OF THE ESTATE OF AN INCAPACITATED PERSON**

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**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION**

O.C. NO. \_\_\_\_\_ OF \_\_\_\_\_

ESTATE OF \_\_\_\_\_,  
AN INCAPACITATED PERSON

**ANNUAL REPORT OF GUARDIAN OF THE ESTATE**

I, \_\_\_\_\_, was appointed  
(Name of Guardian)  
\_\_\_\_\_ guardian of the estate by Decree of \_\_\_\_\_, J.,  
(Plenary or limited)  
dated \_\_\_\_\_.

This is my annual report for the period from \_\_\_\_\_,  
to \_\_\_\_\_ (the "Report Period").

**I. SUMMARY**

- A. Value of principal assets at the beginning of the Report Period? (See Inventory if first report, otherwise last report) \$ \_\_\_\_\_
- B. Total amount of income earned during the Report Period \$ \_\_\_\_\_
- C. Total amount of all expenditures made for care and maintenance of the Incapacitated Person during the Report Period? \$ \_\_\_\_\_
  - (1) From principal \$ \_\_\_\_\_
  - (2) From income \$ \_\_\_\_\_
- D. Total amount spent for all other purposes during the Report Period? \$ \_\_\_\_\_
- E. Total amounts remaining at the end of the Report Period?
  - (1) Principal \$ \_\_\_\_\_
  - (2) Income \$ \_\_\_\_\_
  - (3) Total (1 & 2) \$ \_\_\_\_\_

**8.3**

**ANNUAL REPORT OF  
GUARDIAN OF THE ESTATE OF AN INCAPACITATED PERSON**

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**II. ADDITIONAL INFORMATION**

(If more space is needed, attach additional pages)

**A. Principal:**

(1) Total amount remaining at the end of the Report Period? \$ \_\_\_\_\_

(2) How is principal currently invested? (Please specify, i.e., real estates, certificates of deposits, restricted bank accounts, etc.):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Have there been any expenditures from principal during the Report Period?  
(check one)             YES    or     NO

(4) Did you receive any principal assets during the Report Period which were not included in the Inventory or a prior report filed for the estate?  
(check one)             YES    or     NO

If you answered YES:

(a) Did you receive Court approval prior to receiving additional principal:  
(check one)             YES    or     NO

(b) State the sources and amounts of the additional principal you received:  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

**B. Income:**

(1) State sources and amounts of income received during the Report Period (i.e., Social Security, Pension, Rents, etc.):  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

Total income received during the Report Period \$ \_\_\_\_\_

**8.3**  
**ANNUAL REPORT OF**  
**GUARDIAN OF THE ESTATE OF AN INCAPACITATED PERSON**

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(2) How is income currently invested? (Please specify, restricted bank accounts, client care account, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Specify what payments were made for the care and maintenance of the Incapacitated Person (i.e. clothing, nursing home, medicine, support, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Specify what other payments were made during the Report Period. (Do not include any items stated in response to question C above.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I verify that the foregoing information is correct to the best of my knowledge, information and belief; and that this verification is subject to the penalties of 18 Pa. C.S.A. 4904 relative to unsworn falsification to authorities.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Guardian (type or print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone



**8.4**

**ANNUAL REPORT OF  
GUARDIAN OF THE PERSON OF AN INCAPACITATED PERSON**

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**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION**

O.C. NO. \_\_\_\_\_ OF \_\_\_\_\_

ESTATE OF \_\_\_\_\_,  
AN INCAPACITATED PERSON

**ANNUAL REPORT OF GUARDIAN OF THE PERSON**

1. I, \_\_\_\_\_, was appointed  
(Name of Guardian)  
\_\_\_\_\_ guardian of the estate by Decree of \_\_\_\_\_, J.,  
(Plenary or limited)  
dated \_\_\_\_\_.

This is my annual report for the period from \_\_\_\_\_,  
to \_\_\_\_\_ (the "Report Period").

2. Age of the incapacitated person: \_\_\_\_\_ years. Date of Birth: \_\_\_\_\_.
3. Living arrangements.
- a. Current address of the incapacitated person:  
\_\_\_\_\_  
\_\_\_\_\_
- b. The incapacitated person's residence is:  
\_\_\_\_ own home/apartment  
\_\_\_\_ nursing home  
\_\_\_\_ boarding home/personal care home  
\_\_\_\_ guardian's home/apartment  
\_\_\_\_ hospital or medical facility  
\_\_\_\_ relative's home (name relationship and address)  
\_\_\_\_\_  
\_\_\_\_\_
- c. The incapacitated person has been in the present residence since \_\_\_\_\_,  
\_\_\_\_\_. If the incapacitated person has moved within the past year, state  
change and reason(s) for change: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8.4**  
**ANNUAL REPORT OF**  
**GUARDIAN OF THE PERSON OF AN INCAPACITATED PERSON**

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d. Name and address of the incapacitated person's primary caregiver:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The major medical or mental problems of the incapacitated person are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Specify what, if any, social, medical, psychological and support services the incapacitated person is receiving:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. It is my opinion as guardian of the person that the guardianship should: (check one)  
\_\_\_ continue \_\_\_ be modified \_\_\_ be terminated. (Briefly explain your response.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. During the past year, I have visited the incapacitated person \_\_\_\_\_ times with the average visit lasting \_\_\_\_\_.  
(Hrs.     Min.)

The report of a social service organization employed by the guardian to oversee and coordinate the care of the incapacitated person for the period covered by this report may be attached to supplement this report.

I verify that the foregoing information is correct to the best of my knowledge, information and belief; and that this verification is subject to the penalties of 18 Pa. C.S.A. 4904 relative to unsworn falsification to authorities.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Guardian (type or print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone

**8.5**

**PETITION FOR ALLOWANCE FROM  
INCAPACITATED PERSON'S ESTATE TO PAY  
FOR THE MAINTENANCE OF THE INCAPACITATED PERSON IN  
ACCORDANCE WITH 20 Pa. C.S.A. §5536(a) AND TO PAY COUNSEL FEES**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Henry Doe, Plenary Guardian of the Estate of Jane R. Dunn, an Incapacitated Person is authorized to spend the principal of said incapacitated person's estate to the extent of \$28,000 annually for a period of three years, said sum to be used for the care and comfortable maintenance of the said incapacitated person.

It is further ORDERED and DECREED that Henry Doe, Plenary Guardian of the Estate of Jane R. Dunn, is authorized to pay from the principal of said incapacitated person's estate the sum of \$2,500 to John Smith, Esquire, as payment of counsel fee for his legal services to the incapacitated person and her guardian.

\_\_\_\_\_  
J.

*[Petition on following page]*

## 8.5

**PETITION FOR ALLOWANCE FROM  
INCAPACITATED PERSON'S ESTATE TO PAY  
FOR THE MAINTENANCE OF THE INCAPACITATED PERSON IN  
ACCORDANCE WITH 20 Pa. C.S.A. §5536(a) AND TO PAY COUNSEL FEES**

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[SEE CAPTION AT 1.3.2]

### **PETITION**

The Petition of Henry Doe, Plenary Guardian of the Estate of Jane R. Dunn, an Incapacitated Person, respectfully states that:

1. By Decree of the Honorable John Jones dated September 1, 2000, Jane R. Dunn was adjudged an incapacitated person, and the Court appointed guardians of her person and estate; Petitioner was appointed Plenary Guardian of the Estate of Jane R. Dunn, an Incapacitated Person.
2. Jane R. Dunn ("the incapacitated person") resides at ABC Nursing Home, Philadelphia, Pennsylvania.
3. On September 15, 2000, Petitioner filed a report of the incapacitated person's estate in accordance with the provisions of 20 Pa. C.S.A. §5521(1)(i), which reflected principal assets in the amount of \$360,000.
4. The total annual income which Petitioner estimates he will receive on behalf of the incapacitated person, including Social Security payments, is \$20,000.
5. It is estimated that the care and comfortable maintenance of the incapacitated person will require annual expenditures of at least \$48,000.
6. Therefore, the annual income of \$20,000 now available from all sources is insufficient to maintain the incapacitated person and an annual principal invasion of \$28,000 will be necessary.
7. Petitioner has also received a bill in the amount of \$2,500 from John Smith, Esquire, for services rendered to the incapacitated person and for representing Petitioner in the incapacity proceedings, which bill Petitioner wishes to pay from principal. A copy of Mr. Smith's statement is attached hereto as Exhibit "B."
8. Petitioner is aware of the following services performed by John Smith, Esquire, which were beneficial to the incapacitated person:



**8.5**

**PETITION FOR ALLOWANCE FROM  
INCAPACITATED PERSON'S ESTATE TO PAY  
FOR THE MAINTENANCE OF THE INCAPACITATED PERSON IN  
ACCORDANCE WITH 20 Pa. C.S.A. §5536(a) AND TO PAY COUNSEL FEES**

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- a. Investigation as to family and financial status, including calls to area banks.
  - b. Conferring by telephone with the incapacitated person's physicians to confirm her need for a guardian.
  - c. Arranging the appointment of an emergency guardian so that immediate medical care could be rendered to the incapacitated person.
  - d. Arranging the opening of the incapacitated person's safe-deposit box and the delivery of the contents to Petitioner.
  - e. Appearing at the hearing at which Petitioner was appointed plenary guardian of the incapacitated person's estate and Petitioner's sister was appointed guardian of the person.
  - f. Assisting in the location of a savings account belonging to the incapacitated person.
9. The following persons, who have received notice of the presentation of this Petition, a copy of which is attached hereto as Exhibit "B," are all of the incapacitated person's living next of kin:

Joan Smith  
1200 Locust Way  
Philadelphia, PA 19103

Henry Doe  
P.O. Box 1234  
Boston, MA 12345

Wherefore, Petitioner respectfully requests that this Court authorize Henry Doe, as Plenary Guardian of the Estate of Jane Dunn, to spend principal to the extent of \$28,000 annually for a period of three years for the care and the comfortable maintenance of said incapacitated person; and he further requests that this Court authorize payment of \$2,500

**8.5**

**PETITION FOR ALLOWANCE FROM  
INCAPACITATED PERSON'S ESTATE TO PAY  
FOR THE MAINTENANCE OF THE INCAPACITATED PERSON IN  
ACCORDANCE WITH 20 Pa. C.S.A. §5536(a) AND TO PAY COUNSEL FEES**

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from the principal of the incapacitated person's estate to John Smith, Esquire, for legal services he rendered as aforesaid.

Respectfully submitted,

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Henry Doe  
Petitioner

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

**8.6**  
**PETITION FOR ADJUDICATION OF CAPACITY**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5517**

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[SEE CAPTION AT 1.3.1]

**PRELIMINARY DECREE**

Now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, it is hereby ORDERED and DECREED that a hearing on the annexed Petition to find that Jane R. Dunn, previously adjudged incapacitated, is no longer incapacitated shall take place in Room \_\_\_\_\_, City Hall, Philadelphia, Pennsylvania, on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .m.

At least twenty days notice shall be given to all persons who are *sui juris* and would be entitled to share in the estate of Jane R. Dunn if she died intestate.

\_\_\_\_\_  
J.

*[Decree on following page]*

**8.6**  
**PETITION FOR ADJUDICATION OF CAPACITY**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5517**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition and after hearing held following notice as directed by the Court, it is hereby ORDERED and DECREED that Jane R. Dunn, who was previously adjudged an incapacitated person, is no longer incapacitated and it is ordered that Henry Doe, the Guardian of Jane R. Dunn, an Incapacitated Person, shall file an account of his administration of the estate of Jane R. Dunn, an incapacitated person, within \_\_\_\_\_ days of the date of this Decree.

\_\_\_\_\_  
J.

*[Petition on following page]*

**8.6**  
**PETITION FOR ADJUDICATION OF CAPACITY**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5517**

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---

[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Jane R. Dunn respectfully states that:

1. By Decree of the Honorable John Jones dated September 1, 2000, Petitioner was adjudged an incapacitated person, and the Court appointed guardians of her person and estate.
2. The guardian of her estate is Henry Doe and his address is P.O. Box 1234, Boston, Massachusetts 12345; the guardian of her person is Joan Smith, 2000 Locust Way, Philadelphia, Pennsylvania.
3. Petitioner is not presently and has never been a patient in a mental hospital.
4. Petitioner presently resides alone at 261 Horse Hair Road, Philadelphia, Pennsylvania.
5. The names and addresses of Petitioner's living next-of-kin are:

Joan Smith  
1200 Locust Way  
Philadelphia, PA 19103

Henry Doe  
P.O. Box 1234  
Boston, MA 12345

6. The mental and physical health of Petitioner has been restored, and she is capable of managing her own person and property, and her own affairs, both financial and otherwise.

**8.6**  
**PETITION FOR ADJUDICATION OF CAPACITY**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5517**

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Wherefore, Petitioner respectfully requests that she be adjudged capable of managing her own estate and person and that the guardian of the estate be directed to file an account of his administration of the estate.

Respectfully submitted,

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Jane R. Dunn

Note: *See Rule 14.2.E.*

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.3.1]

**8.7**

**PETITION TO CREATE FUNERAL EXPENSE TRUST  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5537**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition it is hereby ORDERED and DECREED that Henry Doe, Guardian of the Estate of Jane R. Dunn, an Incapacitated Person, is hereby authorized to create with Old Faithful Bank as Trustee a trust with a principal of \$7,500 under the terms and conditions of 20 Pa. C.S.A. §5537.

\_\_\_\_\_  
J.

*[Petition on following page]*

8.7

**PETITION TO CREATE FUNERAL EXPENSE TRUST  
IN ACCORDANCE WITH 20 Pa. C.S.A. §5537**

---

---

[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Henry Doe, Guardian of the Estate of Jane R. Dunn, an Incapacitated Person, respectfully states that:

1. Jane R. Dunn was declared an incapacitated person and Henry Doe appointed guardian of her estate by the Decree of the Honorable John Jones on September 1, 2000.
2. On September 15, 2000, Petitioner filed a report in accordance with the provisions of 20 Pa. C.S.A. §5521.
3. The annual income of the incapacitated person's estate is \$20,000, including Social Security payments.
4. The present value of the incapacitated person's estate is \$360,000, consisting of a money market account at Old Faithful Bank.
5. The incapacitated person is residing at The Best Nursing Home, where she has been a patient since September 10, 2000.
6. The following persons are all of the persons who are *sui juris* and would be entitled to share in the estate of Jane R. Dunn if she died intestate:

Joan Smith  
1200 Locust Way  
Philadelphia, PA 19103

Henry Doe  
P.O. Box 1234  
Boston, MA 12345

7. The incapacitated person is receiving residential services from:



**8.7**  
**PETITION TO CREATE FUNERAL EXPENSE TRUST**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §5537**

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The Best Nursing Home  
900 Lombard Street  
Philadelphia, PA 19103

8. There is attached as Exhibit “A” hereto a list of all claims of the incapacitated person’s creditors known to Petitioner, showing claims paid to date and those remaining unpaid.
9. No portion of the incapacitated person’s estate is derived from the United States Veterans’ Administration.
10. There is presently no provision for payment of the incapacitated person’s funeral expenses. In view of the incapacitated person’s physical and mental condition, it is likely that her estate will be exhausted by expenditures for her care and maintenance, leaving no funds available for funeral expenses.

Wherefore, Petitioner respectfully requests this Court to authorize Petitioner to create with Old Faithful Bank as trustee a trust with principal of \$7,500 under the terms and conditions of 20 Pa. C.S.A. §5537.

Respectfully submitted,

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Henry Doe  
Petitioner

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]



**8.8**  
**PETITION FOR APPROVAL OF GIFTS**  
**ON BEHALF OF INCAPACITATED PERSON**  
**PURSUANT TO 20 Pa. C.S.A. §5536(b)**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition and pursuant to 20 Pa. C.S.A. §5536(b), it is hereby ORDERED and DECREED that Henry Doe, Guardian of the Estate of Jane R. Dunn, an Incapacitated Person, is authorized and directed to make, prior to the end of 2000 and at the beginning of each subsequent year without further court approval, equal annual gifts on the incapacitated person's behalf to or for the benefit of each of the issue of Joan Smith, sister of the incapacitated person, living on the date set for distribution of such gifts, in an amount not to exceed as to each donee the annual exclusion amount set forth in section 2503(b) of the Internal Revenue Code of 1986, as amended, or any successor provision.

\_\_\_\_\_ J.

*[Petition on following page]*

**8.8**

**PETITION FOR APPROVAL OF GIFTS  
ON BEHALF OF INCAPACITATED PERSON  
PURSUANT TO 20 Pa. C.S.A. §5536(b)**

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[SEE CAPTION AT 1.3.2]

**PETITION**

Petitioner, Henry Doe, Guardian of the Estate of Jane R. Dunn, an Incapacitated Person, respectfully submits this Petition to Approve Annual Exclusion Gifts on Behalf of Jane R. Dunn, an incapacitated person, and in support thereof, avers the following:

1. By Decree dated September 1, 2000 of the Honorable John Jones, Judge of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County, Pennsylvania, Jane R. Dunn ("the incapacitated person") was adjudicated an incapacitated person, and the Court appointed Petitioner as guardian of the incapacitated person's estate and Joan Smith as guardian of her person. A copy of the said Decree is attached hereto as Exhibit "A."
2. The incapacitated person is 60 years old and resides at the Best Nursing Home, 900 Lombard Street, Philadelphia, Pennsylvania.
3. The incapacitated person is divorced and has no children or other dependents and her parents are deceased. Her next of kin are her sister, Joan Smith, and her brother, Henry Doe. Joan Smith has three children; Henry Doe has no children.
4. Petitioner, as guardian of the incapacitated person's estate, filed an Inventory for the guardianship estate on September 15, 2000. The Inventory reflected assets of approximately \$1,500,000. A copy of the Inventory is attached hereto as Exhibit "B."
5. The incapacitated person's current assets and income are summarized as follows:  
*[list assets]*
6. The projected annual expenses for the incapacitated person's care and comfortable maintenance based upon 1999 figures total approximately \$58,000, as follows:

The Best Nursing Home	42,000
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**8.8**  
**PETITION FOR APPROVAL OF GIFTS**  
**ON BEHALF OF INCAPACITATED PERSON**  
**PURSUANT TO 20 Pa. C.S.A. §5536(b)**

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Medical, medications & incidental expenses	10,000
Income Taxes (federal and state)	<u>6,000</u>
TOTAL ANNUAL EXPENSE	<u>58,000</u>

7. Based on the information set forth in the preceding paragraphs, the incapacitated person's income alone will exceed her expenses by over \$30,000 in 2000. Such income will accumulate and be subject to taxes upon her death.
8. In addition to excess income, the incapacitated person has more than enough principal available for her needs. She has access to approximately \$1.5 million in assets for her support and maintenance.
9. Section 5536(b) of the Pennsylvania Probate, Estates and Fiduciaries Code provides, in relevant part, as follows: *[quote relevant provisions]*
10. Assets exist which are not required for the maintenance, support and well-being of the incapacitated person. In light of the substantial financial security of the incapacitated person from various sources there is no reason to allow her guardianship estate to grow; to the contrary, Petitioner, as Guardian of the Estate, should attempt to reduce the size of the incapacitated person's gross taxable estate and benefit the various members of her family in an appropriate way.
11. This Petition requests the Court to substitute its judgment for the incapacitated person in accordance with Pa. C.S.A. §5536(b) by adopting an annual plan of giving by which Petitioner, as Guardian of the Estate, would make gifts in amounts not to exceed, as to each donee, the annual exclusion amount set forth in §2503(b) of the Internal Revenue Code of 1986, as amended, ("annual exclusion gifts") to reduce future death taxes on the incapacitated person's estate without the imposition of any gift tax or utilization of her unified estate and gift tax credit (\$675,000 under present law). Such annual exclusion gifts will save death taxes and carry out the incapacitated person's plan of lifetime giving.
12. Petitioner believes that he is constrained by Pa. C.S.A. §5536(b) to make annual exclusion gifts only to some of the incapacitated person's family members. Section 5536(b) requires that the proper donees of the gifts in question be limited to those beneficiaries expressly identified in the incapacitated person's estate plan (as established by her Will) and her pattern of lifetime giving. The beneficiaries of the

## 8.8

### PETITION FOR APPROVAL OF GIFTS ON BEHALF OF INCAPACITATED PERSON PURSUANT TO 20 Pa. C.S.A. §5536(b)

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incapacitated person's estate plan and lifetime giving are the issue of her sister, Joan Smith. A copy of both the incapacitated person's Will is being forwarded privately and separately to the Court to assist in its consideration of this Petition.

13. By her Will, the incapacitated person leaves her entire estate to the children of her sister, Joan Smith. *[Note that if the estate plan is not known generally to the parties it should not be revealed by the Guardian, but should remain private, although the original or copy of the Will should be lodged privately with the Court.]*
14. In addition, in each year from 1995 to 1999 the incapacitated person made *inter vivos* gifts of \$5,000 to each of Joan Smith's three children.
15. In accordance with the incapacitated person's estate plan and her established pattern of lifetime giving, Petitioner proposes that prior to the end of 2000 and at the beginning of each subsequent year, without further court approval, Petitioner make equal annual exclusion gifts on behalf of the incapacitated person to each of the three children of Joan Smith.
16. The proposed annual exclusion gifts requested herein are advisable and will not materially prejudice or harm the incapacitated person or her creditors, or any other party in interest.
17. As noted above, the incapacitated person is a widow and has no children or other dependents, and her parents are deceased. The only persons who would be entitled to the incapacitated person's estate if she should die at this time under her present Will are:

***Issue of Joan Smith:***

John Smith P.O. Box 1 Way, Utah 84040	Nephew
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Robert Smith 123 Park Rd. Cleveland, Ohio 45750	Nephew
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Theresa Smith 4 Orr Road Philadelphia, PA 19118	Niece
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**8.8**  
**PETITION FOR APPROVAL OF GIFTS**  
**ON BEHALF OF INCAPACITATED PERSON**  
**PURSUANT TO 20 Pa. C.S.A. §5536(b)**

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18. If the incapacitated person had no Will, her intestate heirs would be her sister, Joan Smith, and her brother, Henry Doe, Petitioner herein.
19. The consents of all parties interested in this Petition (i.e., the children of Joan Smith, and Joan Smith) are attached collectively hereto as Exhibit "C."

Wherefore, in accordance with 20 Pa. C.S.A. §5536(b) Petitioner respectfully requests that this Court enter the proposed Decree attached hereto which directs Petitioner, as Guardian of the Estate of Jane R. Dunn, an Incapacitated Person, to make, prior to the end of 2000 and at the beginning of each subsequent year, without further court approval, equal annual gifts on the incapacitated person's behalf to or for the benefit of each of the children of Joan Smith, sister of the incapacitated person, living on the date set for distribution of such gifts, in an amount not to exceed as to each donee the annual exclusion amount set forth in §2503(b) of the Internal Revenue Code of 1986, as amended, or any successor provision.

Respectfully submitted,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Henry Doe  
Guardian of the Estate of  
Jane R. Dunn, An Incapacitated Person

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

**8.8**  
**PETITION FOR APPROVAL OF GIFTS**  
**ON BEHALF OF INCAPACITATED PERSON**  
**PURSUANT TO 20 Pa. C.S.A. §5536(b)**

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[SEE CAPTION AT 1.3.1]

**CONSENT AND JOINDER**

I, John Smith, a nephew of Jane R. Dunn, and a party-in-interest in the foregoing Petition for Approval of Annual Exclusion Gifts on Behalf of the Incapacitated Person Pursuant to 20 Pa. C.S.A. §5536(b), upon review of said Petition, hereby consent to and join in the said Petition for myself individually.

Dated: \_\_\_\_\_

\_\_\_\_\_  
John Smith



CHAPTER 9

**APPOINTMENT, REMOVAL  
AND DISCHARGE OF FIDUCIARIES**

**9.1**

**PETITION FOR APPOINTMENT OF TRUSTEE  
IN ACCORDANCE WITH 20 Pa. C.S.A. §7101**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Old Faithful Bank is appointed substituted Trustee of the residuary trust under the Will of Joseph B. Dunn, Deceased.

\_\_\_\_\_  
J.

*[Petition on following page]*

**9.1**  
**PETITION FOR APPOINTMENT OF TRUSTEE**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §7101**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Sally Jones, Executrix of the Will of John Jones, deceased Trustee under the Will of Joseph B. Dunn, Deceased, respectfully states that:

1. Joseph B. Dunn died on July 7, 1991, a resident of Philadelphia, Pennsylvania, leaving a Will dated June 2, 1988, a true and correct copy of which is attached hereto as Exhibit "A."
2. By Item SIXTH of his Will, Testator directed that his residuary estate be held in trust and that the income be paid in equal shares to his nephews, Harold Dunn and Samuel Dunn, for their lifetimes, and upon the death of either of them, he further directed a nephew's one-half share of the principal be distributed to such nephew's then-living issue, *per stirpes*.
3. By Item EIGHTH of his Will, Testator appointed John Jones as Trustee of the residuary trust. No successor Trustee is provided for in the Will.
4. This Petition is filed because the said John Jones died on January 30, 2000.
5. The First and Final Account of the said John Jones, Trustee, as stated by Sally Jones, Executrix of the Will of John Jones, has been filed for audit in this Court, which Account shows a balance of principal having an accounting value of \$400,000 and a market value of \$500,000 as of January 30, 2000.
6. The parties in interest are as follows:

Harold Dunn 2 Main Street Philadelphia, Pennsylvania	Nephew	Life Tenant
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Samuel Dunn 16 Jones Boulevard Philadelphia, Pennsylvania	Nephew	Life Tenant
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**9.1**  
**PETITION FOR APPOINTMENT OF TRUSTEE**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §7101**

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Faith Dunn  
2 Main Street  
Philadelphia, Pennsylvania

Grandniece

Contingent  
remainderman

7. The consents of all of the above parties in interest who are *sui juris* to this Petition are attached hereto as Exhibit "B," with the exception of Samuel Dunn who has not consented. Samuel Dunn has been given notice of intention to file this Petition by letter dated February 28, 2000, a copy of which is attached as Exhibit "C."
8. The proposed substituted Trustee is Old Faithful Bank, 10 Main Street, Philadelphia, Pennsylvania. The consent of the proposed Trustee is attached hereto as Exhibit "D."
9. Because there is no Trustee now living to administer the assets of this Trust, it is necessary that this Court appoint a new Trustee.

Wherefore, Petitioner respectfully requests this Court to appoint Old Faithful Bank as substituted Trustee of the residuary trust under the Will of Joseph B. Dunn, Deceased.

---

Sally Jones, Executrix of the  
Will of John Jones, Deceased Trustee

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*[Consent to Serve as a Trustee on following page]*

**9.1**  
**PETITION FOR APPOINTMENT OF TRUSTEE**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §7101**

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**CONSENT TO SERVE AS A TRUSTEE**

Old Faithful Bank hereby consents to serve as substituted Trustee of the residuary trust under the Will of Joseph B. Dunn, Deceased.

Old Faithful Bank

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Note: *The consents of all other parties in interest should be attached. See Rule 12.6.A. If a corporate fiduciary has not before acted as a fiduciary in Philadelphia, see Philadelphia Rule 1.2.K. If an individual Trustee is to be appointed, the Petition should state the individual's age and occupation.*

## 9.2

### PETITION FOR CONFIRMATION OF APPOINTMENT OF TRUSTEE

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[SEE CAPTION AT 1.3.1]

#### DECREE

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that the appointment of Jane R. Dunn as Trustee of the non-marital trust under the Will of Joseph B. Dunn, Deceased, is confirmed.

\_\_\_\_\_  
J.

*[Petition on following page]*

## 9.2

### PETITION FOR CONFIRMATION OF APPOINTMENT OF TRUSTEE

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---

[SEE CAPTION AT 1.3.2]

#### PETITION

The Petition of Jane R. Dunn respectfully states that:

1. Joseph B. Dunn died on February 7, 2000, a resident of Philadelphia, Pennsylvania, leaving a Will dated June 2, 1988, a true and correct copy of which is attached hereto as Exhibit "A."
2. Petitioner was appointed Trustee of the non-marital trust under the Will of Joseph B. Dunn, Deceased, by Item TWELFTH of the Will. Her acceptance of the appointment is attached hereto as Exhibit "B."
3. This Petition is filed because life insurance policy proceeds were made payable to the Trustee of the non-marital trust under the Will of Joseph B. Dunn, Deceased and the insurers will not make payment of the proceeds to Petitioner until her appointment as Trustee is confirmed by this Court.
4. The pertinent provisions of the Will of the decedent creating the trust and providing for the appointment of the Trustee are as follows:

"THIRD: I direct my Executor to divide my residuary estate into two fractional portions, one to be known as the 'marital portion' and the other to be known as the 'non-marital portion'...

"SIXTH: I give the non-marital portion to my Trustee IN TRUST upon the following terms and conditions:...

"TWELFTH: I nominate, constitute and appoint my wife, Jane R. Dunn, as Executor and Trustee hereunder..."

**9.2**

**PETITION FOR CONFIRMATION OF APPOINTMENT OF TRUSTEE**

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Wherefore, Petitioner respectfully requests that this Court confirm her appointment as Trustee of the non-marital trust under the Will of Joseph B. Dunn, Deceased.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

**9.2**

**PETITION FOR CONFIRMATION OF APPOINTMENT OF TRUSTEE**

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[SEE CAPTION AT 1.3.1]

**ACCEPTANCE OF APPOINTMENT  
TO SERVE AS TRUSTEE**

I hereby accept my appointment as Trustee of the non-marital trust under the Will of Joseph B. Dunn, Deceased, who died on February 7, 2000, a resident of Philadelphia, Pennsylvania.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jane R. Dunn

Note: *See Rule 12.6.A.*



**9.3**  
**PETITION FOR REMOVAL OF TRUSTEE**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §7121**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20 \_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Jane R. Dunn is removed as a Co-Trustee of the residuary trust under Item SIXTH of the Will of Joseph B. Dunn, Deceased.

\_\_\_\_\_  
J.

*[Petition on following page]*

### 9.3

#### PETITION FOR REMOVAL OF TRUSTEE IN ACCORDANCE WITH 20 Pa. C.S.A. §7121

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---

[SEE CAPTION AT 1.3.2]

#### PETITION

The Petition of John Smith respectfully states that:

1. Joseph B. Dunn died on July 7, 1991, a resident of Philadelphia, Pennsylvania, leaving a Will dated June 2, 1982, a true and correct copy of which is attached hereto as Exhibit "A."
2. By Adjudication dated June 30, 1992, of Jones, J., the Executors' Account was confirmed and the residuary estate was awarded in accordance with the terms of the Will to Old Faithful Bank and Jane R. Dunn, as Trustees under Item SIXTH of the Will. The Trustees were not required to enter bond.
3. Under Item SIXTH of the Will, the income of the residuary trust is distributable to or to be applied for the benefit of Jane R. Dunn, and upon her death, this Trust is to terminate and the principal is distributable to Testator's then-living issue, *per stirpes*.
4. On February 1, 2000, this Court entered a Decree adjudging Jane R. Dunn an incapacitated person and appointing John Smith, Petitioner herein, Guardian of her Estate. A certified copy of the Decree is attached hereto as Exhibit "B."
5. The incapacity of Jane R. Dunn is likely to continue to the injury of the Trust.
6. This Court has authority to remove a Trustee who has been adjudged an incapacitated person under the provisions of 20 Pa. C.S.A. §7121.
7. Because a Final Account will have to be filed following the death of Jane R. Dunn (who is presently 83 years of age), and an Account would presumably be required at this time were the discharge of Jane R. Dunn requested, Petitioner is requesting only her removal, with her discharge to await confirmation of the Trustees' Account following her death.
8. Attached hereto are the consents of the Co-Trustee, Old Faithful Bank, and of Juliana Dunn and Theodore Dunn, Testator's children and the contingent remaindermen of this Trust.

**9.3**  
**PETITION FOR REMOVAL OF TRUSTEE**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §7121**

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---

Wherefore, Petitioner respectfully requests that this Court remove Jane R. Dunn as a Co-Trustee of the above Trust.

---

John Smith

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*[Consents on following page]*

**9.3  
PETITION FOR REMOVAL OF TRUSTEE  
IN ACCORDANCE WITH 20 Pa. C.S.A. §7121**

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---

[SEE CAPTION AT 1.3.1]

**CONSENT**

Old Faithful Bank, Co-Trustee with Jane R. Dunn, hereby consents to the removal of Jane R. Dunn as a Co-Trustee of the residuary trust under Item SIXTH of the Will of Joseph B. Dunn, Deceased.

Old Faithful Bank

Dated: \_\_\_\_\_ By: \_\_\_\_\_

**CONSENTS**

We, Juliana Dunn and Theodore Dunn, being the Testator's children and the contingent remaindermen of the residuary trust under Item SIXTH of the Will of Joseph B. Dunn, Deceased, hereby consent to the removal of Jane R. Dunn as Co-Trustee.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
Juliana Dunn

Dated: \_\_\_\_\_  
\_\_\_\_\_  
Theodore Dunn

**9.4**

**PETITION TO THE ORPHANS' COURT DIVISION  
TO SHOW CAUSE WHY ADMINISTRATOR SHOULD NOT  
BE REMOVED IN ACCORDANCE WITH 20 Pa. C.S.A. §§ 3182 AND 3183**

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[SEE CAPTION AT 1.3.1]

**PRELIMINARY DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition it is hereby ORDERED and DECREED that a Citation is awarded directed to John Dunn, to show cause why he should not be removed as Administrator of the Estate of Joseph B. Dunn, Deceased.

The Citation is returnable *sec. leg.*

\_\_\_\_\_  
J.

*[Decree on following page]*

**9.4**

**PETITION TO THE ORPHANS' COURT DIVISION  
TO SHOW CAUSE WHY ADMINISTRATOR SHOULD NOT  
BE REMOVED IN ACCORDANCE WITH 20 Pa. C.S.A. §§ 3182 AND 3183**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, and following a hearing thereon at which just cause was shown, it is hereby ORDERED and DECREED that John Dunn is removed as Administrator of the Estate of Joseph B. Dunn, Deceased. The Register of Wills is directed to grant Letters of Administration, *d.b.n.* to the persons entitled thereto, and John Dunn is directed to deliver the assets of the estate, along with all books, accounts and papers relating thereto to the Administrator so appointed.

\_\_\_\_\_  
J.

*[Petition on following page]*

**9.4**

**PETITION TO THE ORPHANS' COURT DIVISION  
TO SHOW CAUSE WHY ADMINISTRATOR SHOULD NOT  
BE REMOVED IN ACCORDANCE WITH 20 Pa. C.S.A. §§ 3182 AND 3183**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Jane R. Dunn respectfully states that:

1. Petitioner is the widow of Joseph B. Dunn, a resident of Philadelphia, Pennsylvania, who died intestate on January 1, 1999.
2. Decedent's sole heirs are Petitioner and John Dunn, decedent's son and only issue, who is of age.
3. On February 1, 1999, Letters of Administration were granted on the estate of the decedent to John Dunn, pursuant to a renunciation executed by Petitioner.
4. Respondent has failed to take steps to properly administer the Estate of Joseph B. Dunn, Deceased, including but not limited to marshaling the assets, filing an Inventory or filing income and inheritance tax returns.
5. Under 20 Pa. C.S.A. § 3182(1), the Court, upon Petition of any party in interest alleging adequate grounds for removal, may remove the personal representative when he is failing to perform any duty imposed by law.

Wherefore, Petitioner respectfully requests that a Citation be awarded, directed to John Dunn, to show cause why he should not be removed as Administrator of the Estate of Joseph B. Dunn, Deceased.

---

Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]





**9.5**

**PETITION FOR DISCHARGE OF PERSONAL REPRESENTATIVE  
AND SURETY IN ACCORDANCE WITH 20 Pa. C.S.A. §3184**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that Jane R. Dunn is discharged as Administratrix of the Estate of Joseph B. Dunn, Deceased, and that Jane R. Dunn and Faithful Bonding Company are released from all future liability on the bond given by them on her appointment as Administratrix.

\_\_\_\_\_  
J.

*[Petition on following page]*

9.5

**PETITION FOR DISCHARGE OF PERSONAL REPRESENTATIVE  
AND SURETY IN ACCORDANCE WITH 20 Pa. C.S.A. §3184**

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[SEE CAPTION AT 1.3.2]

**PETITION**

The Petition of Jane R. Dunn respectfully states that:

1. Petitioner was appointed Administratrix of the Estate of Joseph B. Dunn, Deceased by the Register of Wills of Philadelphia County on June 30, 1998, as File No. 51-98-A0444.
2. Petitioner filed her First and Final Account on September 30, 1999, and it was confirmed *nisi* by Adjudication of Jones, J., dated December 6, 1999, which Adjudication has since become absolute.
3. The entire estate has been distributed to the creditors and the parties entitled thereto, and no other property belonging to the estate has been received by Petitioner or remains to be accounted for by Petitioner.
4. Faithful Bonding Company is surety on Petitioner's bond as Administratrix in the amount of \$100,000.
5. Attached hereto are Satisfactions of Award and Consents to discharge of Petitioner as Administratrix signed by all parties in interest, and a Consent of the surety to the Petitioner's discharge.

Wherefore, Petitioner respectfully requests that this Court discharge her as Administratrix and release her and her surety from all future liability on the bond given by them.

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Jane R. Dunn

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*[Consent to Discharge on following page]*

**9.5  
PETITION FOR DISCHARGE OF PERSONAL REPRESENTATIVE  
AND SURETY IN ACCORDANCE WITH 20 Pa. C.S.A. §3184**

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[SEE CAPTION AT 1.3.1]

**CONSENT TO DISCHARGE**

The undersigned surety hereby consents to the discharge of Jane R. Dunn as Administratrix of the Estate of Joseph B. Dunn, Deceased and to the release of Jane R. Dunn from all future liability on the bond given by her on her appointment as Administratrix.

Faithful Bonding Company

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Note: *The consents of all other parties should also be attached. See Rule 12.7.A.*



**9.6**  
**PETITION FOR CHANGE OF SITUS OF TRUST**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §725**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that the situs of the above Trust is transferred to Broward County, Florida, provided that a court of competent jurisdiction in that state enters an order accepting jurisdiction over the Trust.

\_\_\_\_\_  
J.

*[Petition on following page]*

## 9.6

### PETITION FOR CHANGE OF SITUS OF TRUST IN ACCORDANCE WITH 20 Pa. C.S.A. §725

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[SEE CAPTION AT 1.3.2]

#### PETITION

The Petition of Sally Jones, individual Trustee and income beneficiary of the Residuary Trust under Will of Joseph B. Dunn, Deceased, respectfully states that:

1. Joseph B. Dunn died on March 5, 1986, leaving a Will dated July 22, 1980, a true and correct copy of which is attached as Exhibit "A."
2. By Item SIXTH of his Will, Testator directed that his residuary estate be held in trust and that the income be paid to his daughter, Sally Jones, for her lifetime, and upon her death, he further directed that the principal be paid to her then-living issue, *per stirpes*.
3. By Item NINTH of his Will, Testator appointed Sally Jones and Old Faithful Bank as Trustees of the residuary trust.
4. By Item TENTH of his Will, Testator gave Sally Jones the power to remove Old Faithful Bank as Trustee and appoint another bank to serve as Co-Trustee in its place.
5. Sally Jones has moved from Philadelphia to Fort Lauderdale, Florida. By a writing dated March 23, 2000, Sally Jones has removed Old Faithful Bank and appointed New South Bank as Trustee in its place; however, New South Bank is not authorized to act as a Trustee in Pennsylvania so its appointment is contingent upon the change of the situs of this Trust from Philadelphia, Pennsylvania, to Broward County, Florida, the county in which Sally Jones resides and a state in which New South Bank is authorized to serve.
6. 20 Pa. C.S.A. §725 authorizes the Court having jurisdiction of a testamentary trust, on application of a Trustee or other interested party, to approve a change of situs of the trust if the Court finds the change necessary or desirable for the proper administration of the Trust. The life tenant of the Trust is a resident of Florida, and New South Bank has offices there and is authorized to serve as Trustee in Florida.
7. The First and Final Account of Sally Jones and Old Faithful Bank, Co-Trustees, has been filed for audit in this Court, which Account shows a balance of principal having

**9.6**  
**PETITION FOR CHANGE OF SITUS OF TRUST**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §725**

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an accounting value of \$750,000 and a market value of \$1,235,000 as of April 30, 2000.

8. The parties in interest, other than Sally Jones, are as follows:

Name	Relationship to Testator	Interest
Sally Jones 121 Sunnyview Road Fort Lauderdale FL 33312	Daughter	Income beneficiary and Co-Trustee
Jamal Jones 600 Ocean Drive Apartment 2C Miami Beach FL 33137	Grandson (Son of Sally Jones)	Contingent remainderman
Laura Jones 600 Ocean Drive Miami Beach FL 33137	Granddaughter (Daughter of Sally Jones)	Contingent remainderman

9. All parties having an interest are living, of age and *sui juris*. Notice of intention to file this Petition was given to all parties by letter dated May 25, 2000, a copy of which is attached as Exhibit "B."
10. All Pennsylvania Inheritance Tax and Pennsylvania Estate Tax have been paid in full; Petitioner is not aware of any creditors of the Trust who would be prejudiced by the requested change of situs.
11. New South Bank has consented to serve as successor corporate Co-Trustee, contingent upon the Court's approval of the change of situs of the Trust requested by this Petition. A true and correct copy of its Acceptance is attached as Exhibit "C."

Wherefore, Petitioner respectfully requests that this Court discharge Old Faithful Bank for its administration of the Trust, approve the appointment of New South Bank as

**9.6**  
**PETITION FOR CHANGE OF SITUS OF TRUST**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §725**

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successor corporate Trustee and change the situs of the Trust to Broward County, Florida, contingent upon a court of competent jurisdiction in Broward County, Florida assuming jurisdiction over the Trust.

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Sally Jones

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*[Acceptance of Trusteeship on following page]*



**9.6**  
**PETITION FOR CHANGE OF SITUS OF TRUST**  
**IN ACCORDANCE WITH 20 Pa. C.S.A. §725**

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[SEE CAPTION AT 1.3.1]

**ACCEPTANCE OF TRUSTEESHIP**

New South Bank hereby accepts appointment as successor corporate Co-Trustee of the above-referenced Trust created under the Will of Joseph B. Dunn, Deceased dated July 22, 1980, conditioned upon the approval by the Orphans' Court Division of the Court of Common Pleas of Philadelphia County of the change of situs to Broward County, Florida and the acceptance by the Broward County, Florida Court of jurisdiction over the Trust.

New South Bank

Dated: \_\_\_\_\_

By: \_\_\_\_\_



## CHAPTER 10

# INHERITANCE TAX

### 10.1

#### FORMS AND DISPUTED TAX

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#### RESIDENT DECEDENTS

Pennsylvania Inheritance Tax forms and instructions for resident decedents are available in small quantities from the Register of Wills of any county (Room 177, City Hall, Philadelphia, 215-686-2918) or any Pennsylvania Department of Revenue District Office (Room 201, State Office Building, 1400 West Spring Garden Street, Philadelphia 19130-4088; Telephone: 215-560-2056).

Downloadable forms (including fill-in forms) are available on the internet at <http://www.revenue.state.pa.us>.

Large quantities of forms may be ordered, upon written request, from:

Pennsylvania Department of Revenue  
Bureau of Administrative Services  
Tax Form Services Unit  
711 Gibson Boulevard  
Harrisburg, PA 17104-3200

#### NONRESIDENT DECEDENTS

Forms and instructions may be secured from:

Nonresident Inheritance Tax  
Pennsylvania Department of Revenue  
Bureau of Individual Taxes  
Dept. 280601  
Harrisburg, PA 17128-0601  
717-783-3836

## **10.1**

### **FORMS AND DISPUTED TAX**

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#### **DISPUTED TAX**

Three alternatives are available to taxpayers who are not satisfied with the appraisal, allowance or disallowance of deductions, assessment of tax (including discount or interest) or any other matter relating to tax imposed (72 Pa. C.S.A. §1786).

Form REV-65 is the official Department of Revenue Form for a Petition to the Board of Appeals. However, a letter may be used in lieu of the official form. A sample Protest in letter form (Form 10.1) and sample Appeal and related Petition for Citation (Form 10.2) follow. The third procedure (72 P.S. §9186(a)(2)) is to notify the register that the executor elects to have the matter determined at the Orphans' Court audit of the executor's account.

## 10.2 PROTEST

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January 25, 2002

Pennsylvania Department of Revenue  
Board of Appeals  
Dept. 281021  
Harrisburg, PA 17128-1021

Re: Estate of Joseph B. Dunn, Deceased  
Date of Death: January 30, 2001  
File No. 51 01 W0123  
Protest of Appraisement under §9186(a)(1) of the  
Inheritance and Estate Tax Act

Gentlemen:

1. This Protest is filed by the undersigned party-in-interest who is the Executrix of the Will of Joseph B. Dunn, Deceased.
2. On January 15, 2002 the Pennsylvania Department of Revenue issued the "Notice of Inheritance Tax Appraisement, Allowance or Disallowance of Deductions and Assessment of Tax."
3. The undersigned protests the Notice of Appraisement as incorrect for the following reasons:
  - a. The decedent owned 100 shares of Dunn Enough, Inc. (a closely held Pennsylvania corporation) which were reported on Schedule C—Item 1 of the Pennsylvania Inheritance Tax Return at a value of \$125.00 per share.
  - b. The Notice of Appraisement issued by the Department of Revenue valued shares of Dunn Enough, Inc. at \$200.00 per share.
  - c. The valuation by the Department does not reflect the true "value" of the shares as this term is defined in §9102 of the Inheritance and Estate Tax Act (72 P.S. §9102).
  - d. The valuation is inequitable and unreasonable in that it fails to recognize the binding effect of a "Buy-Sell Agreement" dated November 14, 1997 entered into by the decedent and the corporation requiring the personal representative

## 10.2 PROTEST

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of the decedent's estate to sell the shares to the corporation at a price of \$125.00 per share. A copy of the Agreement was filed with the Inheritance Tax Return.

4. Based on the above, the undersigned is of the opinion that the Notice of Appraisal is incorrect and that the 100 shares of Dunn Enough, Inc. should be valued, as reported, at \$125.00 per share.
5. An oral hearing in Philadelphia❖ is hereby requested if the Board of Appeals is hesitant to grant the relief requested in this Protest. Notice of such hearing should be sent to counsel for the Estate as follows:

John K. Trustworthy, Esquire  
343 Court Street  
Philadelphia PA 19101

215-555-5555

The foregoing statements are true and correct to the best of my knowledge and belief and this Protest is not made for the purpose of delay.

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Jane R. Dunn, Executrix of the Will  
of Joseph B. Dunn, Deceased

❖ *Oral hearings are available in Harrisburg, Philadelphia and Pittsburgh.*

**10.3**

**APPEAL FROM REGISTER AND  
PETITION FOR CITATION TO SHOW CAUSE WHY  
APPEAL FROM NOTICE OF APPRAISEMENT SHOULD NOT BE SUSTAINED**

[Pre-printed form]

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION**

**APPEAL FROM REGISTER OF WILLS**

Will No. \_\_\_\_\_ of \_\_\_\_\_  
Adm. No. \_\_\_\_\_ of \_\_\_\_\_  
Misc. No. \_\_\_\_\_ of \_\_\_\_\_

**ESTATE OF:** \_\_\_\_\_,

**O.C. NO. \_\_\_\_\_ OF \_\_\_\_\_**

**TO THE REGISTER OF WILLS OF PHILADELPHIA COUNTY:**

The undersigned, a party in interest, appeals to the ORPHANS' COURT of said County from the decision of the REGISTER OF WILLS in the Estate:

- (1) admitting to Probate a certain writing, dated the \_\_\_\_\_ day of \_\_\_\_\_ as the last will of said decedent, and granting letters testamentary thereon:
- (2) granting letters of administration to \_\_\_\_\_
- (3) with respect to the Inheritance Tax Assessment.

strike out  
inapplicable  
sections

\_\_\_\_\_  
**Appellant Signature**

\_\_\_\_\_  
Print Appellant's Name & Address

Attorney: \_\_\_\_\_

I.D. No. \_\_\_\_\_

Address: \_\_\_\_\_

Phone # \_\_\_\_\_

Date Filed \_\_\_\_\_

**10.3**

**APPEAL FROM REGISTER AND  
PETITION FOR CITATION TO SHOW CAUSE WHY  
APPEAL FROM NOTICE OF APPRAISEMENT SHOULD NOT BE SUSTAINED**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, \_\_\_\_\_, 20\_\_\_\_, upon consideration of the annexed Petition, it is hereby ORDERED and DECREED that a Citation is awarded, directed to the Pennsylvania Department of Revenue, Office of Chief Counsel, Department 281061, Harrisburg, PA 17128-1061, to show cause why the Appeal of Jane R. Dunn, Executrix of the Will of Joseph B. Dunn, Deceased from the Notice of Appraisement of Pennsylvania Inheritance Tax dated January 15, 2002, should not be sustained.

This Citation is returnable *sec. leg.*

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J.

*[Petition on following page]*



### **10.3**

#### **APPEAL FROM REGISTER AND PETITION FOR CITATION TO SHOW CAUSE WHY APPEAL FROM NOTICE OF APPRAISEMENT SHOULD NOT BE SUSTAINED**

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[SEE CAPTION AT 1.3.2]

### **PETITION**

The Petition of Jane R. Dunn respectfully states that:

1. Joseph B. Dunn died on January 30, 2001, a resident of Philadelphia, Pennsylvania. Letters Testamentary were issued to Petitioner as Executrix by the Register of Wills of Philadelphia County on February 6, 2001 as Will No. 123 of 2001.
2. Your Petitioner filed the Pennsylvania Inheritance Tax Return in the Office of the Register of Wills of Philadelphia County on October 25, 2001. A copy of the return is attached hereto as Exhibit "A." The Department of Revenue identifies this estate as File No. 51 01 W0123.
3. Included on the Inheritance Tax Return at Schedule C, Item 1 was the decedent's holding of 100 shares of Dunn Enough, Inc. (a closely held Pennsylvania corporation) at a value of \$125.00 per share.
4. On January 15, 2002 the Pennsylvania Department of Revenue issued the "Notice of Inheritance Tax Appraisalment, Allowance or Disallowance of Deductions and Assessment of Tax," a copy of which is attached hereto as Exhibit "B."
5. The Notice of Appraisalment issued by the Department of Revenue valued shares of Dunn Enough, Inc. at \$200.00 per share.
6. On February 20, 2002 your Petitioner in conformity with Rule 10.2.E filed an appeal from the Notice of Appraisalment with the Register of Wills on the form supplied by the Register not for the purpose of delay but because she believed the Department of Revenue incorrectly valued shares of Dunn Enough, Inc. A copy of the appeal is attached hereto as Exhibit "C." The record of the appeal filed with the Register has been duly certified to this Court.
7. Your Petitioner suggests that the Department of Revenue erred in appraising shares of Dunn Enough, Inc. at \$200.00 per share for Inheritance Tax purposes for the following reasons:

### 10.3

**APPEAL FROM REGISTER AND  
PETITION FOR CITATION TO SHOW CAUSE WHY  
APPEAL FROM NOTICE OF APPRAISEMENT SHOULD NOT BE SUSTAINED**

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- a. the valuation does not reflect the true “value” of the shares as this term is defined in Section 9102 of the Inheritance and Estate Tax Act (72 P.S. §9102);
- b. the valuation is inequitable and unreasonable in that it fails to recognize the binding effect of a “Buy-Sell Agreement” dated November 14, 1997 entered into by the decedent and the corporation requiring the personal representative of the decedent’s estate to sell the shares to the corporation at a price of \$125.00 per share.

Wherefore, Petitioner respectfully requests that a citation be awarded, directed to the Pennsylvania Department of Revenue, Office of Chief Counsel (Department 281061, Harrisburg, PA 17128-1061), to show cause why the appeal of your Petitioner from the Notice of Appraisal of Inheritance Tax dated January 25, 2002 in the Estate of Joseph B. Dunn, Deceased should not be sustained.

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Jane R. Dunn, Executrix of the Will  
of Joseph B. Dunn, Deceased

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

## CHAPTER 11

# SETTLEMENT OR COMPROMISE ACTIONS INVOLVING MINORS, INCAPACITATED PERSONS, OR WRONGFUL DEATH CLAIMS

### 11.1

#### GENERAL RULES AND PROCEDURES

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The rules for obtaining approval for litigation settlements involving minors, incapacitated persons or wrongful death and survival actions are set forth in Pennsylvania Rules of Civil Procedure 2039, 2064 and 2206. The local Philadelphia rules, procedures and forms are contained in Joint General Court Regulation Trial Division and Orphans' Court Division No. 97-1 ("Joint Court Regulation 97-1") and Local Phila. R. Civ. P. Nos. 2039.1, 2039.2 and 2206. *Note: Joint Court Regulation 97-1 specifically states that to the extent that local rules 2039.1, 2039.2 and 2206 differ from the terms of the Regulation, Joint Court Regulation 97-1 governs and the contrary provisions of the local rules are rescinded.* The following forms are modeled after the forms in Joint General Court Regulation No. 97-1.❖ There are currently no local rules governing special needs trusts.

- ❖ *As this book goes to print it is expected that the Court may repeal Joint Court Regulation 97-1 and replace it with another Regulation. Check the most recent rules whenever preparing any Petition or other document under this Chapter.*



## **11.2**

### **MINORS AND INCAPACITATED PERSONS - CHECKLIST**

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See Court Form on following page.

**In the Court of Common Pleas of Philadelphia County  
First Judicial District of Pennsylvania**

Joint General Court Regulation  
Trial Division and Orphans' Court Division No. 97-1  
**Minors and Incapacitated Person Checklist**

Settlement/Trial Division Judge: \_\_\_\_\_ Court Term: \_\_\_\_\_

Caption: \_\_\_\_\_ Number: \_\_\_\_\_

Is this case disposed except for this petition? \_\_\_\_ Yes \_\_\_\_ No

If yes, how was it disposed? \_\_\_\_ S.D.&E. \_\_\_\_ Jury Trial \_\_\_\_ Non-Jury Trial (Incls. Assessment of Damages)

\_\_\_\_ Other (explain) \_\_\_\_\_

Consolidated Cases (Indicate Court Term and Number) \_\_\_\_\_

Any pleadings filed in Orphans' Court:  Yes  No

**Are the following items included in the Petition/Order?**

	Yes	No
1. Minor's/Incapacitated Person's:		
a. Date of Birth	<input type="checkbox"/>	<input type="checkbox"/>
b. SS#	<input type="checkbox"/>	<input type="checkbox"/>
c. Address	<input type="checkbox"/>	<input type="checkbox"/>
d. Written approval of settlement if minor is 16 years of age or older	<input type="checkbox"/>	<input type="checkbox"/>
2. Parent(s)/guardian verification attached	<input type="checkbox"/>	<input type="checkbox"/>
3. If guardian of estate was appointed, is Order attached	<input type="checkbox"/>	<input type="checkbox"/>
4. Information concerning mother and father	<input type="checkbox"/>	<input type="checkbox"/>
5. Details concerning the injury	<input type="checkbox"/>	<input type="checkbox"/>
6. Doctor's report of present condition of minor/incapacitated person	<input type="checkbox"/>	<input type="checkbox"/>
7. Statement from parents and/or guardian certifying the condition of minor/incapacitated person and approval of proposed settlement	<input type="checkbox"/>	<input type="checkbox"/>
8. Counsel's reasons for approval of proposed settlement	<input type="checkbox"/>	<input type="checkbox"/>
9. Petition signed by counsel	<input type="checkbox"/>	<input type="checkbox"/>
10. Department of Welfare or any other entity lien or claim	<input type="checkbox"/>	<input type="checkbox"/>
11. Does the Order contain the following:		
a. Itemization of costs for reimbursement	<input type="checkbox"/>	<input type="checkbox"/>
b. Counsel fee computed on net settlement	<input type="checkbox"/>	<input type="checkbox"/>
c. Affidavit will be filed certifying compliance with the Order	<input type="checkbox"/>	<input type="checkbox"/>
d. Amount to Guardian of minor/incapacitated person <i>(in restricted accounts, typically if under \$350,000)</i>	<input type="checkbox"/>	<input type="checkbox"/>
e. Amount to Guardian of minor/incapacitated person <i>(typically if over \$350,000)</i>	<input type="checkbox"/>	<input type="checkbox"/>

*I verify the answers above to be true and correct and understand  
that sanctions may be imposed for inaccurate or incomplete answers.*

\_\_\_\_\_

### 11.3

## PETITION FOR LEAVE TO SETTLE OR COMPROMISE MINOR'S ACTION

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[SEE CAPTION AT 1.3.4]

### ORDER APPROVING SETTLEMENT AND ORDER FOR DISTRIBUTION

Now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the Petition For Leave to Compromise A Minor's Action, filed May 15, 1999, it is hereby ORDERED and DECREED that Petitioner is authorized to enter into a settlement with Defendant Thomas White in the gross sum of One Million, Five Hundred Thousand Dollars (\$1,500,000).

It is further ORDERED and DECREED that the settlement proceeds be distributed as follows:

To:	John K. Trustworthy, Esquire Reimbursement of Costs	\$ 10,165.00
To:	John K. Trustworthy, Esquire Counsel Fee	\$496,611.66
To:	Henry Doe, Guardian of the Estate of John Dunn, a Minor, provided, however, that no payment shall be made to the guardian until the guardian has posted additional security as may be required by the Orphans' Court Division pursuant to 20 Pa. C.S. §5121, et seq. An appropriate Petition shall be filed with the Orphans' Court within thirty (30) days.❖ [Note: <i>If the funds payable to the minor are to be placed in one or more restricted accounts, the Order should be modified to show how the funds will be held and to describe the restrictions.</i> ]	\$993,223.34

❖ *This Petition should be in a form similar to the Petition shown in 11.11.*

Pursuant to Phila. Civ. R.2039.1(I), counsel shall file with the office of Civil Administration within sixty (60) days from the date of this final Order proof of the establishment of the accounts for any minor or incapacitated person set forth herein, by

### 11.3

#### PETITION FOR LEAVE TO SETTLE OR COMPROMISE MINOR'S ACTION

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Affidavit from counsel certifying compliance with this Order. [Note: *If the Order requires distribution to one or more restricted accounts, counsel must attach to the Affidavit proof of the deposit and the restriction in the form of a photocopy, CD or a bankbook.*]

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J.  
ORPHANS' COURT DIVISION

*[Petition on following page]*



### 11.3

#### PETITION FOR LEAVE TO SETTLE OR COMPROMISE MINOR'S ACTION

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[SEE CAPTION AT 1.3.4]

#### PETITION FOR LEAVE TO SETTLE MINOR'S ACTION

The Petition of John Dunn, a minor, by his Guardian, Henry Doe, by his attorney, John K. Trustworthy, Esquire respectfully requests that this Court approve the settlement of the within matter and the distribution of proceeds and in support thereof avers the following:

1. Petitioner is John Dunn, a minor.
2. The minor was born on January 1, 1988, and his social security number is 111-11-1111.
3. The minor resides with his parents at the following address: 275 Horse Hair Road, Philadelphia, Pennsylvania.
4. Henry Doe was appointed guardian of the estate of the minor by decree of the Honorable Harold S. Jones, dated March 30, 1998. A copy of the Order is attached as Exhibit "A."
5. The minor's mother is Jane R. Dunn and the minor's father is Joseph B. Dunn, both of whom reside at 275 Horse Hair Road, Philadelphia, Pennsylvania.
6. The defendant is Thomas White, who resides or whose principal place of business at all relevant times was 564 Main Street, Philadelphia, Pennsylvania.
7. On November 20, 1989, while crossing the street at the intersection of 15th and Walnut Streets, Philadelphia, Pennsylvania, the minor was struck by a motor vehicle owned and operated by the defendant. The minor sustained a broken left femur and damage to his spinal column, resulting in partial paralysis below the waist.
8. A complaint was filed against the Defendant alleging that the minor's personal injuries were the result of Defendant's negligence. A copy of the Complaint is attached as Exhibit "B."
9. Attached hereto as Exhibit "C" is a report by Dr. John Smith dated May 5, 1999, which sets forth the present condition of the minor.

### 11.3

#### PETITION FOR LEAVE TO SETTLE OR COMPROMISE MINOR'S ACTIONS

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10. Attached hereto as Exhibits "D" and "E" respectively, are the statements, under oath, of the minor's parents and guardian of the estate certifying the physical and mental condition of the minor, together with their approval of the proposed settlement and distribution.
11. The following gross settlement has been proposed❖: \$1,500,000.00 payable to the minor.
12. Counsel is of the professional opinion that the proposed settlement is reasonable inasmuch as it is the limit on the defendant's insurance policy and counsel sees little likelihood of any recovery from the defendant's own assets, which are small and held in joint names with his wife.
13. Counsel has incurred litigation expenses for which reimbursement is sought in the amount of \$10,165.00. Attached hereto as Exhibit "F" is a detailed list of those expenses.
14. The Department of Public Welfare does not have a claim or lien against the plaintiff. Petitioner is not aware of any claim or lien by any other entity.
15. Counsel requests a fee in the sum of \$496,611.66, which is 33 1/3 percent of the net settlement payable to the minor. A copy of the contingent fee agreement is attached as Exhibit "G."
16. Counsel has not and will not receive collateral payments as counsel fees for representation involving the same matter from third parties (i.e. subrogation).
17. The net settlement payable to the minor (after deduction of costs and attorneys fees) is \$993,223.34.

Wherefore, Petitioner requests that he be permitted to enter into the settlement recited above and that the Court enter an Order of Distribution as follows:

- |  |              |
|--|--------------|
| a. To John K. Trustworthy, Esq.<br>Reimbursement for Costs | \$ 10,165.00 |
| b. To John K. Trustworthy, Esq.<br>Counsel Fee             | \$496,611.66 |

### 11.3

#### PETITION FOR LEAVE TO SETTLE OR COMPROMISE MINOR'S ACTION

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- c. To Henry Doe, Guardian of the Estate of John Dunn, A Minor, appointed by the Orphans' Court Division of Philadelphia County, by Decree dated 3/30/98 (O.C. No. 98-1345) \$993,223.34

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John K. Trustworthy  
Attorney for Petitioner

- ❖ *Joint Court Regulation 97-1, paragraph I(b)(4)(d) provides as follows: "If there is to be an allocation between parents and children or incapacitated persons or among children or other parties, the amounts allocated to each party and specific reasons for such allocation must be set forth." Additionally, if more than one plaintiff is involved, whether minors, incapacitated persons or adults, Petitioner must indicate the amount each Plaintiff is to receive for his or her injuries and justification for the requested allocation. Petitioner must also properly allocate costs and counsel fees among such claims.*

Note: *Counsel is cautioned to provide specifically the requested distribution. Requests that distribution be "as per the attached Order" are not acceptable.*

Note: *In appropriate cases, funds for the minor may be distributed to a restricted account, i.e., marked not to be withdrawn before majority or upon prior leave of the court. The restricted account must be set up in the name of the minor only (not in the name of the parent as guardian for the minor). See Pa. R.C.P. 2039(b)(2).*

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]



## 11.4

### **PETITION FOR LEAVE TO SETTLE OR COMPROMISE AN INCAPACITATED PERSON'S ACTION (WITH SPECIAL NEEDS TRUST AND STRUCTURED SETTLEMENT)**

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[SEE CAPTION AT 1.3.4 ]

#### **ORDER APPROVING SETTLEMENT AND ORDER FOR DISTRIBUTION**

Now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the Petition For Leave to Compromise an Incapacitated Person's Action, filed May 15, 1999, it is hereby ORDERED and DECREED that Petitioner is authorized to enter into a settlement with Defendant Thomas White in the gross sum of One Million Dollars (\$1,000,000).

It is further ORDERED and DECREED that the settlement proceeds be distributed as follows:

To:	John K. Trustworthy, Esquire Reimbursement of Costs	\$ 15,234.00
To:	John K. Trustworthy, Esquire Counsel Fee	328,255.33
To:	Commonwealth of Pa, Dept. of Public Welfare, Payment of Lien	21,000.00
To:	XYZ Life Insurance Co. for the purchase of a structured settlement annuity to make payments of \$42,175 per month guaranteed for 20 years and life thereafter, increasing at 3% annually, to commence 8/1/99, in accordance with the Release attached as Exhibit "F."	300,000.00
To:	Henry Doe, Guardian of the Estate of John Dunn, an Incapacitated Person, appointed by the Orphans' Court Division of Philadelphia County, by Decree dated 5/30/98 (O.C. No. 98-643) for distribution to	335,510.67

## 11.4

### PETITION FOR LEAVE TO SETTLE OR COMPROMISE AN INCAPACITATED PERSON'S ACTION (WITH SPECIAL NEEDS TRUST AND STRUCTURED SETTLEMENT)

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a special needs trust to be approved by the Orphans' Court Division upon petition to be filed within thirty (30) days of this Order; provided, however, that no payment shall be made to the said guardian until the guardian has posted additional security as may be required by the Orphans' Court Division pursuant to 20 Pa. C.S. §5516, an appropriate Petition shall be filed with the Orphans' Court within thirty (30) days. ❖ [Note: *If the funds payable to the incapacitated person are to be placed in one or more restricted accounts instead of to a guardian or trustee, the Order should be modified to show how the funds will be held and to describe the restrictions.*]

Pursuant to Phila. Civ. R. \*2039.1(I), counsel shall file with the office of Civil Administration within sixty (60) days from the date of this final Order proof of the establishment of the accounts for any incapacitated person set forth herein, by Affidavit from counsel certifying compliance with this Order. [Note: *If Order requires distribution to one or more restricted accounts, counsel must attach to the Affidavit proof of the deposit and the restriction in the form of a photocopy, CD or a bankbook.*]

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J.  
ORPHANS' COURT DIVISION

**11.4**  
**PETITION FOR LEAVE TO SETTLE**  
**OR COMPROMISE AN INCAPACITATED PERSON’S ACTION**  
**(WITH SPECIAL NEEDS TRUST AND STRUCTURED SETTLEMENT)**

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[SEE CAPTION AT 1.3.2]

**PETITION FOR LEAVE TO SETTLE**  
**INCAPACITATED PERSON’S ACTION**

The Petition of John Dunn, an Incapacitated Person, by his Guardian, Henry Doe, by his attorney, John K. Trustworthy, Esquire respectfully requests that this Court approve the settlement of the within matter and the distribution of proceeds and in support thereof avers the following:

1. Petitioner is John Dunn, an incapacitated person.
2. The minor was born on January 1, 1963, and his social security number is 222-222-2222.
3. The incapacitated person currently resides at XYZ nursing facility at the following address: 2050 Hampton Road, Philadelphia, Pennsylvania.
4. Henry Doe was appointed Guardian of the Estate of the incapacitated person by Decree of the Honorable Harold S. Jones, dated May 30, 1998. A copy of the Order is attached as Exhibit “A.”
5. The incapacitated person’s mother is Jane R. Dunn and the incapacitated person’s father is Joseph B. Dunn, both of whom reside at 275 Horse Hair Road, Philadelphia, Pennsylvania.
6. The Defendant is Thomas White, who resides or whose principal place of business at all relevant times was 564 Main Street, Philadelphia, Pennsylvania.
7. On November 20, 1997, while crossing the street at the intersection of 15th and Walnut Streets, Philadelphia, Pennsylvania, the incapacitated person was struck by a motor vehicle owned and operated by the defendant. The incapacitated person sustained a traumatic brain injury which has left him with severe physical and cognitive deficits.
8. A Complaint was filed against the Defendant alleging that the incapacitated person’s

## 11.4

### **PETITION FOR LEAVE TO SETTLE OR COMPROMISE AN INCAPACITATED PERSON'S ACTION (WITH SPECIAL NEEDS TRUST AND STRUCTURED SETTLEMENT)**

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personal injuries were the result of Defendant's negligence. A copy of the Complaint is attached as Exhibit "B."

9. Attached hereto as Exhibit "C" is a report by Dr. John Smith dated May 5, 1999, which sets forth the present condition of the incapacitated person. In short, he cannot walk and will be confined to a wheelchair for the rest of his life. He cannot feed himself, dress himself and needs assistance for all of his activities of daily living. He will require 24-hour care for the rest of his life and will never be gainfully employed. He is dependent on a gastrotome tube for feeding and has a tracheotomy for breathing.
10. Attached hereto as Exhibits "D" and "E" respectively, are the statements, under oath, of the incapacitated person's parents and Guardian of the Estate certifying the physical and mental condition of the incapacitated person, together with their approval of the proposed settlement and distribution.
11. The following settlement has been proposed: ♦ \$700,000 lump sum cash plus a structured settlement (with a present cost value of \$300,000), all payable to the incapacitated person. The structured settlement (to be funded with an annuity purchased through ABC Insurance Co, rated A++ by A.M. Best) will provide the incapacitated person with income-tax-free payments of \$2,175 per month guaranteed for twenty years and life thereafter, increasing at 3% annually, to commence September 1, 1999. A copy of the Release, which describes the settlement, is attached as Exhibit "F."
12. The incapacitated person's needs are extraordinary. In light of his disabilities and extraordinary medical needs, he is currently eligible for Medicaid. Although the incapacitated person's settlement is substantial, in reality, for the incapacitated person's funds to provide sustained life enhancing care, it is necessary to preserve his Medicaid entitlement. Accordingly, the settlement proceeds (including the structured settlement payments) are to be distributed to a special needs disability trust under 42 U.S.C. §1396p(d)(4)(A). A separate petition seeking approval of that trust will be filed with the Orphans' Court Division within 30 days of the date of the Order approving the settlement.
13. Counsel is of the professional opinion that the proposed settlement is reasonable inasmuch as the defendant vigorously contested both liability and causation, the settlement represents the limit on the defendant's insurance policy, and counsel sees



**11.4**  
**PETITION FOR LEAVE TO SETTLE**  
**OR COMPROMISE AN INCAPACITATED PERSON'S ACTION**  
**(WITH SPECIAL NEEDS TRUST AND STRUCTURED SETTLEMENT)**

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little likelihood of any recovery from the defendant's own assets, which are small and held in joint names with his wife.

14. Counsel has incurred litigation expenses for which reimbursement is sought in the amount of \$15,234. Attached hereto as Exhibit "G" is a detailed list of those expenses.
15. The Commonwealth of Pennsylvania, Department of Public Welfare has asserted a lien under a Statement of Claim in the amount of \$31,545. The Department has agreed to accept \$21,000 in full satisfaction of its claim.
16. Counsel requests a fee in the sum of \$328,255.33, which is 33 1/3 per cent of the net settlement payable to the incapacitated person after costs. A copy of the Contingent Fee Agreement is attached.
17. The net settlement payable to the incapacitated person (after deduction of costs, attorney's fees and DPW lien) is \$300,000 lump sum cash plus the aforementioned structured settlement payments.
18. Counsel has not and will not receive collateral payments as counsel fees for representation involving the same matter from third parties (*i.e.* subrogation).

Wherefore, Petitioner requests that he be permitted to enter into the settlement recited above and that the Court enter an Order of Distribution as follows: ❖❖

a. To:	John K. Trustworthy, Esq. Reimbursement for Costs	\$ 15,234.00
b. To:	John K. Trustworthy, Esq. Counsel Fee	328,255.33
c. To:	Commonwealth of Pa, Dept. of Public Welfare, Payment of Lien	21,000.00
d. To:	XYZ Life Insurance Co. for the purchase of a structured settlement annuity to make payments of \$2,175 per month guaranteed for	300,000.00

## 11.4

### PETITION FOR LEAVE TO SETTLE OR COMPROMISE AN INCAPACITATED PERSON'S ACTION (WITH SPECIAL NEEDS TRUST AND STRUCTURED SETTLEMENT)

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20 years and life thereafter,  
increasing at 3% annually, to  
commence 8/1/99, in accordance  
with the Release attached as  
Exhibit "F."

- e. To Henry Doe, Guardian of the Estate 335,510.67  
of John Dunn, an Incapacitated Person,  
appointed by the Orphans' Court Division  
of Philadelphia County, by Decree dated  
5/30/98 (O.C. No. 98-643) for distribution  
to a special needs trust to be approved by  
the Orphans' Court Division upon petition  
to be filed within 30 days of the Order.

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John K. Trustworthy  
Attorney for Petitioner

- ❖ *Joint Court Regulation 97-1, paragraph I.(b)(4)(d) provides as follows: "If there is to be an allocation between parents and children or incapacitated persons or among children or other parties, the amounts allocated to each party and specific reasons for such allocation must be set forth." Additionally, if more than one plaintiff is involved, whether minors, incapacitated persons or adults, Petitioner must indicate the amount each plaintiff is to receive for his or her injuries and justification for the requested allocation.*
- ❖❖ *Counsel is cautioned to provide specifically the requested distribution. Requests that distribution be "as per the attached Order" are not acceptable.*

Note: *In appropriate cases, funds for the incapacitated person may be distributed to a restricted account, not to be withdrawn before majority or upon prior leave of the court. The restricted account must be set up in the name of the incapacitated person only. See Pa. R.C.P. 2064(b)(2).*

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

**11.5**  
**AFFIDAVIT CONFIRMING COMPLIANCE WITH ORDER**  
**(MINOR/INCAPACITATED PERSON ACTION)**

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[SEE CAPTION AT 1.3.4]

**AFFIDAVIT**

I, John K. Trustworthy, Esquire, hereby state and affirm that I have complied with the Order issued on November 15, 1999 by the Honorable Harold S. Jones as follows:

By delivering a check (No. 1234) in the amount of \$993,223.34 made payable to Henry Doe, Guardian of the Estate of John Dunn, a minor, to the said Guardian on November 30, 1999. [Note: *If funds are payable to a restricted account instead of a guardianship, attach copies of bank accounts.*]

I verify that the statements in this Affidavit are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Dated: \_\_\_\_\_

\_\_\_\_\_  
John K. Trustworthy, Esquire  
Attorney for Petitioner



**11.6**  
**PETITION FOR APPROVAL TO SPECIAL**  
**NEEDS TRUST UNDER 42 U.S.C. §1396p(d)(4)(A)**  
**FOR DISABLED MINOR/INCAPACITATED PERSON**

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[SEE CAPTION AT 1.3.1]

**DECREE**

Now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in consideration of the annexed Petition, it is hereby ORDERED and DECREED as follows:

1. The attached Special Needs Trust pursuant to 42 U.S.C. §1396p(d)(4)(A) for the benefit of Lisa Dunn, an Incapacitated Person (“Trust”) is hereby created, approved and incorporated herein by reference;
2. ABC Bank (“Trustee”) is hereby appointed to serve as Trustee of the said Trust pursuant to the terms of the Trust; and
3. The Trustee shall accept the settlement proceeds of a personal injury action filed on behalf of the incapacitated person in the Court of Common Pleas of Philadelphia County, Trial Division, entitled “Lisa Dunn, an Incapacitated Person, et al v. Thomas White (June Term, 1997, No. 3479)” consisting of lump sum cash and a tax-free structured settlement, which settlement was approved by Order dated July 2, 1999 of the Honorable Anita S. Jones, and shall hold and administer such funds in accordance with the terms of the said Trust.

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J.

*[Petition on following page]*

## 11.6

### **PETITION FOR APPROVAL TO SPECIAL NEEDS TRUST UNDER 42 U.S.C. §1396p(d)(4)(A) FOR DISABLED MINOR/INCAPACITATED PERSON**

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[SEE CAPTION AT 1.3.2]

#### **PETITION FOR APPROVAL OF SPECIAL NEEDS TRUST FOR INCAPACITATED PERSON UNDER 42 U.S.C. §1396p(d)(4)(A)**

Pamela Dunn, Guardian of the Estate of Lisa Dunn, an Incapacitated Person, respectfully submits this Petition seeking approval of a Special Needs Trust for Lisa Dunn, with ABC Bank to serve as Trustee to receive and administer settlement funds awarded to Lisa in a personal injury action, and in support thereof, Petitioner avers the following:

1. Lisa Dunn (“Lisa” or the “incapacitated person”) was born on July 1, 1967. She is currently 32 years old and resides with her mother, Pamela Dunn, at 111 Pine Street, Philadelphia, Pennsylvania 19111. Her social security number is 111-11-1111.
2. On September 1, 1994, Lisa was struck by a car while crossing Oak Street in Philadelphia.
3. Lisa suffered traumatic brain damage in the accident and as a result, has severe and permanent cognitive and physical disabilities. She cannot walk or talk. Although she appears to recognize her family members and care givers, she cannot speak or communicate in any effective way. She requires assistance for all of her daily needs (personal hygiene, feeding, dressing, etc). She will require 24-hour nursing and custodial care as well as significant medical care for the rest of her life. Her condition and required care are described in the reports of her neurosurgeon, Susan Smith, M.D. and neurologist, William Jones, M.D., copies of which are attached hereto as Exhibits “A” and “B” respectively.
4. Following Lisa’s injuries, Lisa was adjudicated a totally incapacitated person and Pamela Dunn, the incapacitated person’s mother, was appointed plenary guardian of her estate and person, by Decree dated January 15, 1995 of the Honorable Anita S. Jones.
5. The Guardian of Lisa’s estate, through her attorneys, Smith and Smith, filed an action on Lisa’s behalf in Philadelphia County, Pennsylvania, entitled “Lisa Dunn, an Incapacitated Person, by the Guardian of her Estate, Pamela Dunn et al. v. Thomas White et al (June Term, 1997, No. 3479)” for her injuries arising from the accident. Plaintiff sued the driver of the automobile and others alleging that the injuries were the result of the defendants’ negligence.

**11.6**  
**PETITION FOR APPROVAL TO SPECIAL**  
**NEEDS TRUST UNDER 42 U.S.C. §1396p(d)(4)(A)**  
**FOR DISABLED MINOR/INCAPACITATED PERSON**

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6. The parties settled out of court for the gross combined amount of \$2,000,000. Pamela Dunn filed a Petition for Leave to Compromise an Incapacitated Person's Action ("Incapacitated Person's Compromise Petition") in the Philadelphia Court of Common Pleas for approval of the settlement of the action on behalf of Lisa. That Petition set forth Petitioner's intention to seek approval for a Special Needs Trust for Lisa and a Decree authorizing distribution of the settlement proceeds to the Guardian for distribution to the Special Needs Trust. A copy of the Incapacitated Person's Compromise Petition is attached as Exhibit "C."
7. By Order dated July 2, 1999 ("Settlement Approval Order"), the Honorable Anita S. Jones approved the settlement and ordered distribution of the settlement proceeds to the Guardian for distribution to a Corporate Trustee of a Special Needs Trust to be approved by the Orphans' Court Division. Thus, Lisa's settlement proceeds may not be distributed until this Court has entered an order approving the Special Needs Trust and an appropriate Trustee. A copy of Judge Jones' Settlement Approval Order dated July 2, 1999 is attached hereto as Exhibit "D."
8. The net amount of the settlement distributable to Lisa after payment of all liens, expenses and other deductions associated with the civil action, is as follows:
  - a. Cash payment of **\$500,000**, *and*
  - b. Monthly, tax-free structured settlement payments of **\$3,350 per month**, guaranteed for a minimum period of 10 years and life thereafter, to commence 9/1/99.
9. By this Petition, Petitioners seek to obtain approval for the creation and funding of a Special Needs Trust for Lisa under 42 U.S.C. §1396p(d)(4)(A), with ABC Bank to serve as the trustee of the said Trust.
10. Lisa has no **assets** other than the personal injury settlement described above. Lisa's only **income** (other than the investment income to be earned on her settlement funds) is her SSI income in the amount of \$550 per month.
11. Lisa qualifies for and relies upon Medicaid for all of her medical care, which is substantial.

## 11.6

### PETITION FOR APPROVAL TO SPECIAL NEEDS TRUST UNDER 42 U.S.C. §1396p(d)(4)(A) FOR DISABLED MINOR/INCAPACITATED PERSON

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12. In light of Lisa's serious and permanent disabilities, Petitioner seeks this Court's approval to create a Special Needs Disability Trust under 42 U.S.C. §1396p(d)(4)(A) for Lisa in order to preserve her Medicaid benefits. ABC Bank will serve as Trustee and receive and administer Lisa's settlement proceeds pursuant to the terms of the Trust. For Medicaid eligibility reasons, all funds distributable to Lisa in the personal injury suit should be paid directly to ABC Bank as Trustee of the Trust for Lisa.
13. Because the Trust will contain all of Lisa's assets and there is no need for the Guardian to post additional security. ABC Bank's consent to serve as Trustee of the Trust is attached as Exhibit "E."
14. The Pennsylvania Rules of Civil Procedure, as amended January 1, 1997, specifically authorize the creation of Special Needs Trusts as vehicles for administering the proceeds of a settlement of an action for an incapacitated plaintiff. See Pa. R. Civ. P. No. 2064. In addition, 20 Pa. C.S.A. § 5536(b) allows the Court to approve the creation of a Trust for an Incapacitated Person.
15. The federal statute, 42 U.S.C. §1396p(d)(4)(A) provides an extraordinary Medicaid benefit to disabled individuals only if their funds are placed in a Special Needs Trust like the one proposed herein.
16. Under 42 U.S.C. §1396p(d)(4)(A), Lisa will continue to be eligible for Medicaid benefits. Upon her death, however, the Trustee will be required to reimburse the Commonwealth of Pennsylvania for all Medicaid payments made on behalf of Lisa during her lifetime. In light of the extraordinary cost of Lisa's round-the-clock nursing care, without the Trust, Lisa's settlement funds would be insufficient to provide any sustained increase in the quality of her life over her entire lifetime and would be depleted well before the end of her life expectancy.
17. Petitioner has attached as Exhibit "F" a copy of the proposed Trust. A separate memorandum, attached as Exhibit "G," describes the Trust's terms, benefits, and purposes in further detail.
18. The structured settlement annuity payment will be paid directly to the Trustee of the Trust and, upon the incapacitated person's death, will be paid to her estate to the extent that there are any guaranteed payments left to be made.



**11.6**  
**PETITION FOR APPROVAL TO SPECIAL**  
**NEEDS TRUST UNDER 42 U.S.C. §1396p(d)(4)(A)**  
**FOR DISABLED MINOR/INCAPACITATED PERSON**

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19. The estimated annual cost of Lisa's care is substantial. Petitioners have engaged a private case management firm to prepare an updated, actual care plan for Lisa. Petitioners will file a separate Petition for allowances to obtain approval to expend Trust principal for Lisa's actual special needs beyond those covered by insurance.
20. The incapacitated person has never been married and has no children. She does not have a Will. Her presumptive intestate heirs are as follows:

Pamela Dunn	Mother, Guardian of the Estate (Petitioner herein)
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Joseph Dunn	Father
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The minor's parents were divorced in 1992. The consents of the foregoing intestate heirs are attached as Exhibit "H."

21. By letter dated July 26, 1999, a copy of which is attached to the Certificate of Service submitted herewith, Petitioner provided notice of the filing (as well as a copy) of this Petition to the following:

Department of Public Welfare, Legal  
302 State Office Building  
1400 Spring Garden Street  
Philadelphia PA 19130

SSI Program Support Team  
Attention: Team Leader  
Mid Atlantic Program Service Center  
3rd and Spring Garden Streets  
Philadelphia PA 19101

Wherefore, Petitioner respectfully requests that this Court enter the proposed Decree attached hereto, which provides as follows:

- A. The attached Special Needs Trust under 42 U.S.C. §1396p(d)(4)(A) for the benefit of Lisa Dunn, an incapacitated person is created, approved and incorporated herein by reference;

## 11.6

### PETITION FOR APPROVAL TO SPECIAL NEEDS TRUST UNDER 42 U.S.C. §1396p(d)(4)(A) FOR DISABLED MINOR/INCAPACITATED PERSON

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- B. ABC Bank (“Trustee”) is hereby appointed to serve as trustee of the said Trust pursuant to the terms of the Trust;
- C. The Trustee shall accept the settlement proceeds of a personal injury action filed on behalf of the incapacitated person in the Court of Common Pleas of Philadelphia County, Trial Division, entitled “Lisa Dunn, an Incapacitated Person, by the Guardian of her Estate, Pamela Dunn et al. v. Thomas White (June Term, 1997, No. 3479)” consisting of lump sum cash and a tax-free structured settlement, which settlement was approved by Order dated July 2, 1999 of the Honorable Anita S. Jones, and the Trustee shall hold and administer such funds in accordance with the terms of the said Trust.

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Jane K. Trustworthy, Esquire  
Attorney for Petitioner

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*[Certificate of Service on following page]*

**11.6  
PETITION FOR APPROVAL TO SPECIAL  
NEEDS TRUST UNDER 42 U.S.C. §1396p(d)(4)(A)  
FOR DISABLED MINOR/INCAPACITATED PERSON**

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**CERTIFICATE OF SERVICE**

[SEE CERTIFICATE OF SERVICE AT 2.2]

**CERTIFICATION AND ACCEPTANCE OF ABC BANK  
TO SERVE AS TRUSTEE OF THE SPECIAL NEEDS TRUST  
FOR LISA DUNN**

ABC Bank (“ABC”), by its proper officer, hereby certifies that (i) ABC is lawfully authorized to engage in Trust business and to serve as a Trustee in Pennsylvania under the laws of Pennsylvania; (ii) ABC is independent from Lisa Dunn (the “incapacitated person”) and anyone acting on her behalf; (iii) ABC is not the fiduciary of any estate in which the incapacitated person has an interest nor is it the surety for any such fiduciary; and (iv) ABC has no other interest adverse to the incapacitated person.

ABC Bank hereby accepts its appointment to serve as Trustee of the Special Needs Trust f/b/o Lisa Dunn.

ABC Bank

Sworn to and subscribed before  
me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



## 11.7

### SPECIAL NEEDS TRUST ❖

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#### IRREVOCABLE SPECIAL NEEDS TRUST FOR THE BENEFIT OF LISA DUNN

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Pamela Dunn (hereinafter called “Settlor”), Guardian of the Estate of Lisa Dunn, an Incapacitated Person (hereinafter called “Beneficiary”) and ABC Bank (hereinafter called “Trustee”).

The Trustee shall ascertain whether there are any claims or liens by the Department of Public Welfare and the Social Security Administration before payment into the trust. A copy of the Special Needs Trust should be directed to:

The Special Needs Trust Depository  
Attention: Manager, TPL Section  
P.O. Box 8486  
Harrisburg PA 17105-8486

SSI Program Support Team  
Attention: Team Leader  
Mid Atlantic Program Service Center  
3rd and Spring Garden Streets  
Philadelphia PA 19101

After payment of any claims or liens, if any, the Settlor is authorized, subject to Court approval, to transfer, assign and convey unto the Trustee, the property listed in Schedule “A” annexed hereto and made a part hereof, and the Trustee agrees to hold such property, together with any other property, real or personal, that may be added to this Trust after obtaining approval from the Orphans’ Court Division of the Court of Common Pleas of Philadelphia County. No public assistance or social security benefits for the Beneficiary shall be added to the Trust and no additions shall be accepted by the Trustee after the Beneficiary attains the age of sixty-five (65) years, such proceeds and additions being hereinafter call principal in trust, upon the following terms and conditions:

- ❖ Note: *Because Special Needs Trusts under 42 U.S.C. §1396p(d)(4)(A) have only been in existence since 1993, and because Pa.R.C.P. 2039 and 2064 have only allowed the creation of Special Needs Trusts since 1997, the substantive and procedural requirements for approval in the Orphans’ Court Division in Philadelphia are still evolving at the time this book goes to print. This “form trust” (to the extent that there can be a “form trust”), although currently an approved form for the Philadelphia ORPHANS’ Court Division, may not be appropriate in many cases. The terms should be carefully analyzed and modified as appropriate under the circumstances.*

## 11.7

### SPECIAL NEEDS TRUST

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FIRST: Lisa Dunn is a disabled individual, born July 1, 1967. She shall be the primary Beneficiary of this Trust.

SECOND: Settlor declares this Trust to be a Special Needs Trust pursuant to 42 U.S.C. §1396p(d)(4)(a) and shall be for the sole benefit of the Beneficiary. The purpose of the Special Needs Trust shall be to maintain and support the Beneficiary's health, safety, welfare, education and treatment when such items, products or services are not provided by a public agency or government program.

- A. Special needs shall mean those requisite items, products or services that can be provided to the beneficiary to assist in the treatment of the Beneficiary's disability and increase her quality of life.
- B. Special needs shall include but not be limited to medical expenses, dental expenses, nursing and custodial care, psychiatric/psychological services, recreational therapy, occupational therapy, physical therapy, vocational therapy, durable medical needs, prosthetic devices, special rehabilitative services or equipment, programs of training, education, transportation and required travel expenses, dietary needs and supplements, and related insurance.

THIRD: Trustee shall seek support and maintenance of the Beneficiary from all available public resources, including (but not limited to) supplemental security income program (SSI), old age survivor and disability program (OASD), the Medicare program and Medical Assistance program or similar or successor programs. Trustee shall take into consideration applicable resources and income limitations of any of those public programs or private agencies for which the Beneficiary is eligible in determining whether to make any discretionary distributions hereunder. Payments or distributions from this Trust which will result in the loss of governmental or other benefits to which the Beneficiary is or may be entitled are expressly forbidden. The Trustee should provide the Special Needs Trust Depository with annual statements.

FOURTH: Trustee shall have the power AFTER OBTAINING APPROVAL from the Orphans' Court Division of the Court of Common Pleas of Philadelphia County, following due notice to all interested parties, including the Department of Public Welfare and Social Security Administration, to distribute to or apply for the benefit of the Beneficiary, such amount of income and/or principal (including accumulated income) as Trustee may from time to time determine to be necessary or appropriate for her special needs and comfort. Expenditures from the Trust fund must have a reasonable relationship to the disability of the

**11.7**  
**SPECIAL NEEDS TRUST**

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Beneficiary. Any income not so distributed or applied shall be added to principal. Notice to the Department of Public Welfare and Social Security Administration should be directed to:

The Special Needs Trust Depository  
Attention: Manager, TPL Section  
P.O. Box 8486  
Harrisburg PA 17105-8486

SSI Program Support Team  
Attention: Team Leader  
Mid Atlantic Program Service Center  
3rd and Spring Garden Streets  
Philadelphia PA 19101

FIFTH: It is further the intent of this Trust that no part of the Trust established hereunder shall be used to supplant or replace public assistance benefits of any county, state, federal or governmental agency. For these purposes, in determining the Beneficiary's eligibility for such benefits, no part of the principal or income of the Trust established hereunder shall be considered available to the Beneficiary. In the event the Trustee is requested by any department or agency to release principal or income of the Trust established hereunder, to or on behalf of the Beneficiary, to pay for equipment, medication or services that other organizations or agencies are authorized to provide, or in the event the Trustee is requested by any department or agency administering such benefits to release the Trust principal or income for this purpose or in the event that any department or agency administering such benefits petitions the Court of competent jurisdiction for these same purposes, the Trustee shall deny such request and is directed to defend and contest, at the expense of the Trust established hereunder. Trustee shall have complete discretion with regard to any such claims, including management of all litigation which may result. Trustee shall also be authorized in its sole and absolute discretion, to settle, in whole or in part, or otherwise compromise any such claim or litigation.

SIXTH: If the Trustee determines that it is impractical to administer the Trust held under this irrevocable Trust because it is or becomes too small to justify maintaining as a Trust, or because it is no longer suitable for the Beneficiary's needs, the Trustee shall obtain Court approval to terminate this Trust and to distribute the principal and income of the Trust.

SEVENTH: This Trust shall terminate upon the earlier of the death of the Beneficiary or Order of Court upon petition thereto, or the termination of the Guardianship of the Beneficiary through an Adjudication and Order of Distribution.

## 11.7

### SPECIAL NEEDS TRUST

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- A. Upon termination of the Trust during the lifetime of the Beneficiary, Trustee shall obtain a determination from the Department of Public Welfare of its claim, if any, for Medical Assistance payments which it has made on behalf of the Beneficiary. Trustee shall distribute to the department of Public Welfare from the remaining principal and accumulated income, if any, an amount equal to the amount of Medical Assistance [Medicaid] paid on behalf of the Beneficiary during the time the Trust was in existence. If more than one state is entitled to reimbursement for Medicaid expenditures, each state shall receive its proportionate share of the total amount of Medicaid to be reimbursed. If any principal and accumulated income remains after distribution to the Department of Public Welfare, Trustee shall distribute the remainder in accordance with an Order of Court terminating the Trust upon petition thereto, or in accordance with the termination of the Guardianship of the Beneficiary through an Adjudication and Order of Distribution.
  
- B. Upon the termination of the Trust at the death of the Beneficiary, Trustee shall obtain a determination from the Department of Public Welfare of its claim, if any, for Medical Assistance payments which it has made on behalf of the Beneficiary. Trustee shall distribute to the Department of Public Welfare from the remaining principal and accumulated income, if any, an amount equal to the amount of Medical Assistance [Medicaid] paid on behalf of the Beneficiary during the time the Trust was in existence. If more than one state is entitled to reimbursement for Medicaid expenditures, each state shall receive its proportionate share of the total amount of Medicaid to be reimbursed. If any principal and accumulated income remains after distribution to the Department of Public Welfare, Trustee shall distribute the remainder to the personal representative of the Beneficiary's estate.

EIGHTH: The interest of the Beneficiary in both the principal and income, until actually distributed, shall not be subject to anticipation or to voluntary or involuntary alienation.

NINTH: Trustee shall, in addition to the powers given by law, have the following powers applicable to all property held in trust whether principal or income, and exercisable without Order of Court:

- A. To retain any property transferred to this Trust, and to make such investments, and reinvestments and in such proportions, without limitation to what are known as legal investments, as the Trustee shall consider beneficial.



**11.7**  
**SPECIAL NEEDS TRUST**

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- B. To (1) participate in any merger or reorganization affecting securities held hereunder at any time, (2) deposit stock under voting agreements, (3) exercise any option to subscribe for stocks, bonds or debentures, (4) grant proxies, discretionary or otherwise, to vote shares of stock.
- C. To manage, operate, repair, alter or improve real estate or other property and to lease real estate and other property upon such terms and for such period as Trustee deems advisable.
- D. To buy or sell (and to grant options for the sale of) any real or personal property at public or private sale for such prices and upon such terms as Trustee may think proper after obtaining approval from the Orphans' Court Division of the Court of Common Pleas of Philadelphia County, following due notice to all interested parties, including the Department of Public Welfare and Social Security Administration, without liability on the purchaser to see to the application of the purchase monies.

TENTH: This Trust shall be irrevocable, and Settlor shall not have the right to alter, amend or revoke this Trust Agreement, or any provision hereto without the approval of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County, following due notice to all interested parties, including the Department of Public Welfare and Social Security Administration.

ELEVENTH: If the Trustee shall resign or for any reason cease or become unable to act as Trustee hereunder before termination of this Trust, a successor shall be appointed by the Orphans' Court Division of the Court of Common Pleas of Philadelphia County. Although an accounting shall not be required by the Court, the Trustee shall be required to file with the Clerk of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County, following due notice to all interested parties, including the Department of Public Welfare and Social Security Administration, a Petition for Discharge as Trustee, appending thereto a status report summarizing all transactions.

TWELFTH: The situs of this Trust shall be the Commonwealth of Pennsylvania and all questions as to the validity or effect of this instrument or the administration of the Trust hereunder shall be governed by the law of Pennsylvania.

THIRTEENTH: The Trustee hereby accepts the Trust created by this Agreement and agrees to carry out the provisions hereof on its part according to the best of its ability.

**11.7**  
**SPECIAL NEEDS TRUST**

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In Witness Whereof, the Estate of Lisa Dunn, an Incapacitated Person, by and through Pamela Dunn, as Guardian of the Estate, Settlor herein, and ABC Bank, as Trustee herein have set their hands and seals the month, day and year first above written.

ABC Bank, N.A.  
Trustee

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Pamela Dunn  
Guardian of the Estate of Lisa Dunn, an  
Incapacitated Person

## 11.8

### PETITION FOR ALLOWANCES FROM SPECIAL NEEDS TRUST

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[SEE CAPTION AT 1.3.1]

#### DECREE

Now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in consideration of the annexed Petition, it is hereby ORDERED and DECREED that ABC Bank, Trustee of the Special Needs Trust for the benefit of Lisa Dunn, a disabled Incapacitated Person, is authorized to use Trust principal for Lisa's special needs, to the extent not covered by insurance or payable from any other source and to the extent that Trust income is insufficient, as follows:

- A. For Lisa's ongoing annual special needs for the next three years (a new Petition for Allowances to be filed upon the expiration of three years), as follows:

Gas/Oil for Specially Modified Van	\$ 1,680/yr
Insurance on Specially Modified Van	1,944/yr
Supplemental Home Nursing Care (LPNs, RNs)	30,000/yr
Private Care Management Services	2,000/yr

- B. For Lisa's one-time special needs as follows:

Wheelchair Accessible Van W/ Lift	\$42,000
Construction of Wheelchair Ramps for Home	6,000
Specially Adapted Computer with Printer and Accessories	1,800
Computer Desk and Special Needs Bed	4,000

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J.

*[Petition on following page]*

## 11.8

### PETITION FOR ALLOWANCES FROM SPECIAL NEEDS TRUST

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[SEE CAPTION AT 1.3.2]

#### PETITION FOR ALLOWANCES FROM SPECIAL NEEDS TRUST

ABC Bank, Trustee of the Special Needs Trust for the benefit of Lisa Dunn dated 9/15/99, respectfully submits this Petition for Approval to Use Trust Principal for the Beneficiary's Special Needs, to the extent that income is insufficient and to the extent not covered by insurance or any other source, and in support thereof, Petitioner avers the following:

1. Lisa Dunn ("Lisa" or the "incapacitated person") was born on July 1, 1967. She is currently 32 years old and resides with her mother, Pamela Dunn, at 111 Pine Street, Philadelphia, Pennsylvania 19111. Her social security number is 111-11-1111.
2. On September 1, 1994, Lisa was struck by a car while crossing Oak Street in Philadelphia.
3. Lisa suffered traumatic brain damage in the accident and as a result, has severe and permanent cognitive and physical disabilities. She cannot walk or talk. Although she appears to recognize her family members and caregivers, she cannot speak or communicate in any effective way. She requires assistance for all of her daily needs (personal hygiene, feeding, dressing, etc). She will require 24-hour nursing and custodial care as well as significant medical care for the rest of her life. Her condition and required care are described in the reports of her neurosurgeon, Susan Smith, M.D. and neurologist, William Jones, M.D., copies of which are attached hereto as Exhibits "A" and "B" respectively.
4. Following Lisa's injuries, Lisa was adjudicated a totally Incapacitated Person and Pamela Dunn, the incapacitated person's mother, was appointed Plenary Guardian of her Estate and Person, by Decree dated January 15, 1995 of the Honorable Anita S. Jones.
5. Lisa's personal injury case, "Lisa Dunn, an Incapacitated Person, by the Guardian of her Estate, Pamela Dunn et al. v. Thomas White et al. (June Term, 1997, No. 3479)" settled with a net amount payable to Lisa as follows:
  - a. Cash payment of \$500,000, *and*
  - b. Monthly, tax-free structured settlement payments of \$3,350 per month,

## 11.8

### PETITION FOR ALLOWANCES FROM SPECIAL NEEDS TRUST

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guaranteed for a minimum period of 10 years and life thereafter, to commence 9/1/99.

6. By Order dated July 2, 1999 (“Settlement Approval Order”), the Honorable Anita S. Jones approved the settlement and ordered distribution of the settlement proceeds to the Guardian of the Estate for distribution to a Corporate Trustee of a Special Needs Trust to be approved by the Orphans’ Court Division. A copy of the said Order dated July 2, 1999 is attached hereto as Exhibit “C.”
7. Thereafter, Petitioner filed a Petition for Approval of a Special Needs Trust. By Decree dated August 15, 1999, the Honorable Anita S. Jones approved the proposed Special Needs Trust for Lisa and appointed ABC Bank, Trustee. A copy of Judge Jones’ August 15, 1999 Decree is attached as Exhibit “D.”
8. Lisa has no assets other than the principal contained in the Special Needs Trust. The principal will grow through both investment growth *and* the addition of the monthly structured settlement payments of \$3,350 per month. The current market value of the principal of the Trust, as set forth in the statement attached as Exhibit “E,” is \$520,000.
9. Lisa also receives income in the form of SSI payments of \$550 per month. Lisa’s only other income will be the income earned on the investments in her Special Needs Trust, which is expected to be approximately \$17,500 to \$22,500 if the investment portfolio is allocated 65% equities/35% fixed income. Accordingly, after adding the structured settlement payments of \$40,200 per year, the Trust corpus is still expected to grow, even after all Trust distributions and expenses requested herein.
10. After being appointed Trustee, ABC contacted Life Care Managers, Inc. (“LCM”), a private case management service for disabled individuals, to evaluate Lisa’s current condition and needs; and, after working extensively with Lisa’s mother, the Trustee, and counsel, LCM has developed a current special needs care plan for Lisa, which includes certain ongoing and one-time expenses. A copy of the said Report of LCM, is attached hereto as Exhibit “F.”
11. Because the terms of the Special Needs Trust require the Trustee to obtain prior Court approval to use Trust principal for Lisa’s special needs, Petitioner hereby seeks authorization to make certain annual and one-time expenditures for Lisa’s special needs, as described in the LCM report and as summarized in Schedules A and B attached as Exhibit “G.” As set forth in the comprehensive list of expenses set forth in Schedule A, Lisa’s annual cash needs are estimated to be \$35,624 per year; her one-time needs total \$53,800.

## 11.8

### PETITION FOR ALLOWANCES FROM SPECIAL NEEDS TRUST

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12. Lisa qualifies for and relies upon Medicaid for her medical care. Thus, an allowance for the cost of basic medical care covered by insurance is not included in this petition.
13. Lisa's presumptive intestate heirs are as follows:

Mary Jones 617 Alcott Street Philadelphia, PA 19120	Mother (consent attached)
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James Black whereabouts unknown	Father
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Lisa's mother and father were never married but lived together for some time. Lisa's father left when she was seven years old. He does not participate in Lisa's life or her care and his whereabouts are currently unknown. Lisa also has a sister, Jennifer Jones, who is 18 years old.

By letter dated January 14, 2000, a copy of which is attached, Petitioner provided notice of the filing (as well as a copy) of this Petition to the following:

Andrew Coates, Esquire  
Department of Public Welfare, Legal  
302 State Office Building  
1400 Spring Garden Street  
Philadelphia PA 19130

SSI Program Support Team  
Attention: Team Leader  
Mid Atlantic Program Service Center  
3rd and Spring Garden Streets  
Philadelphia PA 19101

Wherefore, Petitioner respectfully requests that this Court enter the proposed Decree attached hereto, which provides that ABC Bank, Trustee of the Special Needs Disability Trust for the benefit of Lisa Jones, is authorized to use Trust principal for Lisa's special needs, to the extent not covered by insurance or payable from any other source and to the extent that Trust income is insufficient, as follows:

- A. For Lisa's ongoing annual special needs for the next three years (a new Petition for Allowances to be filed upon the expiration of three years), as follows:

**11.8**

**PETITION FOR ALLOWANCES FROM SPECIAL NEEDS TRUST**

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Gas/Oil for specially modified van	\$ 1,680/yr
Insurance on specially modified van	1,944/yr
Supplemental Home Nursing Care (LPNs, RNs)	30,000/yr
Private Care Management Services	2,000/yr

B. For Lisa's one-time special needs as follows:

Wheelchair accessible van w/ lift	\$42,000
Construction of wheelchair ramps for home	6,000
Specially Adapted Computer with Printer and Accessories	1,800
Computer desk and special bed	4,000

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John K. Trustworthy, Esquire  
Attorney for Petitioner

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

[SEE CERTIFICATE OF SERVICE AT 2.2]





**11.9**

**NOTICE OF FILING OF WRONGFUL DEATH ACTION  
PURSUANT TO Pa. R.C.P. 2205 AND Phila. R.Civ.P. \*2206**

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[SEE CAPTION AT 1.3.4]

**NOTICE OF PENDENCY OF ACTION  
PURSUANT TO PENNSYLVANIA RULE  
OF CIVIL PROCEDURE 2205 AND PHILADELPHIA R. CIV. P. \*2205**

To all persons entitled by law to recover damages in the above-captioned action:

You are hereby notified that I, Jane R. Dunn, as Executrix of the Estate of Joseph B. Dunn, Deceased, have commenced this action, which includes claims to recover damages for the wrongful death of Joseph B. Dunn on behalf of the following persons who are all the persons entitled to recover damages in this action:

Jane R. Dunn 47 Main Street Philadelphia, Pennsylvania	Widow
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Joseph B. Dunn, Jr. 6 North Street Philadelphia, Pennsylvania	Son
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Elaine S. Dunn 567 Main Street Philadelphia, Pennsylvania	Daughter
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If you object to the authority of Jane R. Dunn to maintain this action, you may petition the court to remove Jane R. Dunn and to substitute as a new Plaintiff either any person entitled by law to recover damages in this action or a personal representative of Joseph B. Dunn.

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Plaintiff - Executrix

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED



## **11.10**

### **WRONGFUL DEATH AND SURVIVAL ACTIONS - CHECKLIST**

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See Court Form on following page.

**In the Court of Common Pleas of Philadelphia County  
First Judicial District of Pennsylvania**

Joint General Court Regulation  
Trial Division and Orphans' Court Division No. 97-1  
**Wrongful Death and Survival Actions Checklist**

Settlement/Trial Division Judge: \_\_\_\_\_ Court Term: \_\_\_\_\_

Caption: \_\_\_\_\_ Number: \_\_\_\_\_

Is this case disposed except for this petition?     Yes     No

If yes, how was it disposed?     S.D.&E.     Jury Trial     Non-Jury Trial (Incls. Assessment of Damages)

Other (explain) \_\_\_\_\_

Consolidated Cases (Indicate Court Term and Number) \_\_\_\_\_

Any pleadings filed in Orphans' Court:     Yes     No

**Are the following items included in the Petition:**

	<b>Yes</b>	<b>No</b>
1. Verification from Administrator/Executor	<input type="checkbox"/>	<input type="checkbox"/>
2. If guardian of estate was appointed, is Order attached	<input type="checkbox"/>	<input type="checkbox"/>
3. Notice letter to all parties in interest is attached	<input type="checkbox"/>	<input type="checkbox"/>
4. Counsel's reasons for approval of proposed settlement	<input type="checkbox"/>	<input type="checkbox"/>
5. Reasons for the allocation between wrongful death and survival action	<input type="checkbox"/>	<input type="checkbox"/>
6. Reason and amount of pecuniary loss suffered by each beneficiary of Wrongful Death Claim	<input type="checkbox"/>	<input type="checkbox"/>
7. Petition signed by counsel	<input type="checkbox"/>	<input type="checkbox"/>
8. Department of Welfare or any other entity claim or lien	<input type="checkbox"/>	<input type="checkbox"/>
9. Does the Order of Distribution set forth the following:		
a. Itemization of costs for reimbursement	<input type="checkbox"/>	<input type="checkbox"/>
b. Counsel fee computed on net settlement	<input type="checkbox"/>	<input type="checkbox"/>
c. Wrongful Death Claim	<input type="checkbox"/>	<input type="checkbox"/>
i. Amount to spouse and adult children	<input type="checkbox"/>	<input type="checkbox"/>
ii. Amount to minor/incapacitated person <i>(in restricted accounts, typically if under \$350,000)</i>	<input type="checkbox"/>	<input type="checkbox"/>
iii. Amount to Guardian of minor/incapacitated person <i>(typically if over \$350,000)</i>	<input type="checkbox"/>	<input type="checkbox"/>
iv. Parent	<input type="checkbox"/>	<input type="checkbox"/>
d. Survival Claim: To Administrator/Executor of the Estate of the Deceased	<input type="checkbox"/>	<input type="checkbox"/>
e. Affidavit will be filed certifying compliance with the Order	<input type="checkbox"/>	<input type="checkbox"/>

*I verify the answers above to be true and correct and understand  
that sanctions may be imposed for inaccurate or incomplete answers.*

## 11.11

### PETITION FOR LEAVE TO SETTLE OR COMPROMISE WRONGFUL DEATH AND SURVIVAL ACTION

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[SEE CAPTION AT 1.3.4]

#### ORDER APPROVING SETTLEMENT AND ORDER FOR DISTRIBUTION

Now, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon consideration of the Petition to Settle Wrongful Death and Survival Actions filed on May 15, 2000, it is hereby ORDERED that Petitioner is authorized to enter into a settlement with Defendant ABC Corporation in the gross sum of Three Million Dollars (\$3,000,000.00).

It is further ORDERED and DECREED that the settlement proceeds are allocated, and shall be distributed, as follows:

To: John K. Trustworthy, Esquire Reimbursement of Costs	\$ 3,500.00
To: John K. Trustworthy, Esquire Counsel Fees	998,833.33
<i>Wrongful Death Claim (50%)</i>	
To: Jane R. Dunn	998,833.32
<i>Survival Claim (25%)</i>	
To: Jane R. Dunn, Executrix of the Estate of Joseph B. Dunn, Deceased, provided that counsel shall not distribute any funds to the said Executrix until a copy of this order is filed with the Register of Wills and the additional security as may be required by the Register of Wills pursuant to 20 Pa. C.S. §3323(b)(3) is posted.	499,416.67
<i>Loss of Consortium Claim (25%)</i>	
To: Jane R. Dunn	499,416.67

**11.11**  
**PETITION FOR LEAVE TO SETTLE OR**  
**COMPROMISE WRONGFUL DEATH AND SURVIVAL ACTION**

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Within sixty (60) days from the date of this Order, counsel shall file with the office of Civil Administration an Affidavit from counsel certifying compliance with this Order. [Note: *If Order requires distribution to one or more restricted accounts instead of to a guardian of the estate, counsel must attach to the Affidavit proof of the deposit in the form of a photocopy of a CD or a bankbook.*]

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J.  
ORPHANS' COURT DIVISION

*[Petition on following page]*

**11.11**  
**PETITION FOR LEAVE TO SETTLE OR**  
**COMPROMISE WRONGFUL DEATH AND SURVIVAL ACTION**

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[SEE CAPTION AT 1.3.5]

**PETITION**

The Petition of Jane R. Dunn, Executrix of the Estate of Joseph B. Dunn, Deceased, by her attorney, John K. Trustworthy, Esquire, respectfully requests that this Court approve the settlement of the within action and the distribution for the proceeds and in support thereof avers the following:

1. Petitioner is Jane R. Dunn, who was appointed Executrix of the Estate of Joseph B. Dunn, Deceased, on July 10, 1996, by the Register of Wills of Philadelphia County. A copy of the Decree of the Register is attached as Exhibit "A."
2. The plaintiff decedent died on July 3, 1996 as a result of injuries received in an automobile accident caused by the failure of the brakes on decedent's automobile.
3. Notice of the institution of the action as required by Pa. R.C.P. 2205 and Philadelphia Civ. R. \*2205 was given on April 8, 1997 to the following individuals:

Jane R. Dunn  
47 Main Street  
Philadelphia, Pennsylvania

Joseph B. Dunn, Jr.  
6 North Street  
Philadelphia, Pennsylvania

Elaine S. Dunn  
567 Main Street  
Philadelphia, Pennsylvania

4. Pursuant to Phila. Civ. R. \*2206(B), Petitioner has served a copy of this Petition on the intestate heirs of plaintiff decedent (as provided in 20 Pa. C.S. §2101 *et. seq.*) who are as follows:

Jane R. Dunn  
47 Main Street  
Philadelphia, Pennsylvania

Widow

## 11.11

### PETITION FOR LEAVE TO SETTLE OR COMPROMISE WRONGFUL DEATH AND SURVIVAL ACTION

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Joseph B. Dunn, Jr.                      Son  
6 North Street  
Philadelphia, Pennsylvania

Elaine S. Dunn                              Daughter  
567 Main Street  
Philadelphia, Pennsylvania

All of the said intestate heirs have consented to the settlement and this Petition. Copies of their Consents are attached as Exhibit "B."

5. There are no other parties having an interest in the settlement and no unpaid claims have been raised and/or are outstanding in the plaintiff-decedent's estate and therefore no further notice is required under Phila. Civ. R. \*2206(B).
6. Decedent had no Will.
7. The following settlement has been proposed:  

Settlement with ABC Corporation in the gross settlement amount of \$3,000,000.00.
8. Counsel is of the professional opinion that the proposed settlement is reasonable because the settlement offer is equal to or higher than settlements of previous comparable cases.
9. Petitioner is of the opinion that the proposed settlement is reasonable.
10. Counsel has incurred \$3,500.00 in expenses for which reimbursement is sought. Counsel has itemized those costs and a copy of the itemization is attached as Exhibit "C."
11. Counsel requests counsel fees in the amount of \$998,833.33, which represents 33 1/3% of the net proceeds of the settlement. A copy of the contingent fee agreement is attached as Exhibit "D."
12. Petitioner requests allocation of the net proceeds of the settlement (after deduction of costs and attorneys fees) as follows:



**11.11  
 PETITION FOR LEAVE TO SETTLE OR  
 COMPROMISE WRONGFUL DEATH AND SURVIVAL ACTION**

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a. Wrongful Death Claim	50%	\$998,833.33
b. Survival Claim	25%	\$499,416.67
c. Loss of Consortium Claim	25%	\$499,416.67

13. The reasons for the requested allocation are as follows:

Counsel believes that this allocation is fair and reasonable based upon previous jury verdicts obtained in similar cases, as well as the elements of damages involved.

14. Pursuant to the Wrongful Death Statute (42 Pa. C.S. §8301), the beneficiaries of the Wrongful Death Claim, and the proportion of their interests, are as follows:

<u>Name</u>	<u>Date of Birth</u>	<u>Soc. Sec. #</u>	<u>Percent</u>	<u>Amount</u>
Jane R. Dunn	2/18/31	11-11-1111	100%	\$499,416.67

15. The pecuniary losses suffered by the beneficiaries listed in Paragraph 14 are as follows: They have lost the support and services of the decedent.

16. The amount of the settlement allocated to the survival claim is payable to the executrix, for administration and ultimate distribution to the intestate heirs of Joseph B Dunn, Deceased.

Wherefore, Petitioner requests that she be permitted to enter into the settlement recited above, and that the Court enter an Order of Distribution as follows:

To: John K. Trustworthy, Esquire Reimbursement of Costs	\$ 3,500.00
To: John K. Trustworthy, Esquire Counsel Fees	998,833.33
<i>Wrongful Death Claim (50%)</i>	
To: Jane R. Dunn	998,833.32

**11.11**  
**PETITION FOR LEAVE TO SETTLE OR**  
**COMPROMISE WRONGFUL DEATH AND SURVIVAL ACTION**

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*Survival Claim (25%)*

To: Jane R. Dunn, Executrix  
of the Estate of Joseph B. Dunn,  
Deceased, provided that counsel  
shall not distribute any funds to  
the said Executrix until a copy of this  
order is filed with the Register of  
Wills and the additional security as  
may be required by the Register of  
Wills pursuant to 20 Pa. C.S. §3323(b)(3)  
is posted. 499,416.67

*Loss of Consortium Claim (25%)*

To: Jane R. Dunn 499,416.67

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John K. Trustworthy, Esquire

[SEE AFFIDAVIT AT 1.4.1 OR VERIFICATION AT 1.4.3]

*[Consent to Settlement on following page]*

**11.11**  
**PETITION FOR LEAVE TO SETTLE OR**  
**COMPROMISE WRONGFUL DEATH AND SURVIVAL ACTION**

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[SEE CAPTION AT 1.3.4]

**CONSENT TO SETTLEMENT**

I, Joseph B. Dunn, Jr., hereby certify that I am over age eighteen and, as a son of the decedent, Joseph B. Dunn, I am entitled to recover damages from the defendants in this action for his wrongful death.

I have received a copy of and hereby consent to the Petition to Settle Wrongful Death and Survival Actions in the above-captioned matter. I hereby consent to the proposed settlement of all claims against Defendant ABC Corporation because of the death of Joseph B. Dunn for a total amount of \$3,000,000.00, of which \$998,833.33 represents settlement of the wrongful death claim. I further consent to the proposed distribution of the settlement funds.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joseph B. Dunn, Jr.



**11.12**  
**NOTICE OF FILING OF PETITION**  
**TO SETTLE WRONGFUL DEATH AND**  
**SURVIVAL ACTIONS PURSUANT TO Phila. Civ. R. \*2206(B)**

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[SEE CAPTION AT 1.3.4]

**NOTICE PURSUANT TO PHILA. CIV. R. \*2206(B)**

TO: Joseph B. Dunn, Jr.  
Elaine S. Dunn

DATE: May 15, 1996

You are hereby notified that Jane R. Dunn, Executrix of the Estate of Joseph B. Dunn, Deceased, will file on this date a Petition to Settle Wrongful Death and Survival Actions. A copy of that Petition is enclosed.

If you object to the proposed settlement and/or proposed distribution, you must submit your written objections or response to the Petition within thirty (30) days ❖, or on or before June 14, 2001, to the following address:

Motion Court, Room 395 City Hall  
Philadelphia, Pennsylvania 19107

I hereby certify that the within Notice has been mailed to the above-named individuals on the date set forth above.

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John K. Trustworthy  
Attorney for Petitioner

❖ *Unless response period is waived by all parties in interest.*



**11.13**  
**AFFIDAVIT CONFIRMING COMPLIANCE**  
**WITH ORDER (WRONGFUL DEATH/SURVIVAL ACTION)**

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[SEE CAPTION AT 1.3.4]

**AFFIDAVIT**

I, John K. Trustworthy, Esquire, hereby state and affirm that I have complied with the Order issued on July 1, 2000 by the Honorable Anita S. Jones as follows:

By delivery on July 20, 2000 as follows:

- Check #123 - \$998,833.32 to Jane R. Dunn, individually for Wrongful Death Claim
- Check #124 - \$499,416.67 to Jane R. Dunn, Executrix of the Estate of Joseph B. Dunn, Deceased, for Survival Claim
- Check #125 - \$499,416.67 to Jane R. Dunn, individually for Loss of Consortium Claim

I verify that the statements in this Affidavit are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Dated: \_\_\_\_\_

\_\_\_\_\_  
John K. Trustworthy, Esquire  
Attorney for Petitioner

