

# **PENNSYLVANIA ORPHANS' COURT RULES PROPOSED NEW RULES**

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No new rules.

# I. PRELIMINARY RULES

## Rule 1.1. Short Title and Citation

These Rules shall be known as the Pennsylvania Orphans' Court Rules, and shall be referred to individually herein as "Rule" and cited as "Pa. O.C. Rule \_\_\_\_\_."

**Note:** Rule 1.1 is substantively similar to former Rule 17.

## Rule 1.2. Construction and Applications of Rules

(a) The Rules adopted by the Supreme Court regulating the practice and procedure of the Orphans' Court Divisions of this Commonwealth, and the Local Rules adopted by such Courts, shall be liberally construed to secure the just, timely and efficient determination of every action or proceeding to which they are applicable. The Court at every stage of any action or proceeding may disregard any error or defect of procedure that does not affect the substantive rights of the parties in interest.

(b) The principles of interpretation and related matters set forth in Pa.R.C.P. 101 through 153 inclusive, with the exception of Pa.R.C.P. 126 and 133, shall apply to these Rules.

(c) Throughout these Rules, the singular shall include the plural.

**Note:** Rule 1.2(a) is identical to former Rule 2.1. Rule 1.2(b) is new. Rule 1.2(c) has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 102.

**Explanatory Comment:** The Orphans' Court Division exercises equitable powers and applies equitable principles.

The question frequently arises as to the effect and use of the notes and explanatory comments which are issued with the Orphans' Court Rules. Notes and explanatory comments are not part of the Rules but they may be used in construing the Rules. The Supreme Court of Pennsylvania has stated in *Laudenberger v. Port Authority of Allegheny County*, 496 Pa. 52, 59, 436 A.2d 147, 151 (1981):

These explanatory notes have not been officially adopted or promulgated by this Court, nor do they constitute part of the rule. However, they indicate the spirit and motivation behind the drafting of the rule, and they serve as guidelines for understanding the purposes for which the rule was drafted.

### **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:

“Accountant” – a Fiduciary or other party who has filed an Account;

“Account” – a financial report by a Fiduciary of the principal and income transactions in the form prescribed by Rule 2.1;

“Adult” – an individual eighteen years of age or over;

“Clerk” – the Clerk of the Orphans’ Court Division or its equivalent;

“Commonwealth” – the Commonwealth of Pennsylvania;

“Court” – the Orphans’ Court Division of the Court of Common Pleas or any judge thereof having jurisdiction;

“Electronic Filing” – the electronic transmission via the Internet of Legal Papers to the Clerk;

“Facsimile copy” – a copy of a document transmitted and received by facsimile equipment;

“Fiduciary” – an executor, administrator, Guardian, trustee or agent, and any other person acting in any similar capacity, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the Court;

“Filing Party” – a party, or an attorney acting on behalf of a party, who files a Legal Paper;

“Guardian” – a Fiduciary who is appointed by the Court to provide for the care and management of the estate, the person, or both, of an individual or class of individuals under a legal disability;

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

“Incapacitated Person” – a person who has been adjudicated incapacitated pursuant to 20 Pa.C.S. § 5501 *et seq.*;

“Interested Party,” or “Interested Parties” – 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;

“Legal Papers” – any document that is filed in connection with an action or proceeding pending before the Court;

“Local Rule” – every Rule promulgated in accordance with Rule 1.5;

“Majority” – when used in reference to age, means of the age of eighteen years or over;

“Minor” – an individual under the age of eighteen years;

“Objector” – an individual or entity filing objections to an Account pursuant to Rule 2.7;

“Personal Representative” – the executor or administrator of any description of a decedent’s estate;

“Petition for Adjudication/Statement of Proposed Distribution” – a uniform, statewide form promulgated by the Supreme Court used in conjunction with the filing of an Account (see Appendix of forms);

“Pleading” – a type of Legal Paper that must be signed and Verified in accordance with Rules 3.13 and 3.14 and includes, but is not limited to, petitions, answers, replies, preliminary objections and motions;

“Publication” – the publication in a newspaper of general circulation where such newspaper is originally issued and circulated;

“Register of Wills” or “Register” – the Register of Wills or its equivalent having jurisdiction or authority to probate wills and grant letters as provided in 20 Pa.C.S. § 901;

“Supreme Court” – the Supreme Court of the Commonwealth;

“Verified” – when used in reference to a written statement of fact by the signer, means supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

**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 substantially similar to Pa.R.C.P. 76.

#### **Rule 1.4. Waiver of Time Limitations**

The Court, upon its own motion or the motion of any party, may extend or shorten any time period prescribed by these Rules.

**Note:** Rule 1.4 is substantively similar to former Rule 2.2, except that former Rule 2.2 only expressly permitted the Court to extend time limits, not shorten the time period as now provided.

## **Rule 1.5. Local Rules**

(a) All previously promulgated Local Rules are hereby vacated, effective \_\_\_\_\_.

(b) The Orphans' Court Divisions of the several judicial districts of this Commonwealth may adopt Local Rules regulating practice and procedure. Such Local Rules shall not be inconsistent with these Rules.

(c) The local rules applicable to practice in the Civil or Trial Division of the local Court of Common Pleas shall not be applicable in the Orphans' Court Division unless these Rules or the local Orphans' Court Division so directs by Local Rule adopted in accordance with this Rule.

(d) Local Rules shall be numbered to correspond to the numbers of these Rules.

(e) All proposed Local Rules and proposed amendments to Local Rules shall be submitted in writing to the Supreme Court Orphans' Court Procedural Rules Committee ("Committee") for review in advance of promulgation. The submitting Court shall not adopt the proposed Local Rule or proposed amendment to the Local Rule until the submitting Court receives written notification from the Committee that the proposed Local Rule or the proposed amendment to the Local Rule is not inconsistent with these Rules.

(f) After written notification is received from the Committee, the submitting Court shall fully comply with all the following requirements:

(1) The Local Rule shall be in writing;

(2) Seven certified copies of the Local Rule shall be filed by the Court promulgating the Local Rule with the Administrative Office of Pennsylvania Courts;

(3) Two certified copies of the Local Rule shall be distributed by the Court promulgating the Local Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and

(4) The Local Rules shall be kept continuously available in the office of the Clerk for public inspection and copying by any person, upon request and the payment of reasonable costs for reproduction.

(g) A Local Rule shall become effective not less than thirty days after the date of publication of the Local Rule in the *Pennsylvania Bulletin*.

(h) No case shall be dismissed nor request for relief granted or denied because of the failure to comply with a Local Rule. In any case of noncompliance with a Local Rule, the Court shall advise the party of the specific provision at issue and provide a reasonable time for the party to comply with the Local Rule.

(i) The Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a Local Rule and may suspend that Local Rule pending action by the Supreme Court on that recommendation.

**Note:** Rule 1.5 is new, but it based upon former Rule 1.2, and has been augmented and modified based upon Pa.R.Crim.P 105.

**Explanatory Comment:** After the Court has alerted the party to the Local Rule pursuant to subparagraph (h), the Court may impose a sanction for subsequent noncompliance either on the individual party or counsel who has entered a written appearance on behalf of a party, but may not dismiss the petition, or grant or deny relief because of non-compliance with the Local Rule. *Cf.* Pa.R.Crim.P. 105 *Comment.*

### **Rule 1.6. Mediation by Local Rule or Special Order**

The Court, by Local Rule or special order, may direct the parties to participate in private or court-sponsored mediation.

**Note:** Rule 1.6 has no counterpart in former Orphans' Court Rules.

**Explanatory Comment:** The confidentiality of mediation is provided by statute, *see* 42 Pa.C.S. § 5949.

### **Rule 1.7 Entry and Withdrawal of Counsel**

(a) **Appearance.** Any counsel appearing before the Court or the Register shall enter a written appearance by filing a praecipe with the Clerk or the Register, by entering counsel's information and signing a cover sheet when Legal Papers are filed, if so provided by Local Rule, or by submitting to the Court or Register an appearance slip as prescribed by Local Rule.

(b) **Withdrawal.** Counsel who has entered an appearance as provided in subparagraph (a) shall not be permitted to withdraw without filing a motion to withdraw and obtaining the Court's leave, unless co-counsel, if any, will remain in representation of the party or there is a simultaneous entry of appearance by other counsel that will not delay the litigation.

**Note:** Rule 1.7 has no counterpart in former Orphans' Court Rules, but is based upon many Local Rules of similar import.

### **Rule 1.8 Forms**

(a) Forms adopted by the Supreme Court for practice and procedure before the Registers of Wills and Orphans' Court Divisions of the Commonwealth shall be used exclusively by all Registers and Clerks. Where Supreme Court adopted forms exist, no other forms shall be allowed or required by Local Rule or practice.

(b) The forms adopted by the Supreme Court for statewide practice are set forth in an Appendix to these Rules. The forms may be revised and supplemented from time to time. The forms shall also be maintained for public access at the official website of the Administrative Office of the Pennsylvania Courts.

(c) A Court may require Legal Papers to be accompanied by a cover sheet or checklist in the form set forth in the Local Rule. A Court that imposes such requirements must promulgate a Local Rule, numbered Local Rule 1.8(c), stating the requirements and setting forth the form of the cover sheet or checklist.

**Note:** Rule 1.8 is substantively similar to former Rule 1.3, but with some modifications.

**Explanatory Comment:** Rule 1.8 has been modified from former Rule 1.3 by now mandating the exclusive use of forms promulgated by the Supreme Court. Previously, forms approved or mandated for use pursuant to Local Rule could be accepted by the local Register of Wills and Clerk so long as the local Register of Wills and Clerk also permitted and accepted forms promulgated by the Supreme Court. Now, if the Supreme Court has promulgated or approved a form for use before the Register or Clerk, then such form is the only one that may be used by the applicant or petitioner and accepted by the local Register of Wills or Clerk. The mandatory state-wide forms are set forth in the Appendix hereto. The current website for electronic access to the forms is found at [www.pacourts.us/forms](http://www.pacourts.us/forms) under the For-the-Public category. The forms posted on the website are capable of on-line completion.

## **II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS**

### **Rule 2.1. Form of Account**

(a) Except where otherwise provided by a special order of the Court in a particular matter, Accounts shall be prepared and filed with the Clerk in conformity with the form of the Model Accounts set forth in the Appendix, or any other form adopted by the Supreme Court subsequent to the date of adoption of these Rules.

(b) As illustrated in the Model Accounts, Accounts shall conform to the following rules:

(1) The dates of all receipts, disbursements and distributions, the sources of the receipts, and the persons to whom disbursements and distributions are made and the purpose thereof shall be stated. When a number of payments have been received from the same source or disbursed or distributed to the same recipient for the same purpose over a period of time, such receipts, disbursements or distributions need not be itemized, but may be stated in total amounts only, with beginning and ending dates within the period covered.

(2) Except where otherwise provided by a special order of the Court in a particular matter, principal and income shall be accounted for separately within the Account.

(3) Assets held by the Accountant on the closing date of the Account shall be separately itemized.

(4) Every Account shall contain:

(i) a cover page;

(ii) a summary page with page references;

(iii) separate schedules, as needed, which set forth receipts, gains or losses on sales or other dispositions, disbursements, distributions, investments made, changes in holdings, and other schedules as appropriate; and

(iv) signature and verification pages by the Accountant. The verification of a Personal Representative's Account shall contain a statement that the Grant of Letters and the first complete advertisement thereof occurred more than four months before the filing of the Account, unless the Personal Representative has been directed by the Court to file an Account prior to that time.

(c) The Uniform Fiduciary Accounting Principles with accompanying commentaries and illustrations, recommended by the Committee on National Fiduciary Accounting Standards in collaboration with the National Center for State Courts, shall serve as an elaboration of the requirements of this Rule.

(d) When a non-profit corporation incorporated for charitable purposes or a cemetery company is required to file an Account, the corporation or company may file its financial statements for its three most recent fiscal years, Verified to be true and correct, in lieu of an Account in the form required by this Rule.

(1) Upon application or its own motion, the Court may require the corporation or company to submit the financial information in some other form or for some longer period.

(2) Upon application or its own motion, the Court may require more or less financial information as it deems appropriate, including some or all of the following:

- (i) the statute or other authority under which the corporation or company was incorporated and the date of its incorporation;
- (ii) the names and addresses of the trustees or directors of the corporation or company;
- (iii) a concise statement of the general purpose of the corporation or company; and
- (iv) a copy of the corporation's or company's charter or articles of incorporation and bylaws.

**Note:** Rule 2.1 is substantively similar to former Rule 6.1 and Rule 12.15, except that certain subparagraphs have been reordered and Rule 12.15 and its Official Note have become subparagraph (d).

**Explanatory Comment:** Piggy-backed Accounts and limited Accounts are permitted pursuant to 20 Pa. C.S. §§ 762, 3501.2, and 7791.1.

## **Rule 2.2. Form; Assets Transfer by the Exercise of a Power of Appointment**

Appointive assets shall be accounted for separately, and testamentary assets shall be segregated from appointive assets.

**Note:** Rule 2.2 is substantively similar to subparagraph (d) of former Rule 6.1.

## **Rule 2.3. Form; Separate Accounts for Minors**

A separate Account shall be filed for the estate of each Minor, unless the Court upon cause shown directs otherwise.

**Note:** Rule 2.3 is identical to former Rule 6.2.

## **Rule 2.4. Petition for Adjudication/Statement of Proposed Distribution; Virtual Representation**

(a) A Petition for Adjudication/Statement of Proposed Distribution shall be filed with the Clerk at the time of filing an Account.

(b) In addition to other information required by the form, the Petition for Adjudication/Statement of Proposed Distribution shall set forth the name of each Interested Party (whether *sui juris* or not) who is not receiving notice of the filing of the Account and the Petition for Adjudication/Statement of Proposed Distribution because another individual or entity is

proposed to represent such Interested Party pursuant to 20 Pa.C.S. § 751(6) or §§ 7721 – 7726, and shall set forth additional facts as to the following:

(1) a statement of the Interested Party’s interest in the property; and

(2) for representation being proposed pursuant to 20 Pa.C.S. § 751(6),

(i) a statement that the Interested Party is not *sui juris* or is unborn, unknown or unascertained; and

(ii) one of the following:

(A) a statement that the proposed representative has an interest in the property similar to that of the Interested Party who is not *sui juris* or is unborn, unknown or unascertained; or

(B) a statement that the proposed representative is the *sui juris* living ancestor of the Interested Party who is not *sui juris* or is unborn, unknown or unascertained and that such living *sui juris* ancestor has an interest in the property that is not adverse to that of the Interested Party who is not *sui juris* or is unborn, unknown or unascertained; and

(3) for representation in trust matters being proposed pursuant to 20 Pa.C.S. §§ 7721 – 7726,

(i) an explanation about how the Interested Party’s interest in the property can be adequately represented by the proposed representative pursuant to 20 Pa.C.S. § 7723,

(ii) a statement that with respect to the matter at issue there is no conflict of interest between the proposed representative and the Interested Party to be represented that will or might affect the impartiality of the proposed representative (except as provided pursuant to 20 Pa.C.S. § 7723(7)); and

(iii) one of the following:

(A) either a statement that the proposed representative has been informed of the right to decline such representation pursuant to 20 Pa.C.S. § 7725 within the time period set forth therein and has failed to inform the trustee in writing that he or she declines to be the proposed representative; or

(B) a statement that the consent to serve signed by the proposed representative is attached as an exhibit to the Petition for Adjudication/Statement of Proposed Distribution.

(c) The Petition for Adjudication/Statement of Proposed Distribution shall be accompanied by such Legal Papers as are required by the form.

(d) The Accountant shall sign and Verify the Petition for Adjudication/Statement of Proposed Distribution in accordance with Rules 3.13 and 3.14.

(e) Counsel for the Accountant shall sign the Petition for Adjudication/Statement of Proposed Distribution in accordance with and pursuant to Rule 3.13.

**Note:** Although substantially modified, Rule 2.4 is derived from former Rule 6.9. One modification is to require averments for virtual representation under 20 Pa.C.S. § 751(6) generally and representation in “trust matters” pursuant to 20 Pa.C.S. § 7721 *et seq.* Another substantial modification is the addition of subparagraph (e) that requires counsel to sign the Petition for Adjudication/Statement of Distribution attesting that the submitted Petition for Adjudication/Statement of Distribution accurately replicates the Model Form and subjects counsel to rules and sanctions as provided in Pa.R.C.P. 1023.1 through Pa.R.C.P. 1023.4. (*See* Rule 3.13.)

**Explanatory Comment:** The Supreme Court has adopted form petitions for adjudication of a decedent’s estate, trust, Guardian of an Incapacitated Person’s estate, Guardian of a Minor’s estate, and the estate of a principal stated by an agent under a power of attorney. These form petitions for adjudication are the exclusive forms for adjudicating an Account, and consequently, the local Court and Clerk must accept these state-wide forms and may not permit or allow any other forms previously permitted under Local Rules. The exclusive state-wide form Petitions for Adjudication/ Statement of Proposed Distribution appear in the Appendix and are available electronically at [www.pacourts.us/forms](http://www.pacourts.us/forms) under the For-the-Public category.

Cover sheets or checklists may be required by Local Rule as permitted by Pa. O.C. Rule 1.8(c).

## **Rule 2.5. Audit Notice**

(a) No Account shall be confirmed unless the Accountant has given written notice of the filing of the Account as provided in subparagraph (d) to the following, as applicable:

(1) every unpaid claimant who has given written notice of his or her claim to the Accountant or who has performed any action that is the equivalent of giving written notice as provided in 20 Pa.C.S. §§ 3384 or 7755;

(2) any other individual or entity with an asserted claim known to the Accountant, that is not shown in either the Account or the Petition for Adjudication/Statement of Proposed Distribution as being either paid in full or to be paid in full; and

(3) any other individual or entity known to the Accountant to have or claim an interest in the estate or trust as a beneficiary, heir, or next of kin, except for those legatees or claimants whose legacies or claims have been satisfied in full as reflected in the Account or will be satisfied in full as proposed in the Petition for Adjudication/Statement of Proposed Distribution.

(b) Notice to an individual or entity shall be given in accordance with Rule 3.18; provided, however, that if the individual or entity is represented by counsel who has entered his or her appearance in accordance with Rule 1.7, notice shall be given to counsel and the individual or entity.

(c) If notice is required to be given to a Personal Representative or trustee, such notice shall also be given to the beneficiaries of the estate or trust, to the extent known.

(d) Written notice, as provided in subparagraph (a) above, shall be mailed at least 20 days prior to the audit or the date by which objections must be filed to the Account, whichever is later, and shall state the date of the audit, and the time and place of the audit to the extent then known. If the time and place of the audit is not known at the time the audit notice is mailed, the audit notice shall state that the time and place of the audit will be provided upon request. A copy of the Account, Petition for Adjudication/Statement of Proposed Distribution, and any Legal Papers filed therewith shall be sent with the audit notice, unless the recipient of the audit notice is a trust beneficiary who is not a “qualified beneficiary” as defined in 20 Pa.C.S. § 7703, or unless the Court, by special order, directs otherwise.

(e) If the audit of an Account is continued, additional notice shall be mailed to those who received written notice of the filing of the Account at least 20 days prior to the date of the continued audit. The additional audit notice shall state the date of the continued audit, and the time and place of the continued audit to the extent then known. If the time and place of the continued audit is not known at the time the additional audit notice is mailed, the additional audit notice shall state that the time and place of the continued audit will be provided upon request.

(f) All audit notices and additional audit notices shall be sent by first-class United States mail, postage prepaid.

(g) A certificate of service and a copy of the audit notice shall be appended to the Petition for Adjudication/Statement of Proposed Distribution or filed with the Clerk prior to the audit or continued audit date.

(h) The audit notice shall contain the information provided in subparagraphs (1), (2), and (3), as applicable, and, in all cases, shall contain a statement as provided in subparagraph (4):

(1) the Accountant’s position on any dispute or interpretation question, known to the Accountant, together with a copy of any instrument or material parts thereof containing any provision which forms the basis of the dispute or question;

(2) the Accountant's understanding of the nature of each contested or unpaid claim, a detailed explanation that specifically identifies the claim, whether the claim is admitted or contested, and if admitted, why the claim is not being paid in full;

(3) if the Account and Petition for Adjudication/Statement of Proposed Distribution is not sent with the audit notice pursuant to subparagraph (d) above, the audit notice shall state the amount of all compensation paid or payable to the Accountant, all attorneys' fees paid or payable, and that copies of the Account and Petition for Adjudication/Statement of Proposed Distribution are available upon request; and

(4) that any recipient of the audit notice who objects to any transaction shown in the Account, any interpretation or position taken by the Accountant, or to any payment, failure to pay, distribution proposed, or any other aspect of the Petition for Adjudication/Statement of Proposed Distribution must file written objections on or before the audit date, with the Clerk, in accordance with Rule 2.7, or if there is no such objection, then no action need be taken and such recipient is deemed to have approved the Account, as stated, and agreed with the Accountant's position on any dispute or question as set forth in the Petition for Adjudication/Statement of Proposed Distribution, if any, and the Accountant's proposed disbursements and distribution.

(i) For an Account with a charitable interest, refer to Rule 7.1.

**Note:** Although substantially modified, Rule 2.5 is derived from former Rule 6.3.

**Explanatory Comment:** Pursuant to the cross-references to 20 Pa.C.S. §§ 3384 and 7755, notice of the claim given to Accountant's counsel of record is notice to the Accountant. *See* 20 Pa. C.S. § 3384(b)(4). If the Court is inclined not to agree with Accountant's position, interpretation or proposed disbursements and distribution, best practice would be for the Court to direct the Accountant to notify the Interested Parties of the Court's position and what additional action must be taken by any Interested Party who objects to the Court's position.

## **Rule 2.6. Filing with the Clerk**

All Accounts shall be filed with the Clerk.

**Note:** Rule 2.6 is derived from what was formerly Rule 6.6. Former Rule 6.4 regarding the time for filing the first Account of the Personal Representative has been deleted as it is codified in 20 Pa.C.S. § 3501.1.

## **Rule 2.7. Objections to Accounts, Petitions for Adjudication/Statements of Proposed Distribution**

(a) Objections to an Account, objections to a Petition for Adjudication/Statement of Proposed Distribution, or objections to an audit notice shall be filed with the Clerk on or before the time and date of the audit, with a copy sent by first-class United States mail, postage prepaid, to the Accountant or the Accountant's counsel, if represented, and to each Interested Party and claimant who received the audit notice, to the extent known.

(b) Objections shall be in writing, with consecutively numbered paragraphs, signed by counsel, or if not represented by counsel, then by all the Objectors in accordance with Rule 3.13, and Verified by at least one of the Objectors in accordance with Rule 3.14.

(c) Each objection shall:

(1) be specific as to description and amount;

(2) raise one issue of law or fact, but if there are several objections relating to the same issue, all such objections shall be included in the same paragraph as subparts; and

(3) briefly set forth the reason or reasons in support thereof.

(d) Upon application or its own motion, the Court may extend the time for filing objections.

**Note:** Although substantially modified, Rule 2.7 is derived from former Rule 6.10.

**Explanatory Comment:** If the audit notice received by the Objector has a service list appended to it setting forth the name and address of each Interested Party who received the audit notice, the Objectors should mail the objections to every name and address appearing on the service list.

## **Rule 2.8. Responsive Pleadings Allowed After Objections are Filed**

(a) Answers to objections, preliminary objections to objections, and answers to preliminary objections are permitted, but a party does not waive any rights by failing to file an answer to objections, preliminary objections to objections, or an answer to preliminary objections.

(b) Answers to objections and preliminary objections to objections must be filed with the Clerk within 20 days after objections are served upon the Accountant or his or her counsel, pursuant to Rule 2.7(a), or the date of the audit, whichever is later. A copy of the answers to objections or preliminary objections to objections shall be provided to the Objector or his or her counsel, if represented, and to each Interested Party and claimant who received the audit notice pursuant to Rule 2.5.

(c) Preliminary objections to objections shall be limited to lack of jurisdiction over the subject matter and lack of standing.

(d) If an answer to objections is filed, no responsive Pleading to the answer is permitted. If preliminary objections are filed, answers to the preliminary objections may be filed within 20 days after the date when the preliminary objections are served upon the Objector or his or her counsel, if represented.

(e) The Court may summarily decide preliminary objections to objections and may do so prior to the filing of an answer to the preliminary objections.

**Note:** Rule 2.8 has no counterpart in former Orphans' Court Rules.

**Explanatory Comment:** Preliminary objections to objections are limited in the grounds that may be raised. Insufficient specificity, failure to conform to law, and the inclusion of scandalous or impertinent matter, *inter alia*, are not properly raised as preliminary objections to Objections. (*Cf.* Rule 3.9 and Pa.R.C.P. 1028).

### **Rule 2.9. Confirmation of Accounts; Awards**

(a) An Account shall be confirmed or Petition for Adjudication/Statement of Proposed Distribution approved when an adjudication or a decree of distribution is issued by the Court and docketed by the Clerk, expressly confirming the Account or approving the Petition for Adjudication/Statement of Proposed Distribution and specifying, or indicating by reference to the Petition for Adjudication/Statement of Proposed Distribution, the names of those to whom the balance available for distribution is awarded and the amount or share awarded to each.

(b) An adjudication confirming an Account discharges the fiduciaries as to those transactions set forth in the Account.

**Note:** Rule 2.9 is substantively similar to former Rule 6.11(a). Former Rule 6.11(b) has been deleted.

### **Rule 2.10. Foreign Heirs and Unknown Distributees**

(a) If it appears that the decedent may have heirs in a foreign country but their location, existence or identity is unknown, the Accountant or his or her counsel shall notify the consulate of the country prior to audit of the facts indicating that the decedent may have had heirs in that country.

(b) Whenever the existence, identity or whereabouts of a distributee is unknown, or it appears that a distributee may not have the actual benefit, use, enjoyment or control of the money or other property if awarded to him or her, or the Court is requested to withhold distribution or to

make an award other than to the distributee or his or her nominee, the Accountant or his or her counsel shall submit to the Court or auditor, as the case may be, a written report outlining the investigation made and the facts relevant thereto. The report shall be in such form and may be filed at such place and time as shall be prescribed by Local Rule or special order of the Court.

**Note:** With only minor modifications, Rule 2.9 is substantially similar to former Rules 13.2 and 13.3. Former Rule 13.1 has been deleted.

### **Rule 2.11. Appointment of Official Examiners**

The Court by Local Rule or special order may appoint an official examiner who shall examine the assets held or transacted by any Fiduciary whenever directed by the Court.

**Note:** Rule 2.11 is substantively identical to former Rule 9.1. The appointment and conduct of Auditors and Masters is provided in Chapter X.

## **III. PETITION PRACTICE AND PLEADING**

### **Petition Practice**

#### **Rule 3.1. Petitions Generally**

Matters may be raised before the Court by written petition filed with the Clerk in conformity with these Rules. Petitions for Adjudication shall be governed by Chapter II.

**Note:** Rule 3.1 has no counterpart in former Orphans' Court Rules.

**Explanatory Comment:** The filing of an Account provides the proceeding for raising questions related to the administration or distribution of an estate or trust, including a guardianship or Minor's estate as well as a decedent's estate. Application to the Orphans' Court may also be commenced by a petition that is Verified or attested by an affidavit. *See* 20 Pa.C.S. §§ 761, 762.

#### **Rule 3.2. Captions; Headings**

Pleadings shall be captioned "Court of Common Pleas of \_\_\_\_\_ County, Orphans' Court Division" and shall include a heading identifying the type of Pleading filed, or in the case of a petition, identifying the nature of the relief requested therein. The caption shall also include the docket number, if one has been assigned to the matter by the Clerk or Register.

**Note:** Rule 3.2 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 1018.

### **Rule 3.3. Contents of All Pleadings; General and Specific Averments**

The following rules shall apply to all Pleadings:

(a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.

(b) Averments of fraud or mistake shall be averred with particularity. Malice, intent, knowledge, and other conditions of mind may be averred generally.

(c) In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of such performance or occurrence shall be made specifically and with particularity.

(d) In pleading an official document or official act, it is sufficient to identify it by reference and aver that the document was issued or the act done in compliance with law.

(e) In pleading a judgment, order or decision of a domestic or foreign court, judicial or administrative tribunal, or board, commission or officer, it is sufficient to aver the judgment, order or decision without setting forth matter showing jurisdiction to render it.

(f) Averments of time and place shall be specifically stated.

(g) Any part of a Pleading may be incorporated by reference in another part of the same Pleading or in another Pleading in the same action. A party may incorporate by reference any matter of record in any state or federal court of record whose records are within the county in which the action is pending, or any matter which is recorded or transcribed verbatim in the office of the prothonotary, clerk of any court of record, recorder of deeds or Register of such county.

(h) When any claim or defense is based upon an agreement, the Pleading shall state specifically if the agreement is oral or written.

(i) When any claim or defense is based upon a writing, the Pleading shall have attached to it a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, identifying the reason thereof, and setting forth the substance of the writing.

**Note:** Rule 3.3 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 1019.

### **Rule 3.4. Form of Petition; Exhibits; Consents; Signing and Verification**

(a) In addition to the requirements of Rules 3.2 and 3.3, a petition shall set forth:

(1) a title indicating briefly the purpose of the petition;

(2) a concise statement of the facts relied upon to establish the Court's jurisdiction and to justify the relief requested;

(3) the questions of law with respect to the petition and the relief requested;

(4) the names and addresses of every Interested Party who has an interest in the matter that is the subject of the petition;

(5) whether the Commonwealth is an Interested Party as required by these Rules or applicable law;

(6) the name of any individual who is an Interested Party but is not *sui juris*, along with the following information:

(i) the name and address of the Guardian, agent under power of attorney, or another individual being proposed to represent such individual, if any;

(ii) if such individual is a Minor and no Guardian has been appointed for such Minor's estate, the Minor's age, the names and addresses of his or her parents, and the individual with whom he or she resides or the facility at which he or she resides; and

(iii) if the individual who is not *sui juris* is proposed to be represented in the matters at issue by another individual or entity pursuant to 20 Pa.C.S. §§ 751(6) or 7721-7726, then subparagraph (7) below shall also apply.

(7) the name of each Interested Party (whether *sui juris* or not) who is not receiving notice of the filing of the petition because another individual or entity is proposed to represent such Interested Party pursuant to 20 Pa.C.S. §§ 751(6) or 7721 – 7726, and shall set forth additional facts as to the following:

(i) a statement of the Interested Party's interest in the property; and

(ii) for representation being proposed pursuant to 20 Pa.C.S. § 751(6),

(A) a statement that the Interested Party is not *sui juris* or is unborn, unknown or unascertained; and

(B) one of the following:

(I) a statement that the proposed representative has an interest in the property similar to that of the Interested Party who is not *sui juris* or is unborn, unknown or unascertained; or

(II) a statement that the proposed representative is the *sui juris* living ancestor of the Interested Party who is not *sui juris* or is unborn, unknown or unascertained and that such living *sui juris* ancestor has an interest in the property that is not adverse to that of the Interested Party who is not *sui juris* or is unborn, unknown or unascertained; and

(iii) for representation in trust matters being proposed pursuant to 20 Pa.C.S. §§ 7721 – 7726,

(A) an explanation about how the Interested Party’s interest in the property can be adequately represented by the proposed representative pursuant to 20 Pa.C.S. § 7723,

(B) a statement that with respect to the matter at issue there is no conflict of interest between the proposed representative and the Interested Party to be represented that will or might affect the impartiality of the proposed representative (except as provided pursuant to 20 Pa.C.S. § 7723(7)); and

(C) one of the following:

(I) either a statement that the proposed representative has been informed of the right to decline such representation pursuant to 20 Pa.C.S. § 7725 within the time period set forth therein and has failed to inform the trustee in writing that he or she declines to be the proposed representative; or

(II) a statement that the consent to serve signed by the proposed representative is attached as an exhibit to such petition.

(8) a prayer for the relief desired.

(b) A proposed form of decree bearing the caption of the case and setting forth the relief requested in the prayer of the petition shall be attached to the front of the petition. In the case of a petition requiring a citation under Rule 3.5(a), a proposed form of preliminary decree for the issuance of the citation to the Interested Parties, subject to subparagraph (a)(7) of this Rule, shall also be attached to the front of the petition.

(c) Petitioner shall attach to the petition such exhibits, consents or approvals as may be required by these Rules, applicable statute, or Local Rule. If the petitioner is unable to attach any necessary exhibit, consent or approval, the petition shall so state and identify the reason thereof.

(d) The petition shall be Verified by at least one of the petitioners in accordance with Rule 3.14 and signed by counsel, or if not represented by counsel, then by all the petitioners in accordance with Rule 3.13.

**Note:** Rule 3.4 is based upon former Rule 3.3 and Rule 3.4, but has been modified to require averments for virtual representation under 20 Pa.C.S. § 751(6) generally and representation in “trust matters” pursuant to 20 Pa.C.S. § 7721 *et seq.* Another modification is the addition of subparagraph (d) that requires petitioner’s counsel to sign the petition, or all of the petitioners to sign the petition, if unrepresented, thereby subjecting these signatories to rules and sanctions as provided in Pa.R.C.P. 1023.1 through Pa.R.C.P. 1023.4. (*See* Rule 3.13.)

### **Rule 3.5. Mode of Proceeding on Petition**

#### **(a) Citation Practice.**

(1) When personal jurisdiction over an Interested Party is required and has not previously been obtained, or when a citation is otherwise required by applicable statute, the petition shall include a preliminary decree for the issuance of a citation to those Interested Parties for whom a citation is necessary to show cause why the relief requested in the petition should not be granted.

(2) The citation to obtain personal jurisdiction and a copy of the petition shall be served upon each cited party at least 20 days before the date when a responsive Pleading is due, in the same manner as service of original process under Pa.R.C.P. 402 through 404, Pa.R.C.P. 420, and Pa.R.C.P. 422 through 424 inclusive. If service cannot be made under the foregoing rules, the Court may order service by Publication in accordance with Pa.R.C.P. 430.

(3) If the citation is not being issued in order to obtain personal jurisdiction over an Interested Party, the petition and the citation may be served by first-class United States mail, postage prepaid, at least 20 days before the date when a responsive Pleading is due.

(4) If the citation and petition are not served at least 20 days before the date when a responsive Pleading is due, the Court, upon request, may authorize the reissuance of the citation.

(5) Once the citation to obtain personal jurisdiction has been served upon the cited party by original process in accordance with subparagraph (a)(2), then notice of a rescheduled return date or any other rescheduled date for filing a responsive Pleading or appearing before the Court may be served by first-class United States mail, postage prepaid, at least 20 days before such rescheduled date.

(5) If an Interested Party (whether *sui juris* or not) is represented by another, the citation and petition shall be served upon the Interested Party’s representative(s) pursuant to Rule 3.18.

(6) Proof of service of the citation shall be filed with the Clerk on or before the return date.

(7) On or before the return date, each Interested Party identified in the citation, or such Interested Party's representative identified in the citation, may file a responsive Pleading in accordance with these Rules.

**(b) Notice Practice.**

(1) In all cases where personal jurisdiction over an Interested Party is not required or has been previously obtained, the petitioner shall, either in advance of filing or contemporaneously therewith, provide a copy of the petition to the Interested Parties identified in the petition. The petition shall have affixed to its first page a notice to plead that shall be in substantially in the following form:

To: \_\_\_\_\_

You are hereby notified to file a written response to the (name of Pleading) within twenty (20) days from the date of notice or the date of filing, whichever is later, or the Court may deem that you have no objection to the relief requested in the petition and may grant such relief without further notice to you.

(2) A certificate of service, listing the names and addresses of those individuals and entities receiving notice of the filing of the petition, shall be appended to, or filed contemporaneously with, the petition.

(3) Unless the Court orders otherwise, each Interested Party identified in the petition, or such Interested Party's representative identified in the petition, may file a responsive Pleading in accordance with these Rules within 20 days of the date of notice or the date of the filing, whichever is later.

(4) If an Interested Party (whether *sui juris* or not) is not receiving notice of the filing of the petition because he or she is represented by another, a copy of the petition shall be sent in accordance with subparagraph (b)(1) to the Interested Party's representative pursuant to Rule 3.18.

**(c) Failure to File a Responsive Pleading.**

An Interested Party identified in the petition who does not file a responsive Pleading shall be deemed to have joined in the petition and the relief requested therein for purposes of any subsequent appeal.

**(d) Consents/Statements of No Objection; Joinders.**

No citation or notice to plead is required where all individuals and/or entities identified in the petition as Interested Parties (or any representative thereof) satisfy one of the following:

(1) they are named petitioners in the petition;

(2) they filed joinders to the petition; or

(3) they signed a document, that is attached to the petition as an exhibit, consenting to or stating that they have no objection to the relief requested in the petition.

**Note:** Subparagraphs (a) and (b) of Rule 3.5 are derived from former Rule 3.5. Subparagraphs (c) and (d) of this Rule have no counterpart in former Orphans' Court Rules.

**Explanatory Comment:** The Court, by Local Rule or special order, may establish a procedure for rules to show cause as provided in Pa.R.C.P. 206.4 *et seq.*

**Responsive Pleadings**

**Rule 3.6. Pleadings Allowed After Petition**

Pleadings allowed after the filing of a petition are limited to:

(a) an answer which can include new matter;

(b) a reply, if an answer contains new matter;

(c) preliminary objections to the petition as permitted by Rule 3.9;

(d) an answer to preliminary objections;

(e) a petition to join one or more persons as parties to the proceeding and an answer thereto; and

(f) motions only as provided in Rule 1.7 (concerning the withdrawal of counsel), Rule 6.2 (regarding judgment on the Pleadings), and Rule 6.3 (regarding summary judgment).

**Note:** Rule 3.6 has no counterpart in former Orphans' Court Rules, but is based, in part, on Pa.R.C.P. 1017.

**Explanatory Comment:** Any Interested Party may file a new petition bringing a new issue or dispute before the Court in the same trust or estate or may file a cross-petition seeking alternative relief.

### **Rule 3.7. Time for Filing and Service of Responsive Pleadings**

(a) A copy of the responsive Pleading shall be sent to the petitioner or his or her counsel, if represented, and all Interested Parties identified in the Petition or counsel representing an Interested Party if so identified in the Petition. A certificate of service, listing the names and addresses of those individuals and entities receiving a copy of the responsive Pleading shall be appended to, or filed contemporaneously with, the responsive Pleading.

(b) A notice to plead in substantially the form provided in Rule 3.5(b)(1) shall be affixed to the first page of an answer that contains new matter and preliminary objections which aver a fact that is not contained in the petition.

(c) Each subsequent Pleading shall be filed within 20 days after service of the preceding Pleading, but no Pleading need be filed unless the preceding Pleading included a notice to plead that complies with the requirements of Rule 3.5(b)(1).

**Note:** Rule 3.7 is new, but is derived from Pa.R.C.P. 1026.

**Explanatory Comment:** The Court, by Local Rule, may establish procedures for the disposition of matters after the Pleadings are closed.

### **Rule 3.8. Headings of Responsive Pleadings**

All responsive Pleadings shall contain a heading identifying the name of the Pleading to which it is responding.

**Note:** Rule 3.8 has no counterpart in former Orphans' Court Rules.

### **Rule 3.9. Preliminary Objections**

(a) **General.** Preliminary objections may be filed to any petition by any Interested Party or the Interested Party's representative.

(b) **Grounds for Preliminary Objections.** Preliminary objections filed to any petition under the Rules of Chapter III are limited to the following grounds:

(1) lack of jurisdiction over the subject matter of the action or lack of jurisdiction over the person, improper venue, or improper form of service;

(2) failure of a Pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

(3) insufficient specificity in a Pleading;

(4) legal insufficiency of a Pleading (demurrer);

(5) lack of standing or lack of capacity to sue, nonjoinder of a necessary party, or misjoinder of a cause of action; and

(6) pendency of a prior action or agreement for alternative dispute resolution.

(c) **Form.** All preliminary objections shall be raised at one time in one Pleading, shall state specifically the grounds relied upon, and may be inconsistent.

(d) **Disposition of Preliminary Objections.**

(1) A party may file an amended Pleading, without consent of any other party and without leave of Court, within 20 days after service of the preliminary objections. If a party files an amended Pleading, the preliminary objections to the original Pleading shall be deemed moot.

(2) In all other instances, the Court shall determine promptly all preliminary objections. If an issue of fact is raised, the Court shall consider evidence by deposition or otherwise.

(e) **Pleadings Allowed Subsequent to the Disposition of Preliminary Objections.**

(1) If the preliminary objections are overruled, the party who filed the preliminary objections shall have the right to file an answer within 20 days after entry of the order overruling the preliminary objections or within such other time as the Court shall direct.

(2) If the filing of an amended petition or a new petition is allowed or required, it shall be filed within 20 days after entry of the order concerning such amended or new petition or within such other time as the Court shall direct.

(3) New preliminary objections may be filed to any amended or new petition in accordance with this Rule.

**Note:** Rule 3.9 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 1028.

**Explanatory Comment:** Preliminary objections raising an issue under subparagraphs (b)(2), (b)(3), (b)(4), and in some instances (b)(1), may be determined from the facts of record so that further evidence is not required. In

such situations, the Court may summarily decide preliminary objections prior to the filing of an answer.

Preliminary objections raising an issue under subparagraphs (b)(5) and (b)(6), and in some instances (b)(1), cannot be determined from the facts of record. In such situations, if the preliminary objections are not endorsed with a notice to plead in the form required by Rule 3.5(b)(1), no reply will be required under Rule 3.10, and the preliminary objections will be overruled.

Pleadings may be amended only in accordance with subparagraphs (d)(1), (e)(2) or Rule 3.15.

For preliminary objections to Objections to an Account, Petition for Adjudication/Statement of Proposed Distribution or an audit notice, *cf.* Rule 2.8(c) for a more limited scope of permitted preliminary objections.

### **Rule 3.10. Denials; Effect of Failure to Deny**

(a) A responsive Pleading shall admit or deny each averment of fact in the preceding Pleading or any part thereof. Admissions and denials in a responsive Pleading shall refer specifically to the paragraph in which the averment admitted or denied is set forth. A party denying only a part of an averment shall specify so much of it as is admitted and shall deny the remainder.

(b) Averments in a Pleading to which a responsive Pleading is required are admitted when not denied specifically or by necessary implication. A general denial or a demand for proof, except as provided by subparagraph (c) of this Rule, shall have the effect of an admission.

(c) A statement by a party that after reasonable investigation the party is without knowledge or information sufficient to form a belief as to the truth of an averment shall have the effect of a denial.

(d) Averments in a Pleading to which no responsive Pleading is required shall be deemed to be denied.

(e) A responsive Pleading shall be signed by counsel, or if not represented by counsel, then by all the respondents in accordance with Rule 3.13. A responsive Pleading that admits or denies any averment of fact shall be Verified by at least one of the respondents in accordance with Rule 3.14.

**Note:** Rule 3.10 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 1029.

**Explanatory Comment:** Reliance on subparagraph (c) does not excuse a failure to admit or deny a factual allegation when it is clear that the respondent must know whether a particular allegation is true or false. *Cf. Cercone v. Cercone*, 254 Pa. Super. 381, 386 A.2d 1 (1978).

### **Rule 3.11. Answer with New Matter.**

All applicable affirmative defenses shall be pleaded in the answer under the heading “New Matter.” A party may set forth as new matter any other material facts that are not merely denials of the averments of the preceding Pleading.

**Note:** Rule 3.11 has no counterpart in former Orphans’ Court Rules, but is derived from Pa.R.C.P. 1030.

## **Pleadings in General**

### **Rule 3.12. Format of Pleadings and Other Legal Papers**

All Legal Papers filed with the Court must conform to the following requirements:

- (a) The document shall be on 8 ½ inch by 11 inch paper.
- (b) The document shall be prepared on white paper (except for dividers and similar sheets) of good quality.
- (c) The text must be double spaced, but quotations more than two lines long may be indented and single-spaced. Margins must be at least one inch on all four sides.
- (d) The lettering shall be clear and legible and no smaller than font 12. The lettering shall be on only one side of a page, except that exhibits and similar supporting documents may be double-sided.
- (e) Every Pleading shall be divided into paragraphs numbered consecutively. Each paragraph shall contain as far as practicable only one material allegation.

**Note:** Rule 3.12 has no counterpart in former Orphans’ Court Rules, but is derived from Pa.R.C.P. 204.1 and Pa.R.C.P. 206.1(c).

**Explanatory Comment:** This Rule governing the format of Legal Papers is modeled after Pa.R.C.P. 204.1 and thus is substantively identical to Pa.R.A.P. 124(a) and Pa.R.Crim.P. 575(C). *See* Explanatory Comment to Pa.R.C.P. 204.1. The goal is to foster uniformity in the formatting of Legal Papers filed in all judicial tribunals, regardless of the level of court or division of court; this uniformity, in turn, will promote the objective of the unified judicial system under the Constitution of 1968 and facilitate the statewide practice of law.

### **Rule 3.13. Signing**

(a) Every Pleading, and any brief or memorandum of law, of a party represented by counsel who has entered an appearance shall include counsel's name and shall be signed by counsel. Every Pleading, and any brief or memorandum of law, of a party not represented by counsel of record shall include the name of the party, shall be signed by the party, and shall include an address where Legal Papers may be served and a telephone number.

(b) If the Legal Papers include a facsimile telephone number and/or email address, that party or his or her counsel agrees to accept service of Legal Papers by transmitting a Facsimile copy or by electronic transmission.

(c) By signing a Legal Paper, the party and counsel are subject to Pa.R.C.P. 1023.1 through 1023.4. The Court has authority to impose sanctions and grant relief in accordance with Pa.R.C.P. 1023.4.

**Note:** Rule 3.13 has no counterpart in former Orphans' Court Rules, but subparagraphs (a) and (b) but are derived from Pa.R.C.P. 1025. Rule 3.13(c) is based upon Pa.R.C.P. 1023.1 *et seq.*

**Explanatory Comment:** The Official Note appearing after Pa.R.C.P. 1023.1 and the Explanatory Comment appearing after Pa.R.C.P. 1023.4 are fully incorporated by reference herein.

### **Rule 3.14. Verification**

(a) A verification shall be attached to every Pleading, Verified by oath or an affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities, averring that every fact not appearing of record in the action or containing a denial of fact is true upon the signer's personal knowledge or information and belief. A Pleading may be Verified upon personal knowledge as to a part and upon information and belief as to the remainder. The signer need not aver the source of the information or expectation of ability to prove the averment or denial at the trial.

(b) If a Pleading contains averments that are inconsistent in fact, the verification shall state that the signer has been unable after reasonable investigation to ascertain which of the inconsistent averments, specifying them, are true but that the signer has knowledge or information sufficient to form a belief that one of them is true.

(c) The verification shall be made by one or more of the parties filing the Pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the Court and the verification of none of them can be obtained within the time allowed for filing the Pleading. In such cases, the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party.

**Note:** Rule 3.14 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 1024.

### **Rule 3.15. Amendment**

A party may amend a Pleading pursuant to Rule 3.9(d)(1) or, at any time, either by written consent of all other parties filed with the Clerk or by leave of Court. The amended Pleading may aver transactions or occurrences that have happened before or after the filing of the original Pleading. An amendment may be made to conform the Pleading to the evidence offered or admitted.

**Note:** Rule 3.15 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 1033.

**Explanatory Comment:** Rule 3.9(d)(1) provides for amending a Pleading after the filing of preliminary objections.

### **Rule 3.16. Pleading More Than One Cause of Action; Alternative Pleadings**

(a) More than one cause of action may be stated in a Pleading. Each cause of action shall be stated in a separate count, preceded by a heading, and the count shall name the parties to that cause of action and shall contain a separate request for relief.

(b) Causes of action and defenses may be pleaded in the alternative.

**Note:** Rule 3.16 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 1020.

## **Service of Legal Papers**

### **Rule 3.17. Service of Legal Papers Other than Citations or Audit Notices**

(a) Copies of all Pleadings, and any brief or memorandum of law in connection therewith, other than audit notices served pursuant to Rule 2.5 or citations served pursuant to Rule 3.5(a), filed in an action or served upon any party to an action shall be served upon every other party to the action. Service shall be made:

(1) by handing, or mailing by first-class United States mail, postage prepaid, a copy to, or leaving a copy for, each party at the address of the party's counsel of record listed on an entry of appearance or prior Pleading of the party, or at such other address as a party may agree, or

(2) by transmitting a Facsimile copy to the party's counsel of record as provided by subparagraph (c), or

(3) by electronic transmission in accordance with Rule 8.1(h).

(b) If there is no attorney of record,

(1) Service shall be made by handing a copy to the party or by mailing a copy to, or leaving a copy for, the party at the address listed on an entry of appearance or prior Pleading or the residence or place of business of the party, or by transmitting a Facsimile copy as provided by subparagraph (c) or by electronic transmission in accordance with Rule 8.1(h).

(2) If such service cannot be made, service shall be made by leaving a copy at, or mailing a copy to, the last known address of the party to be served.

(c) (1) A Facsimile copy may be served or a copy transmitted electronically if the parties agree thereto or if a facsimile telephone number and/or email address is included on an entry of appearance or prior Legal Paper filed with the Court.

(2) A Facsimile copy shall begin with a facsimile cover sheet containing:

(i) the name, firm, address, telephone number, of both the party making service and the party served,

(ii) the facsimile telephone number of the party making service and the facsimile telephone number to which the Facsimile copy was transmitted,

(iii) the title of the Legal Paper served, and

(iv) the number of pages transmitted.

(3) Service is complete when transmission is confirmed as complete.

(d) The Court may order notice by Publication in accordance with Pa. R.C.P. 430.

**Note:** Rule 3.17 has no counterpart in former Orphans' Court Rules, but is based on Pa.R.C.P. 440 with modifications.

**Explanatory Comment:** The Notes and the Explanatory Comment appearing after Pa.R.C.P. 440 are fully incorporated by reference herein.

### **Rule 3.18 Notice or Citation to Individuals and Entities**

(a) Whenever notice or a citation is to be given to an individual:

(1) If the individual is *sui juris*, or if the individual has reached the age of 18 and is believed to be incapacitated (within the meaning of 20 Pa. C.S. § 5501 *et seq.*), but for whom no Guardian is known to have been appointed by a Pennsylvania Court or by the court of any other jurisdiction (including a Guardian ad litem with respect to the matter at issue), then such notice or citation shall be provided:

(i) to the individual; or

(ii) if the individual will be represented with respect to the matter at issue by a representative under the provisions of 20 Pa.C.S. §§ 7721 – 7726, then such notice or citation may instead be provided to such representative, including notice as required by 20 Pa.C.S. § 7725 that each such representative may decline to act as a representative for the *sui juris* individual.

(2) If the individual is not *sui juris*, or is unborn, unknown or unascertained, then such notice or citation shall be provided to such individual’s representative with respect to the matter at issue under the provisions of 20 Pa.C.S. §§ 751(6) or 7721 – 7726, including notice required by 20 Pa.C.S. § 7725 that each such representative may decline to act as a representative for the individual; provided, however, that if a Guardian or Trustee ad litem has been appointed to represent such individual by the Court having jurisdiction over the matter at issue, then such notice or citation shall also be provided to the Guardian or Trustee ad litem.

(b) Whenever notice or a citation is to be given to an entity, then such notice or citation shall be provided:

(i) to the entity, through the entity’s duly authorized representative; or

(ii) if the entity will be represented with respect to the matter at issue by a representative under the provisions of 20 Pa.C.S. §§ 7721 – 7726, then such notice or citation may instead be provided to such representative, including notice as required by 20 Pa.C.S. § 7725 that each such representative may decline to act as a representative for the entity.

(c) If counsel has entered an appearance on behalf of an individual, entity or representative who would otherwise receive notice or a citation as provided under subparagraphs (a) and (b), then such notice or citation shall instead be given to counsel, except as provided in Rule 2.5(b) in which the audit notice must be given to both counsel and the individual, entity or representative.

(d) Notwithstanding the foregoing, if the Court having jurisdiction over the matter determines that the representation is or might be inadequate, then the Court may in its discretion direct to whom notice or a citation shall be provided.

**Note:** Rule 3.18 is derived from former Rule 5.2, but has been substantially modified to address virtual representation under 20 Pa.C.S. § 751(6) generally and representation in “trust matters” pursuant to 20 Pa.C.S. §§ 7721 *et seq.* Cf. Rule

2.5(b) for different requirements that the audit notice must be mailed to the individual or entity and to counsel representing such individual or entity.

## **IV. RULES GOVERNING SPECIFIC TYPES OF PETITIONS**

### **Rule 4.1 Declaratory Judgment**

(a) **Commencement of Action.** An action for declaratory judgment shall be commenced by petition and citation directed to the Interested Parties.

(b) **Contents of Petition.** In addition to the requirements provided by the Rules in Chapter III, the petition shall contain sufficient averments to entitle petitioner to the declaratory relief requested under the Pennsylvania Declaratory Judgments Act including:

- (1) a concise statement of the facts relied upon to justify a declaratory judgment proceeding;
- (2) the question of law, if any, with respect to which declaratory relief is requested;
- (3) identify all Interested Parties; and
- (4) a prayer for the relief desired.

(c) **Exhibits.** A copy of the will, trust, other governing instrument, or any other document to be construed shall be attached to the petition as an exhibit.

(d) **Preliminary Decree.** If necessary, a form of preliminary decree directing the issuance of a citation to every Interested Party shall be attached to the face of the petition as the first page.

(e) **Final Decree.** A form of final decree setting forth the declaratory relief shall be attached to the face of the petition and after the preliminary decree if one included with the petition.

**Note:** Rule 4.1 has no counterpart in former Orphans' Court Rules, but is derived from Philadelphia Local Rule 1.2.P.

### **Rule 4.2. Family Exemption**

(a) In addition to the requirements provided by the Rules in Chapter III, a petition for a family exemption shall set forth the following:

- (1) facts establishing a prima facie right of the petitioner to the exemption;

(2) if the exemption is claimed from real estate, a request for the appointment of two appraisers to appraise the same;

(3) a description of the property claimed; and

(4) whether allowance of the claim prior to the audit or confirmation of the Account is requested.

(b) The manner of appraising the property, of filing and confirming the appraisal, and of advertising or giving notice thereof shall be prescribed by Local Rules.

(c) The Court may, at the request of the petitioner, award in distribution, specific real estate included in the Account in satisfaction of, or on account of, the family exemption without compliance with the procedure outlined in subparagraphs (a)(2), (a)(3), and (b) of this Rule, if all Interested Parties agree in writing that the petitioner is entitled to the family exemption and to the valuation at which such real estate is to be awarded.

**Note:** Rule 4.2 is substantively similar to former Rule 12.1.

**Explanatory Comment:** The Act of 1959, Nov. 10, P.L. 1450 (20 P.S. § 320.211) increased the exemption to \$1,000.00 where decedent died after that date. The Act of 1963, June 11, P.L. 124 (20 P.S. § 320.211) added parents as possible claimants. The suggested general language not only avoids exceptions for effective dates but also may obviate future revisions of the Rule should the Legislature continue to expand the scope of the exemption. Subparagraph (c) is an adaptation of a similar provision in Rule 4.3. It would facilitate the award where all Interested Parties are in accord.

### **Rule 4.3. Intestate Share to Surviving Spouse from Real Estate**

(a) When no Account is filed and all or part of the spouse's intestate share under 20 Pa.C.S. § 2102 is claimed from real estate, the claim shall be presented by petition, which shall conform to the requirements provided by the Rules in Chapter III, and shall set forth the following:

(1) facts establishing a prima facie right of the spouse to the statutory intestate share;

(2) a description of the real estate; and

(3) a request for the appointment of two appraisers to appraise the real estate.

(b) The manner of appraising the property, of filing and confirming the appraisal, and of advertising or giving notice thereof shall be prescribed by Local Rules.

(c) The Court may, at the request of the surviving spouse, award specific real estate in satisfaction of, or on account of, the spouse's statutory intestate share without compliance with the procedure outlined in subparagraphs (a) and (b) of this Rule if all Interested Parties agree in

writing that the surviving spouse is entitled to the statutory share and to the valuation at which such real estate is to be awarded.

**Note:** Rule 4.3 is substantively identical to former Rule 12.2 with minor modifications, including replacing the words “statutory allowance” and “allowance” with “statutory intestate share” and “intestate share”, respectively.

**Explanatory Comment:** Deletion of specific reference to the former statutory allowance of \$10,000.00 increased to \$20,000.00 allows greater flexibility. The Rule would not have to be amended in the future if the statutory amount should be increased. With the broader language employed there is no longer any need to refer to the specific statutory provisions. As amended, the Rule recognizes the present practice of making the award of real estate in satisfaction of the spouse’s allowance a part of the distribution decree when a court accounting is filed. While this Rule will be employed only in a minimum of instances for the foregoing reason and also because of the availability of Section 3546 of the Probate, Estates and Fiduciaries Code, it, nevertheless, is considered advisable to preserve in its altered form as a guide when it is to be employed.

#### **Rule 4.4. Revocation, Vacating or Extension of Time for Filing of Surviving Spouse’s Election**

(a) In addition to the requirements provided by the Rules in Chapter III, a petition to revoke or vacate an election of a surviving spouse to take against the will and other conveyances of the decedent shall set forth the following:

(1) the date of the decedent’s death, whether his will has been probated and, if so, a reference to the place of recording;

(2) the name and capacity of the Fiduciary of the decedent’s estate, if any, and a reference to the record of his appointment;

(3) the names, addresses and relationship, if known, of the other Interested Parties and the nature and the extent of each of their interests;

(4) the names of the Interested Parties who have consented to the revocation or vacating of the election and the names of those who have not consented;

(5) a description and valuation of the decedent’s real and personal property affected by the election;

(6) the date and manner of executing the election desired to be revoked or vacated; whether the same has been recorded, registered or filed, and if so, the date and place thereof;

(7) whether the surviving spouse has made or executed and delivered at any place an election contrary to that desired to be revoked or vacated and whether that election has been recorded, registered or filed, and if so, the date and place thereof;

(8) the facts relied upon to justify the revocation or vacating of the election; and

(9) a request for a citation upon the Interested Parties who have not joined in the petition or who have not consented thereto to show cause why the election should not be revoked or vacated.

(b) A petition for the extension of the time in which the surviving spouse may file an election to take against the will and other conveyances shall be filed prior to the expiration of six months as provided in 20 Pa.C.S. § 2210 with the Clerk of the county where decedent's will was probated in such form as Local Rules may prescribe.

(c) Notice of the filing of any petition under this Rule shall be provided to the personal representative of decedent's estate in accordance with Rule 3.5(b)(1).

**Note:** Rule 4.4 is substantively identical to former Rule 12.3, except for the addition of the statutory reference and providing the place for filing the extension of time as is required by 20 Pa.C.S. § 2210.

#### **Rule 4.5. Appointment of a Guardian ad litem or a Trustee ad litem**

(a) On petition of the Accountant or any Interested Party, or upon its own motion, the Court may appoint one or both of the following if the Court considers that the interests of the non *sui juris* individuals are not adequately represented:

(1) a Guardian ad litem to represent a Minor or a person believed to be incapacitated (within the meaning of 20 Pa. C.S. § 5501 *et seq.*), but for whom no Guardian of the estate is known to have been appointed by a Pennsylvania Court or by the court of any other jurisdiction; and/or

(2) a Trustee ad litem to represent an absentee, a presumed decedent, or unborn or unascertained persons not already represented by a Fiduciary.

(b) The same person may be appointed as Guardian ad litem and Trustee ad litem when the interests represented are not conflicting. Application for such an appointment may be made in one petition.

(c) In addition to the requirements provided by the Rules in Chapter III, the petition shall set forth the following:

(1) the name, age and address of the Minor or person believed to be incapacitated (within the meaning of 20 Pa. C.S. § 5501 *et seq.*), but for whom no Guardian of the estate is known to have been appointed;

(2) the relationship, if any, of such non *sui juris* individual to any Interested Party and to the decedent or settlor;

(3) the interest of such non *sui juris* individual in the property or in the matter at issue;

(4) the provisions of any instrument creating such interests;

(5) the necessity for such interests to be represented by a Guardian ad litem or a Trustee ad litem; and

(6) the proceedings in which such non *sui juris* individual are to be represented.

(d) A decree appointing a Guardian ad litem or a Trustee ad litem shall specify the period or proceedings during which the Guardian or Trustee ad litem shall act as such.

**Note:** Rule 4.5 is substantively identical to former Rule 12.4, with some modifications to provide for person believed to be incapacitated within the meaning of 20 Pa.C.S. §§ 5501 *et seq.*, but not yet adjudicated as such or for whom no Guardian is known to have been appointed.

#### **Rule 4.6. Appointment of a Guardian for the Estate or Person of a Minor**

(a) A petition for the appointment of a Guardian for the estate or person of a Minor shall be filed by the Minor, if he or she is fourteen years of age or older, and if under such age, by his or her parents, the person with whom he or she resides, the person by whom he or she is maintained, or by any person as next friend of the Minor.

(b) **Contents of Petition.** In addition to the requirements provided by the Rules in Chapter III, the petition shall set forth the following:

(1) the name, address and age of the Minor, and the names and addresses of his or her parents, if living;

(2) the name, address and relationship of the petitioner to the Minor, if the petition is not filed by the Minor;

(3) whether the Minor's parents consent to the petition, if the petition is not being filed by the Minor's parents;

(4) the need for the appointment of a Guardian;

(5) that the Minor has no Guardian presently appointed or that a Guardian already appointed has died or has been discharged or removed by the Court, together with the date of such death, discharge or removal and a reference to the Court order discharging or removing the previously appointed Guardian;

(6) the name, address and age of the proposed Guardian and his or her relationship to the Minor, if any;

(7) the nature of any interest of the proposed Guardian adverse to that of the Minor including, *inter alia*, a reference to any estate in which the Minor is interested and in which the proposed Guardian is a Fiduciary or surety or employee of a Fiduciary or surety therein;

(8) if the petition is for the appointment of a Guardian of the person, the religious persuasion of the Minor's parents and the religious persuasion of the proposed Guardian;

(9) if the petition is for the appointment of a Guardian of the estate of the Minor, an itemization of the assets of such estate, their location, approximate value and income, if any;

(10) if the Minor is entitled to receive any money as a party to any action or proceeding in any court, a reference to the court record and the amount to which the Minor is entitled; and

(11) that notice has been given to the United States Veterans' Administration or its successor, if the Minor is the child of a veteran and insurance or other gratuity is payable to him or her by the United States Veterans' Administration, or its successor.

(c) **Exhibits.** The following shall be attached to the petition:

(1) the proposed Guardian's written consent to the appointment; and

(2) the Minor's parents written consents to the petition if they are not the petitioners and if they consent to the petition.

(d) If the appointment of the same person is requested as Guardian of the estates or persons of several Minors who are children of the same parent(s), a single petition shall be filed for such appointments, but shall include in the caption separate dockets numbers for each Minor.

(e) If the Minor is fourteen years of age or older, the Minor's appearance in Court at the time of the hearing shall be governed by Local Rule.

**Note:** Rule 4.6 is substantively identical to former Rule 12.5, except clarifying that separate docket numbers must be assigned to each Minor.

**Explanatory Comment:** Although a single petition may be filed for the appointment of the same person as Guardian of the estates or persons of several Minors, separate Accounts must be filed for the estate of each Minor. *See* Rule 2.3.

#### **Rule 4.7. Appointment of a Trustee**

(a) **Contents of Petition.** A petition for the appointment of a trustee may be filed by a resigning trustee, the current trustee or any trust beneficiary and shall conform to the requirements provided by the Rules in Chapter III and set forth the following:

(1) the situs of the trust and if any Court previously has exercised jurisdiction over the trust;

(2) the provisions of the instrument creating the trust;

(3) the general character, location, and value of the trust property;

(4) the reasons why any individual or corporation named in the trust instrument as trustee or successor trustee is unable or unwilling to serve;

(5) the names, addresses and relationships of all trust beneficiaries and that those who have not joined in or consented to the petition have been given notice of the filing of the petition, or the reason for failing to give any qualified beneficiary such notice;

(6) if the trust includes a charitable interest for which notice is required under Rule 7.1, whether the Office of the Attorney General has been given notice, or the reason for failing to give the Office of the Attorney General such notice, and whether the Office of the Attorney General has issued a statement of no objection to the petition; and

(7) the name and address of the proposed trustee and his or her relationship, if any, to any Interested Party; and

(8) whether the proposed trustee has any interest in the trust.

(b) **Exhibits.** The following shall be attached to the petition:

(1) a copy of the trust instrument;

(2) the signed written consents of all qualified beneficiaries as defined in § 7703 who have not signed or joined in the petition, but who consent to the appointment of the proposed trustee;

(3) the statement of no objection from the Office of the Attorney General if the trust includes a charitable interest for which notice is required under Rule 7.1; and

(4) The proposed trustee's written consent to the appointment.

**Note:** Rule 4.7 is derived from former Rule 12.6, but it has been modified to reflect the additions and changes required by 20 Pa.C.S. §§ 7764.

#### **Rule 4.8. Discharge of Fiduciary and Surety**

(a) **Account Previously Filed.** A petition for the discharge of a Fiduciary and his or her surety, or of the surety alone, subsequent to an Account having been filed and confirmed, shall conform to the requirements provided by the Rules in Chapter III and set forth the following:

- (1) the nature of the Fiduciary capacity;
- (2) the date and a reference to the record of the Fiduciary's appointment;
- (3) the date of filing the Fiduciary's Account and the date of the Court's adjudication or order confirming the Account absolutely; and
- (4) that the entire estate has been distributed to the creditors and parties entitled thereto and that no other property belonging to the estate has been received or remains to be accounted for by the Fiduciary.

(b) **Account Annexed.** In lieu of filing and advertising an Account, a Personal Representative who is distributing an estate under the provisions of 20 Pa.C.S. § 3531, or the Guardian of the estate of a Minor who has attained Majority and whose gross estate does not exceed the statutory limitation of an administration without appointment of a Guardian, may annex an Account to the petition for discharge with the information required above, modified to indicate any previous distribution, and suggesting the proper distribution of any balance on hand.

**Note:** Rule 4.8 is substantively identical to former Rule 12.7.

**Explanatory Comment:** Pursuant to Rule 2.8(b), an adjudication of an Account discharges the Fiduciaries as to the transactions set forth in the adjudicated Account.

#### **Rule 4.9. Partition**

In addition to the requirements provided by the Rules in Chapter III, a petition for partition shall set forth the following:

- (a) the date of the decedent's death and whether he or she died testate or intestate, in whole or in part;
- (b) a description, giving the size and location, of the property to be partitioned, the liens and charges to which it is subject and the rents due from tenants thereof, and that the property has not been partitioned or valued for partition;
- (c) the names, addresses and relationship of those interested in the land to be partitioned, the extent of the interest of each of such person, and, if such interest is created by a recorded deed or will, a reference to such record; and

(d) a request for a citation upon the Interested Parties who have not joined as petitioners to appear and show cause why an inquest in partition should not be granted.

**Note:** Rule 4.9 is substantively identical to former Rule 12.8.

#### **Rule 4.10. Public Sale of Real Property**

(a) In addition to the requirements provided by the Rules in Chapter III, a petition for the public sale of real property shall set forth the reason for filing the petition, a description, stating the size and location of the property to be sold, and the liens and charges to which it is subject.

(b) Public notice of the sale shall be given as required by law and as may be further required by the Court by Local Rule or special order.

**Note:** Rule 4.10 is substantively identical to former Rule 12.9.

#### **Rule 4.11. Private Sale of Real Property or Options Therefor**

(a) **Contents of Petition.** In addition to the requirements provided by the Rules in Chapter III, a petition for the private sale or exchange of real property, or for the grant of an option for any such sale or exchange shall set forth the following:

(1) the information required in a petition for the public sale of real property under Rule 4.10(a); and

(2) the name and address of the proposed purchaser and the terms of the proposed sale, exchange or option, the consideration therefor, and that this is more than can be obtained at public sale.

(b) **Exhibits.** The petition shall be supported by the affidavits of at least two competent persons setting forth that they have inspected the real property to be sold, exchanged or optioned and, in the case of an exchange, the property to be received, that they are acquainted with the value of real estate in the locality of such property, that they are not personally interested in the proposed sale, exchange or option, and that in their opinion the proposed consideration is more than can be obtained at public sale.

**Note:** Rule 4.11 is substantively identical to former Rule 12.10.

#### **Rule 4.12. Mortgage or Lease of Real Property**

In addition to the requirements provided by the Rules in Chapter III, a petition to mortgage or lease real property shall set forth the following:

(a) the information required in a petition for the public sale of real property, as nearly as may be; and

(b) the name of the proposed mortgagee or lessee and the terms of the proposed mortgage or lease.

**Note:** Rule 4.12 is substantively identical to former Rule 12.11.

#### **Rule 4.13. Inalienable Property**

In addition to the requirements provided by the Rules in Chapter III, a petition under Chapter 83 of the Probate, Estates and Fiduciaries Code to sell real property at public or private sale or to mortgage real property shall set forth the facts required by 20 Pa.C.S. § 8301, as applicable, and the following:

(a) the names of all Interested Parties who have not joined as petitioners or provided their consent to the petition, and their addresses, if known; and

(b) if the petition is for the public or private sale of real property subject to a life estate with remainder over and the real property is not held in trust, the petition shall request the appointment of a named trustee to make the sale and hold the proceeds in trust.

**Note:** Rule 4.13 is substantively identical to former Rule 12.12.

#### **Rule 4.14. Designation of a Successor Custodian**

A petition for the designation of a successor custodian under the Pennsylvania Uniform Gifts to Minors Act shall conform to the requirements provided by the Rules in Chapter III and set forth as far as practicable the information required in a petition for the appointment of a Guardian of the estate of a Minor.

**Note:** Rule 4.14 is substantively identical to former Rule 12.13.

#### **Rule 4.15. Confirmation of Appointment.**

(a) **Contents of Petition.** Where a trustee is appointed pursuant to a trust instrument or by the unanimous agreement of all qualified beneficiaries as defined in 20 Pa. C.S. § 7703, a petition for the Court to confirm such appointment shall conform to the requirements provided by the Rules in Chapter III and shall set forth the following:

(1) the reason for filing the petition; and

(2) the pertinent provisions of the instrument creating the trust and providing for the appointment of the trustee.

(b) **Exhibits.** The following shall be attached to the petition:

(1) a copy of the trust instrument duly certified by counsel to be a true and correct copy; and

(2) the designated trustee's written consent to service.

**Note:** Rule 4.15 is substantively identical to former Rule 12.14.

## **V. GUARDIANSHIPS OF INCAPACITATED PERSONS**

### **Rule 5.1. Form of Citation and Notice**

The citation and notice to be attached to and served with a petition for adjudication of incapacity and the appointment of a Guardian shall be in the form approved by the Supreme Court.

**Note:** Former Rules under Rule 14 (i.e., Rule 14.1 *et seq.*) have been relocated to this Chapter V. Rule 5.1 is substantively identical to former Rule 14.5, except that the notice and citation must be in the form approved by the Supreme Court and not in a substantially similar form. *See* Rule 1.8. Former Rule 14.1 has been deleted as it was a restatement of what is already provided in Rule 1.5.

**Explanatory Comment:** The Supreme Court has adopted forms for use in guardianship proceedings which are contained in the Appendix. The form of citation and notice found in the body of former Rule 14.5 have been moved to the Appendix. As of 2011, these forms are the Annual Report of Guardian of the Estate, Annual Report of Guardian of the Person, and Important Notice – Citation with Notice. In accordance with Rule 1.8, these forms must be used exclusively; local forms are not permitted to replace or supplant these forms.

### **Rule 5.2. Adjudication of Incapacity and Appointment of a Guardian of the Person and/or Estate of an Incapacitated Person**

A petition to adjudicate an individual as an Incapacitated Person shall meet all requirements set forth at 20 Pa.C.S. § 5511 *et seq.* A citation and notice in the form adopted by the Supreme Court shall be attached to and served with a petition. The procedure for determining incapacity and for appointment of a Guardian shall meet all requirements set forth at 20 Pa.C.S. §§ 5512 and 5512.1.

**Note:** Rule 5.2 is identical to former Rule 14.2; it has simply been relocated to Chapter V of these Rules.

**Explanatory Comment:** The Supreme Court has promulgated a form notice to be served with the citation and petition to adjudicate an individual as incapacitated. This form notice is located in the Appendix. In accordance with Rule 1.8, this form notice must be used exclusively and replaced or supplanted by a local form.

### **Rule 5.3. Review Hearing**

A petition for a review hearing shall set forth:

- (a) the date of the adjudication of incapacity;
- (b) the name and address of the Guardian;
- (c) if the Incapacitated Person has been a patient in a mental hospital, the name of such institution, the date of admission, and the date of discharge;
- (d) the present address of the Incapacitated Person, and the name of the person with whom the Incapacitated Person is living;
- (e) the names and addresses of the presumptive Adult heirs of the Incapacitated Person; and
- (f) an averment that:
  - (1) there has been significant change in the Incapacitated Person's capacity;
  - (2) there has been a change in the need for guardianship services; or
  - (3) the Guardian has failed to perform duties in accordance with the law or act in the best interest of the Incapacitated Person.

**Note:** Rule 5.3 is identical to former Rule 14.3; it has simply been relocated to Chapter V of these Rules.

**Explanatory Comment:** For the Court's disposition of a petition for a review hearing and evidentiary burden of proof, *see* 20 Pa.C.S. § 5512.2.

### **Rule 5.4. Proceedings Relating to Real Estate**

A petition for the public or private sale, exchange, lease, or mortgage of real estate of an Incapacitated Person or the grant of an option for the sale, exchange or lease of the same shall conform as far as practicable to the requirements of these Rules for Personal Representatives, trustees and Guardians of Minors in a transaction of similar type.

**Note:** Rule 5.4 is identical to former Rule 14.4; it has simply been relocated to Chapter V of these Rules.

## **VI. RULES RELATING TO PRE-HEARING AND HEARING PROCEDURE**

### **Rule 6.1. Depositions, Discovery, Production of Documents and Perpetuation of Testimony**

The Court, by Local Rule or special order, may prescribe the practice relating to depositions, discovery, production of documents and perpetuation of testimony. To the extent not provided for by such Local Rule or special order, the practice relating to such matters shall conform to the practice in the Trial or Civil Division of the local Court of Common Pleas and Pa. R.C.P. 1532 and 4001 *et seq.*

**Note:** Rule 6.1 is identical to former Rule 3.6; it has simply been relocated to Chapter VI of these Rules.

### **Rule 6.2. Motion for Judgment on the Pleadings**

After the relevant Pleadings are closed, but within such time as not to unreasonably delay the hearing, any party may move for judgment on the Pleadings. The Court shall enter such judgment or order as shall be proper on the Pleadings.

**Note:** Rule 6.2 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 1034.

**Explanatory Comment:** The Official Note to Pa.R.C.P. 1034 is fully incorporated by reference herein, except that the Court may, but is not required to, promulgate Local Rules governing the procedure for these motions.

### **Rule 6.3. Motion for Summary Judgment**

(a) After the relevant Pleadings are closed, but within such time as not to unreasonably delay a hearing, any party may move for summary judgment in whole, or in part, as a matter of law in the manner set forth in Pa.R.C.P. 1035.1, 1035.2, and 1035.4.

(b) The party against whom the motion for summary judgment is filed shall respond in accordance with Pa.R.C.P. 1035.3(a) – (b) and 1035.4, except that a responsive Pleading shall be filed within 20 days after service of the motion, not 30 days as provided in Pa.R.C.P. 1035.3(a).

(c) The Court shall rule upon the motion for summary judgment as provided in Pa.R.C.P. Nos. 1035.3(c) – (e) and 1035.5.

**Note:** Rule 6.3 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 1035.1. *et seq.*

**Explanatory Comment:** In order to be consistent with Rules 2.5, 2.8, 3.5, 3.7, and 3.9, the period of time to respond to a motion for summary judgment is shortened from the thirty days permitted under Pa.R.C.P. 1035.3(a) to twenty days. The Notes, Official Note and Explanatory Comments to Pa.R.C.P. 1035.1 *et seq.* are incorporated by reference herein, except that the Court may, but is not required to, promulgate Local Rules governing the procedure for these motions.

#### **Rule 6.4. Subpoenas and Notices to Attend.**

Subject to Rule 6.1, parties can be noticed to attend a deposition pursuant to Pa.R.C.P. 4007.1(a) and third parties can be compelled to attend a hearing or deposition in accordance with Pa.R.C.P. 234.1 through 234.9.

**Note:** Rule 6.4 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 234.1 *et seq.*

**Explanatory Comment:** The procedure for obtaining a subpoena shall conform to the practice set forth in Pa.R.C.P. No. 234.1 *et seq.* The Notes, Official Notes, and Explanatory Comments to Pa.R.C.P. Nos. 234.1 *et seq.* are fully incorporated by reference herein.

#### **Rule 6.5. Injunctions**

Upon petition, the Court may issue a preliminary, special, or permanent injunction in accordance with the rules and procedures provided in Pa.R.C.P. 1531.

**Note:** Rule 6.5 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. 1531.

**Explanatory Comment:** With the repeal of 20 Pa.C.S. § 772, the propriety of and procedure for obtaining an injunction in an Orphans' Court matter was uncertain. This Rule clarifies that an injunction may be requested and issued in this Court. The procedure for requesting the issuance of an injunction shall conform to the practice set forth in Pa.R.C.P. 1531. The Notes and Explanatory Comments to Pa.R.C.P. Nos. 1531 are fully incorporated by reference herein.

## **VII. CHARITIES--NOTICE TO ATTORNEY GENERAL**

### **Rule 7.1. Charities – Notice to the Attorney General**

(a) In every proceeding involving or affecting a charitable interest with the exception hereinafter set forth, at least 20 days advance written notice thereof shall be given to the Attorney General of the Commonwealth of Pennsylvania at the principal office in Harrisburg, Pennsylvania, or to a deputy of the Attorney General designated for such purpose for the judicial district in which the proceeding is pending. The notice shall include or be accompanied by such of the following as may be appropriate

- (1) the caption of the case;
- (2) a description of the nature of the proceeding;
- (3) the date, time and place when the matter is to be heard by the Court to the extent then known;
- (4) the name of the decedent, settlor, Incapacitated Person or Minor, if not disclosed by the caption;
- (5) a copy of the will or other instrument creating the charitable interest;
- (6) the name and address of any specific charity which may be affected by the proceeding;
- (7) if the charitable interest is a present interest, a description and the approximate market value of that interest;
- (8) if the charitable interest is a future interest and the estimated present value of the property involved exceeds \$25,000, a brief description thereof including the conditions precedent to its vesting in enjoyment and possession, the names and ages of persons known to have interests preceding such charitable interest, and the approximate market value of the property involved;
- (9) a description of any unresolved claim and any material question of interpretation or distribution likely to be submitted for adjudication which may affect the value of the charitable interest;
- (10) the names and addresses of all Fiduciaries;
- (11) the name and address of counsel for the Fiduciary;
- (12) the name and address of counsel for any charity who has received notice or has appeared for the charity and the name of the charity which counsel represents; and
- (13) a copy of an Account, if the proceeding involves an Account and the charity is not a pecuniary legatee in an amount of \$25,000 or less which has been or will be paid in full.

(b) Proof of service of the above notice or an acknowledgment of such notice received from the Attorney General or a deputy of the Attorney General shall be filed with the Clerk in every proceeding involving a charitable interest prior to the entry of any decree.

(c) Unless the Court directs otherwise, no notice to the Attorney General or a deputy of the Attorney General shall be required with respect to a pecuniary legacy to a charity in the amount of \$25,000 or less which has been or will be paid in full.

**Note:** This Rule is substantively identical to former Rule 5.5; it has simply been relocated to Chapter VII of these Rules.

**Explanatory Comment:** See Appendix for form of notice under this Rule.

## **VIII. ELECTRONIC FILING**

### **Rule 8.1. Electronic Filing and Service of Legal Papers**

#### **(a) Authorization for Electronic Filing.**

(1) A Court may permit or require Electronic Filing of Legal Papers. Any Court that implements Electronic Filing shall establish procedures governing such filing by Local Rule which shall be consistent with the procedures set forth herein.

**Explanatory Note:** Those jurisdictions which require e-filing must also provide the necessary technical assistance to those parties who lack the capacity to electronically file Legal Papers.

(2) This Rule does not mandate the implementation of Electronic Filing by a Court.

#### **(b) Electronic Filing of Legal Paper.**

(1) A Filing Party may file a Legal Paper with the Clerk by means of Electronic Filing.

(2) Legal Papers and exhibits shall be filed in portable document format (.pdf).

(3) Exhibits to a Legal Paper shall be converted to portable document format (.pdf) by scanning or other method.

(4) Any party may require the Filing Party to file the original or a hard copy of a Legal Paper or exhibit by filing a notice to file with the Clerk and serving a copy of the notice upon the Filing Party. The Filing Party shall file the specified document with the Clerk within 14 days after service of the notice. Upon disposition of the matter before the Court, an original

document may be returned to the party who filed it or retained by the Court, as the Court may determine.

**(c) Signature, Verification and Retention of Legal Paper.**

(1) The original Legal Paper shall be properly signed, and where required, Verified.

(2) The Electronic Filing of a Legal Paper constitutes a certification by the Filing Party that the original document was signed, and where applicable, Verified.

(3) Unless retained by the Court, the Filing Party shall maintain the original of all documents so certified, together with any exhibits filed, for 5 years after the later of:

(i) the disposition of the case;

(ii) the entry of an order resolving the issue raised by the Legal Paper; or

(iii) the disposition by an appellate court of the issue raised by the Legal Paper.

**(d) Website and Filing Date.**

(1) The Court shall designate a website for the Electronic Filing of Legal Papers. A user name and password shall be issued to authorized users.

(2) The Court shall provide Electronic Filing access at all times. The time and date of the filing shall be that registered by the Court's computer system.

(3) The Court shall provide, through its website, an acknowledgement that the filing has been processed. Such acknowledgement shall include the date and time of filing in a form which can be printed for retention by the Filing Party.

(e) **Delay in Filing.** A Filing Party shall be responsible for any delay, disruption, or interruption of electronic transmission, and for the legibility of the document electronically filed, except for delays caused by the failure of the Court's website. The Filing Party may petition the Court to resolve any dispute concerning an alleged failure of the Court's website.

**(f) Fees.**

(1) A Filing Party shall pay the fee for electronically filing a Legal Paper as provided by the Court.

(2) The Court may assess an additional automation fee for each Legal Paper electronically filed which shall be used for the development, implementation, maintenance, and training in the use of the Court Electronic Filing system and other related uses.

(g) **Local Procedures.** The Court may develop further administrative procedures, as needed, to implement this Rule and to provide for security of the Electronic Filing system, as required by changing technology.

(h) **Service of Legal Papers by Parties.**

(1) Service of original process shall not be permitted by electronic means, unless agreed to by the respondent.

(2) Service of subsequent Legal Papers may be effected by electronic transmission if the parties agree, or if an email address appears on an entry of appearance, or other Legal Paper previously filed with the Court in the action. Electronic service is complete when the Legal Paper is sent to the recipient's email address, or when the recipient is notified by email that a Legal Paper affecting the recipient has been filed and is available for review on the Court's website.

(i) *Service of Legal Papers by Court and Clerk.* The Clerk and the Court may serve all notices, opinions, and orders via electronic means where the parties have agreed to receipt of Legal Papers by electronic transmission, or if the underlying Legal Papers related to the notice, opinion or order were filed by Electronic Filing, or if an email address appears on an entry of appearance or other Legal Paper previously filed with the Court in the action.

**Note:** Rule 8.1 is substantively identical to former Rule 3.7, but has been relocated to Chapter VIII of these Rules.

**Explanatory Comment:** Subparagraph (i) of Rule 8.1 differs from its counterpart in former Rule 3.7 in two respects: first, this subparagraph permits the Clerk and Court to serve not only notices, but also opinions and orders, via electronic means; and second, it provides that the Clerk and Court are able to send its notices, opinions, and orders via electronic means if the underlying Legal Papers were filed electronically.

**Explanatory Note:** This Rule is designed as a general enabling mechanism by which local judicial districts can, if they so choose, implement Electronic Filing. Implementation procedures not inconsistent with this Rule will be determined by Local Rules of Court.

Nothing in this Rule is intended to change the procedural requirements of Orphans' Court practice, as embodied in the statutes and rules of Court. Rather this Rule is intended to facilitate the delivery of Legal Papers to the Court and the parties, as well as to reduce record management burdens in the office of the Clerk. The terms "Electronic Filing," "Filing Party," and "Legal Paper" are defined in Rule 1.3.

The Court may, from time to time, modify the approved Electronic Filing system to take into consideration the costs and security of the system and the maintenance of electronic data and images.

Existing procedures regarding record retention for paper documents by the Clerk shall apply to electronically filed documents. A local Court which permits Electronic Filing may require filing and maintenance of paper documents or exhibits; it may also accept paper documents, convert such documents to electronic format, and destroy the paper documents. (See *Record Retention & Disposition Schedule with Guidelines*, adopted by the Supreme Court of Pennsylvania by Order, dated November 28, 2001, as part of the amendment to Pa.R.J.A. 507).

## **IX. PETITION FOR RECONSIDERATION**

**Rule 9.1. Exceptions.** No exceptions may be filed to any order or decree of the Court.

**Explanatory Comment:** The former exception practice is discontinued.

### **Rule 9.2. Petitions for Reconsideration**

A Court, upon petition, may reconsider orders that are final under Pa.R.A.P. 341(b) or 342, or interlocutory orders subject to immediate appeal under Pa.R.A.P. 311, so long as the order granting reconsideration is consistent with Pa.R.A.P. 1701(b)(3). A Court, upon petition, may reconsider an interlocutory order at any time.

**Note:** The period for filing an appeal is not tolled by the filing of a petition for reconsideration unless the Court grants the petition for reconsideration prior to the expiration of the appeal period. See R.A.P. 1703(b)(3). Interlocutory orders may be reconsidered anytime during the pendency of the proceeding. See *Key Automotive Equip. v. Abernethy*, 431 Pa. Super. 358, 362, 636 A.2d 1126, 1128 (1994); 42 Pa. C.S.A. § 5505.

## **X. AUDITORS AND MASTERS**

### **Rule 10.1. Notice of Hearings**

An auditor or master shall give notice of scheduled hearings in such manner and to such parties as Local Rules shall prescribe.

**Note:** Rule 10.1 is substantively identical to former Rule 8.1; it has simply been relocated to Chapter X of these Rules.

### **Rule 10.2. Filing of Report**

An auditor or master shall file his or her report within 90 days after his or her appointment, unless, upon application, the Court extends the time; and, in default thereof, his or her appointment may be vacated and compensation and reimbursement for services and expenses denied.

**Note:** Rule 10.2 is substantively identical to former Rule 8.2; it has simply been relocated to Chapter X of these Rules.

### **Rule 10.3. Form of Auditor's Report**

An auditor's report shall include a statement of the questions involved, findings of fact, conclusions of law, and, if the Account is approved by the auditor, it shall also expressly confirm the Account and shall specify, or indicate by reference to the Statement of Proposed Distribution, the names of the persons to whom the balance available for distribution is awarded and the amount or share awarded to each of such persons.

**Note:** Rule 10.3 is identical to former Rule 8.3; it has simply been relocated to Chapter X of these Rules.

### **Rule 10.4. Form of Master's Report**

A master'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 10.4 is identical to former Rule 8.4; it has simply been relocated to Chapter X of these Rules.

### **Rule 10.5. Transcript of Testimony**

The transcript of testimony taken before an auditor or master shall be filed with the report.

**Note:** Rule 10.5 is identical to former Rule 8.5; it has simply been relocated to Chapter X of these Rules.

### **Rule 10.6. Notice of Filing Report**

An auditor or master 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 10.6 is identical to former Rule 8.6; it has simply been relocated to Chapter X of these Rules.

### **Rule 10.7. 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 shall not be approved until a decree is entered adopting its recommendations.

**Note:** This Rule is identical to former Rule 8.7; it has simply been relocated to Chapter X of these Rules.

### **Rule 10.8. Security for Expenses and Fees**

An auditor or master, 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 expenses and fees, and, when such leave is granted, the auditor or master may decline to proceed until security is entered.

**Note:** Rule 10.7 is substantively identical to former Rule 8.8; it has simply been relocated to Chapter X of these Rules.

## **XI. REGISTER OF WILLS**

### **Rule 11.1 Forms**

The forms adopted by the Supreme Court for statewide practice before the Register as set forth in the Appendix shall be used when applicable. No other forms shall be allowed or required by Local Rule or practice.

### **Rule 11.2 Petition Practice**

When a matter requires the Register to exercise discretion or decide an issue of fact or law, the Pleading and practice shall conform as near as practical to the practice and procedure before the Court as provided by Chapter III of these Rules and 20 Pa. C.S. § 906 (relating to caveats). The Register may issue a citation if appropriate, and may require a party to prepare the form of citation. Service of citations issued by the Register shall be the responsibility of the party requesting the issuance of the citation.

### **Rule 11.3 Hearings**

(a) Evidentiary hearings before the Register shall be recorded by stenographic or electronic means, the cost of which shall be paid by the party initiating the matter unless otherwise directed by the Register.

(b) The Register may issue subpoenas to compel attendance at evidentiary hearings as provided in 20 Pa. C.S. § 903(a).

(c) The Pennsylvania Rules of Evidence shall be applicable to all evidentiary hearings before the Register.

(d) The Register may require parties to submit memoranda and/or proposed findings of fact and conclusions of law.

(e) The Register shall promptly decide the matter at issue by written order or decree. The order or decree may, but need not, contain a brief opinion or recitation of relevant facts and legal conclusions as found by the Register.

#### **Rule 11.4 Appeals from the Register of Wills.**

Appeals to the Court from an order or decree of the Register of Wills shall be by petition and governed by Chapter III of these Rules and any applicable Local Rules.

#### **Rule 11.5. Notice to Beneficiaries and Intestate Heirs**

(a) Within three (3) months after the grant of letters, the Personal Representative to whom original letters have been granted or the Personal Representative's counsel shall send a written notice of estate administration in the form approved by the Supreme Court to:

(1) every person, corporation, association, entity or other party named in decedent's will as an outright beneficiary whether individually or as a class member;

(2) the decedent's spouse and children, whether or not they are named in, or have an interest under, the will;

(3) where there is an intestacy in whole or in part, to every person entitled to inherit as an intestate heir under Chapter 21 of the Probate, Estate and Fiduciaries Code;

(4) the appointed Guardian of the estate, parent or legal custodian of any beneficiary who is a Minor;

(5) the appointed Guardian of the estate or, in the absence of such appointment, the institution or person with custody of any beneficiary who is an adjudicated Incapacitated Person;

(6) the Attorney General on behalf of any charitable beneficiary whose interest exceeds \$25,000 or which will not be paid in full;

- (7) the Attorney General on behalf of any governmental beneficiary;
- (8) the trustee of any trust which is a beneficiary; and
- (9) such other persons and in such manner as may be required by any Local Rule of Court.

(b) “Beneficiary” shall be deemed to include any person who may have an interest by virtue of the Pennsylvania anti-lapse statute, 20 Pa.C.S. § 2514.

(c) Notice shall be given by personal service or by first-class, prepaid mail to each person and entity entitled to notice under subdivision (a)(1)—(9) whose address is known or reasonably available to the Personal Representative.

(d) Within ten (10) days after giving the notice required by subdivision (a) of this Rule, the Personal Representative or the Personal Representative’s counsel shall file with the Register a certification that notice has been given as required by this Rule. No fee shall be charged by the Register for filing the certification required by this subdivision.

(e) Upon the failure by the Personal Representative or the Personal Representative’s counsel to file the certification on a timely basis, the Register shall, after ten (10) days prior written notice to the delinquent Personal Representative and his counsel, notify the Court of such delinquency.

(f) This Rule shall not alter or diminish existing rights or confer new rights.

(g) The Register shall deliver a copy of Rule 5.6 and the forms of notice and certification approved by the Supreme Court to each Personal Representative and counsel at the time letters are granted.

**Note:** Rule 11.5 is identical to former Rule 5.6; it has simply been relocated to Chapter XI of these Rules. The form of notice and certification of notice required by Rule 11.5 is set forth in the Appendix.

**Explanatory Comment:** It is not the intention of the Rule to require notice beyond the degree of consanguinity entitling a person to inherit under Chapter 21 of the Probate, Estates and Fiduciaries Code.

### **Rule 11.6 Status Report by Personal Representative**

(a) **Report of Uncompleted Administration.** If administration of an estate has not been completed within two years of the decedent’s death, the Personal Representative or counsel shall file at such time, and annually thereafter until the administration is completed, a report with the Register of Wills showing the date by which the Personal Representative or counsel reasonably believes administration will be completed.

(b) **Report of Completed Administration.** Upon completion of the administration of an estate, the Personal Representative or his, her or its counsel shall file with the Register of Wills a report showing:

- (1) completion of administration of the estate;
- (2) whether a formal Account was filed with the Orphans' Court;
- (3) whether a complete Account was informally stated to all parties in interest;
- (4) whether final distribution has been completed; and

(5) whether approvals of the Account, receipts, joinders and releases have been filed with the Clerk of the Orphans' Court.

(c) **Form of Report.** The Report required by this Rule shall be in substantially the prescribed form.

(d) **No Fee.** No fee shall be charged for filing the report required by this Rule.

(e) **Copy of Rule.** Upon the grant of letters, the Register shall give a copy of this Rule to each Personal Representative and his, her or its counsel.

(f) **Failure to File a Report.** After at least ten (10) days prior notice to a delinquent Personal Representative and counsel, the Clerk of the Orphans' Court shall inform the Court of the failure to file the report required by this Rule with a request that the Court conduct a hearing to determine what sanctions, if any, should be imposed.

**Note:** Rule 11.6 is identical to former Rule 6.12; it has simply been relocated to Chapter XI of these Rules. The form of status report required by Rule 11.6 is set forth in the Appendix.