

**SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.O.C.P. 7.1

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 7.1 of the Pennsylvania Rules of Orphans' Court Procedure for the reasons set forth in the accompanying Publication Report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

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
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All communications in reference to the proposal should be received by **October 17, 2025**. 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,

Kendra D. McGuire, Esq.
Chair

Rule 7.1. [Depositions, Discovery, Production of Documents, Perpetuation of Testimony, and Subpoenas to Attend and Testify] Conduct of Discovery.

[The court, by local rule or order in a particular matter, may prescribe the practice relating to depositions, discovery, production of documents, perpetuation of testimony, and subpoenas to attend and testify. To the extent not provided for by local rule or an order governing a particular matter, the practice relating to depositions, discovery, production of documents, perpetuation of testimony, and subpoenas to attend and testify shall conform to the practice in the Trial or Civil Division of the local Court of Common Pleas.]

(a) As used in this rule, “discovery” means, but is not limited to, procedures relating to subpoenas, notices to attend, notices to produce documents or things, depositions, production of documents, and perpetuation of testimony, as set forth in Pa.R.Civ.P. 234.1–234.9 and Pa.R.Civ.P. 4001 et seq.

(b) Conduct of Discovery.

(1) The conduct of discovery shall be directed by local rule or court order in a particular matter.

(2) In the absence of a local rule or court order, the conduct of discovery shall be governed by the Pennsylvania Rules of Civil Procedure.

[Note: Rule 7.1] Comment: Pa.R.O.C.P. 7.1 is derived from former [Rule 3.6.] Pa.R.O.C.P. 3.6.

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PUBLICATION REPORT

Proposed Amendment of Pa.R.O.C.P. 7.1

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 7.1 of the Pennsylvania Rules of Orphans' Court Procedure. This proposal would amend the current rule governing discovery procedures to include procedures relating to notices to appear and notices to produce documents or things, as well as clarification regarding the hierarchy of relevant authority.

Prior to the 2016 rewrite of many of the Pennsylvania Rules of Orphans' Court Procedure, in the absence of other statutory authority or statewide or local rule, procedures in the orphans' courts were to conform to the "pleading and practice in equity in the local Court of Common Pleas." See former Pa.R.O.C.P. 3.1. The 2016 rewrite rescinded Rule 3.1, while at the same time adopting new rules that brought orphans' court practice more in line with civil division proceedings. A rule analogous to former Rule 3.1 was not enacted following its rescission in 2016.

Currently, Pa.R.O.C.P. 7.1, which was derived from former Rule 3.6 and pertains to discovery practices, authorizes the promulgation of local discovery procedures by local rule or order. In the absence of a local rule or order, the discovery procedures are to conform to the discovery rules in the trial or civil division of the local court of common pleas. See Pa.R.O.C.P. 7.1. The rule is silent on two matters. First, does not reference notices to a party to attend and produce documents or things, as set forth in Pa.R.Civ.P. 234.3. Second, the rule does not address the governing authority if there are neither local orphans' court rules nor local common pleas rules concerning discovery procedures.

The Committee received a request to consider whether Rule 7.1 should be amended to include notices to a party to attend or to produce documents or things. While Rule 7.1 addresses subpoenas, the proper way under the Rules of Civil Procedure to compel a party's appearance at a trial or a hearing is by the filing of a Notice to Attend pursuant to Pa.R.Civ.P. 234.4, a rule that is not incorporated in the Rules of Orphans' Court Procedure. Moreover, with the rescission of Rule 3.1 in 2016, proceeding via Pa.R.Civ.P. 234.4 has not been available in orphans' court matters. Therefore, the Committee is considering recommending that the Court add notices to a party to the compilation of practices encompassed by Rule 7.1.

While discussing this inquiry, the Committee also examined the hierarchy of authority governing discovery practices. Currently, Rule 7.1 provides that the conduct of

discovery is guided by local rule or court order in a particular matter. In the absence of a local rule or court order, the conduct of discovery is governed by the “practice in the Trial or Civil Division of the local Court of Common Pleas.” See Pa.R.O.C.P. 7.1. The Committee notes that not all judicial districts have separate orphans’ court divisions. See 42 Pa.C.S. § 951(d). In those judicial districts, the orphans’ court division is composed of the court of common pleas of that judicial district. See *id.* The Committee believes that the Pennsylvania Rules of Civil Procedure, rather than local civil rules, should guide discovery practice in the absence of local orphans’ court rules of procedure or a court order. Reliance on the Pennsylvania Rules of Civil Procedure will provide greater certainty in this area of practice. Therefore, the Committee is considering recommending that the Court amend Rule 7.1 to reflect that “in the absence of a local rule or court order, the conduct of discovery shall be governed by the Pennsylvania Rules of Civil Procedure.”

Finally, the Committee also proposes stylistic amendments to enhance readability. Citations to the relevant Pennsylvania Rules of Civil Procedure were also added.

The Committee invites all comments, concerns, and suggestions regarding this proposal.