

**SUPREME COURT OF PENNSYLVANIA
Orphans' Court Procedural Rules Committee**

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Rules 1.3, 2.11, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, and 9.8 of the
Pennsylvania Orphans' Court Rules**

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 1.3, 2.11, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, and 9.8 of the Pennsylvania Orphans' Court Rules, replacing the term "master" with "hearing officer," for the reasons set forth in the accompanying Publication Report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor be officially adopted by the Supreme Court.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
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Harrisburg, PA 17106-2635
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All communications in reference to the proposal should be received by **September 24, 2021**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Orphans' Court Procedural Rules Committee,

Kenneth G. Potter, Esq.
Chair

Rule 1.3. Definitions

The following words and phrases when used in these Rules shall have the following meanings, respectively, unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the Chapter in which the particular Rule is included:

“Guardian” – a fiduciary who has the care and management of the estate, the person, or both, of a minor or an incapacitated person;

“Guardian *ad litem* or Trustee *ad litem*” – a fiduciary who is appointed by a court in a legal proceeding to represent an individual or class of individuals under a legal disability;

“Hearing Officer” – a person who is appointed by the court to investigate any issue of fact and to report findings of fact, conclusions of law, and recommendations to the court.

“Incapacitated Person” – a person determined to be incapacitated under the provisions of Chapter 55 of Title 20 (relating to incapacitated persons);

“Interested Party” – one or more individuals or entities having or claiming an interest in the estate, trust, person or other entity that is the subject of the legal proceeding;

Note: This definitional section is new; but, some of the definitions are substantively identical to the definitions in former Rule 2.3 and other definitions are taken from and are similar to Pa.R.C.P. No. 76. **The term “hearing officer” is used in these Rules in the same manner as “master” in the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. §§ 101 et seq. See, e.g., 20 Pa.C.S. § 751(1).**

Rule 2.11. Appointment of Official Examiners

The court, by local rule or order in a particular matter, may appoint an official examiner who shall examine the assets held by or the transactions of any fiduciary.

Note: Rule 2.11 is substantively identical to former Rule 9.1. The appointment and conduct of Auditors and **[Masters] Hearing Officers** is provided for in Chapter IX.

Chapter IX. Auditors and **[Masters] Hearing Officers**

Rule 9.1. Notice of Hearings

An auditor or **[master] hearing officer** appointed pursuant to 20 Pa.C.S. § 751 shall give notice of scheduled hearings in such manner and to such parties as local rules shall prescribe.

Note: Rule 9.1 is substantively identical to former Rule 8.1.

Rule 9.2. Filing of Report

An auditor or **[master] hearing officer** shall file his or her report within 90 days after his or her appointment, unless the court extends the time upon request.

Note: Rule 9.2 is based upon former Rule 8.2.

Rule 9.4. Form of **[Master's] Hearing Officer's Report**

A **[master's] hearing officer's** report shall state the number, times, dates, and duration of the hearings held, the number, extent, and causes of any delays or continuances, and the basis of the court's jurisdiction, and shall include a statement and discussion of the questions involved, findings of fact and conclusions of law, and specific recommendations.

Note: Rule 9.4 is **substantively** identical to former Rule 8.4.

Rule 9.5. Transcript of Testimony

The transcript of testimony taken before an auditor or **[master] hearing officer** shall be filed with the report.

Note: Rule 9.5 is **substantively** identical to former Rule 8.5.

Rule 9.6. Notice of Filing Report

An auditor or **[master] hearing officer** shall give notice of the filing of the report or of the intention to file the report in such manner and to such parties as local rules shall prescribe.

Note: Rule 9.6 is **substantively** identical to former Rule 8.6.

Rule 9.7. Confirmation of Report

(a) The report of an auditor shall be confirmed in such manner as local rules shall prescribe.

(b) The report of a **[master] hearing officer** shall not be approved until a decree is entered adopting its recommendations.

Note: Rule 9.7 is **substantively** identical to former Rule 8.7.

Rule 9.8. Security for Expenses and Fees

An auditor or **[master] hearing officer**, the accountant, or any interested party may apply to the court at any time for leave to require security for the payment of the auditor's or **[master's] hearing officer's** expenses and fees, and, when such leave is granted, the auditor or **[master] hearing officer** may decline to proceed until security is entered.

Note: Rule 9.8 is substantively identical to former Rule 8.8.

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The purpose of the proposed amendments is two-fold. First, while the term "master" has traditionally identified a quasi-judicial officer and is considered neutral in legal proceedings, a pejorative connotation has been ascribed to the term in modern parlance outside of court. Second, the term has been either already replaced or proposed to be replaced in other bodies of rules. See 47 Pa.B. 2313 (April, 22, 2017) (amendments to the Rules of Juvenile Court Procedure), 51 Pa.B. 1006 (February 27, 2021) (proposed amendments to the Rules of Civil Procedure Governing Domestic Relations proceedings), and 51 Pa.B. 4262 (August 7, 2021) (proposed amendments to the Rules of Civil Procedure). In addition, the Committee observes that a number of judicial districts have also changed this terminology in their local rules.

The Committee acknowledges the term "master" continues to be used in relevant statutes. See, e.g., 20 Pa.C.S. § 751(1) ("a master to investigate any issue of fact and to report his findings of fact, conclusions of law and recommendations to the court"). The Committee proposes adding a new definition of "hearing officer" and amending the Note to Rule 1.3 to clarify that the new term, "hearing officer," is used in the Rules in the same manner as "master" in the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. §§ 101 *et seq.*

The Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.