

[This is an entirely new chapter.]

CHAPTER I. PRELIMINARY RULES

Rule 1.1. Short Title and Citation

These rules shall be known as the Pennsylvania Rules of Orphans' Court Procedure and may be cited as "Pa.R.O.C.P. ____."

Comment: The previous use of "Pa. O.C. Rule" to cite the Pennsylvania Rules of Orphans' Court Procedure may not serve as a basis to invalidate a reference to that authority.

ADOPTION REPORT

Amendment of Pa.R.J.A. No. 101 and 103, Pa.R.C.P. No. 51 and 129, Pa.R.C.P.M.D.J. No. 201, and Pa. O.C. Rule 1.1

An effort has been undertaken to establish internal guidance to enhance and maintain uniformity among the Court's procedural and evidentiary rules through the adherence to common standards for style, numbering, syntax, nomenclature, and the use of commentary in rulemaking. To facilitate the implementation of this guidance, a proposal was published for response concerning the possible amendment of Pa.R.J.A. No. 103 and Pa.R.C.P. No. 129 to clarify the use of commentary in rulemaking and amendment of Pa.R.J.A. No. 101, Pa.R.C.P. No. 51, Pa.R.C.P.M.D.J. No. 201, and Pa. O.C. Rule 1.1 concerning citation format. *See* 49 Pa.B. 4809 (August 24, 2019). The Publication Report accompanying the proposal further addressed: 1) the ongoing effort to achieve consistency, including reconciliation of the differing numbering schemes for subparts and the use of subdivisions and paragraphs to describe subparts; 2) removal and reestablishment of Chapters 1900—1950 of the Rules of Civil Procedure; 3) the use of "Comments" to describe commentary and the elimination of "notes"; 4) clarifying that commentary is part of the rule, but not part of the rule text; 5) removing largely historical material from existing commentary; and 6) a phased approach to restyling the rules to conform with internal guidance.

The proposal received seven responses containing helpful suggestions, insightful observations, and possible areas of concern. One respondent suggested reorganization of aspects of the Pennsylvania Rules of Civil Procedure so they are ordered in a more intuitive fashion that relates to the linear progression of litigation. This suggestion will remain under consideration for possible implementation after those rules are conformed to internal guidance. Another respondent suggested a uniform set of rules of construction for the Court's procedural and evidentiary rules. It is anticipated that a proposal on this subject will be forthcoming.

Concerning proposed changes to the titles and citations of certain bodies of rules, several respondents suggested revising the abbreviation for "civil" to distinguish it from the abbreviation for "court." This suggestion is reflected in post-publication revisions to Pa.R.C.P. No. 51 and

Pa.R.C.P.M.D.J. 201 to abbreviate "civil" as "civ." Relatedly, a respondent expressed concern that changes to citations might operate to invalidate a previous reference to that authority. A Comment was added to Pa.R.C.P. No. 51, Pa.R.C.P.M.D.J. No. 201, and Pa. O.C. Rule 1.1 to address that concern.

The rules set forth in Chapters 1900—1950 of the Rules of Civil Procedure, will be removed and relocated separate from the Rules of Civil Procedure. In doing so, that body of rules will be named the "Pennsylvania Rules of Family Court Procedure" and provided a corresponding citation format consistent with the other bodies of rules. Relocation of the rules will provide the opportunity for reorganization and renumbering to reduce or eliminate the use of secondary and tertiary numbering schemes. To minimize the impact that renumbering the statewide rules may have on the numbering of local rules, derivation tables and disposition tables may be permitted, subject to certain conditions, which will be discussed further in future rulemaking.

The value of retaining historical commentary will be evaluated on an ongoing basis. Commentary removed will be identified and set forth in an Adoption Report accompanying a general restyling. Commentary removed through rulemaking unrelated to a general restyling will continue to be identified by textual indicators. Accordingly, the removed commentary will be publically available in either an Adoption Report or the amended form of the rule should a reader wish to review rulemaking history.

The procedural and evidentiary rules will be conformed to the internal guidance in the following manner: The guidance will be applied prospectively to future rulemaking proposed by the Rules Committees. To the extent practicable, rules currently subject to rulemaking will be revised depending upon their stage in the process. Recognizing that some rules are infrequently amended, each body of rules will also be conformed in their entirety through a phased process. The first body of rules to be subjected to the phased conformity will be Chapters 1900—1950 of the Rules of Civil Procedure contemporaneous with its relocation and renumbering. No substantive changes to the operation of the rules are intended as a result of conformance.

Editor's note: Amended June 10, 2021, effective October 1, 2021.

Rule 1.2. Construction and Application 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. Nos. 102 through 153 inclusive, with the exception of Pa.R.C.P. No. 126, shall apply to these Rules.

Note: Rule 1.2(a) is identical to former Rule 2.1. Rule 1.2(b) is new.

Explanatory Comment: The Orphans' Court Division exercises equitable powers and applies equitable principles. *Estate of Hahn*, 369 A.2d 1290, 1291-92 (Pa. 1977); *Estate of Freihofer*, 174 A.2d 282, 284 (Pa. 1961).

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*, 436 A.2d 147, 151 (Pa. 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 purpose 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, excluding the annual reports of Guardians;

“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 a legal paper to the clerk;

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

“Fiduciary” – an agent under a power of attorney, custodian under the Uniform Transfers to Minors Act, personal representative, guardian, trustee, guardian *ad litem*, or trustee *ad litem*, 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 has the care and management of the estate, the person, or both, of a minor or an incapacitated person;

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

“Hearing Officer” – a person who is appointed by the court to investigate any issue of fact and to report findings of fact, conclusions of law, and recommendations to the court. A hearing officer shall include any person now or formerly referred to as a master by rule of court or statute;

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

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

“Legal Paper” – a document that is filed with 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;

“Motion” – if in writing, a legal paper that must be signed, but does not need to be verified, does not plead any facts not of record, and does not require the court to obtain jurisdiction over an Interested Party;

“Objector” – an individual or entity filing objections to an Account and/or Petition for Adjudication/Statement of Proposed Distribution 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 3.12 and 3.13 and includes, but is not limited to, petitions, answers, replies, and certain preliminary objections;

“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 by 20 Pa.C.S. § 901;

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

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

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

Editor’s note: Amended January 6, 2022, effective April 1, 2022.

Rule 1.4. Extension of Time Limitations

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

Note: Rule 1.4 is identical to former Rule 2.2.

Rule 1.5. Local Rules

- (a) All previously promulgated local rules are hereby vacated, effective September 1, 2016, except for those local rules promulgated under Chapter XIV regarding guardianship of incapacitated persons, Chapter XV regarding adoptions, and Chapter XVI regarding proceedings pursuant to Section 3206 of the Abortion Control Act.
- (b) All previously promulgated local rules under Chapter XIV regarding guardianship of incapacitated persons are hereby vacated, effective June 1, 2019.
- (c) The requirements for the promulgation and amendment of local procedural rules for orphans’ court proceedings are set forth in Pennsylvania Rule of Judicial Administration 103(d).
- (d) 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 so directed by these Rules or by local rule adopted by the court of the particular judicial district in accordance with Pa.R.J.A. No. 103(d).

Note: Effective August 1, 2016, Pennsylvania Rule of Judicial Administration 103 was amended to consolidate and include all local rulemaking requirements. Accordingly, the rulemaking requirements under Pa. O.C. Rule 1.5 for the promulgation and amendment of local procedural rules for orphans’ court proceedings were rescinded and replaced.

- (e) When a local rule corresponds to a Rule, the local rule shall be given a number that corresponds to the number of these Rules.
- (f) 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 becoming effective. 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.
- (g) After written notification is received from the Committee, the submitting court shall comply with all the following requirements:
 - (1) The local rule shall be set forth in writing;
 - (2) One certified paper copy of the local rule shall be filed with the Administrative Office of Pennsylvania Courts;
 - (3) Two certified paper copies of the local rule and a computer diskette or a CD-ROM that complies with requirements of 1 Pa. Code § 13.11(b), or an agreed-upon alternate format, containing the text of the local rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;
 - (4) A copy of the local rule shall be published on the Unified Judicial System’s website through the Pennsylvania Judiciary’s Web Application Portal, currently <http://ujportal.pacourts.us/localrules/ruleselection.aspx>; and
 - (5) The local rule 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 and mailing, the clerk shall furnish to any person a copy of any local rule.
- (h) A local rule shall become effective only upon publication on the Pennsylvania Judiciary’s Web Application Portal and not less than thirty days after the date of publication of the local rule in the *Pennsylvania Bulletin*.
- (i) 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. Subsequent noncompliance may result in court-imposed sanctions.

- (j) The Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule.

Note: Rule 1.5 is new; but, the procedures for promulgating local rules are based upon former Rule 1.2 and have been modeled after those found in Pa.R.Crim.P. 105. The Administrative Office of Pennsylvania Courts maintains a web site containing the texts of local rules at <http://www.pacourts.us/T/SpecialCourts/LocalRules.htm>

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 noncompliance with the local rule. *Cf.* Pa.R.Crim.P. 105 *Comment*.

Through amendment of Rule 1.5 and operation of Order, No. 771 Supreme Court Rules Docket (June 1, 2018), all previously promulgated local rules concerning guardianship proceedings are vacated, effective June 1, 2019. For a local guardianship rule of procedure to be effective on June 1, 2019, it must be deemed necessary by the judicial district in light of the new statewide rules and be submitted to the Orphans' Court Procedural Rules Committee no later than December 1, 2018. This deadline is calculated to afford the Committee sufficient time to review the local rules, respond to the judicial district, and permit publication in the *Pennsylvania Bulletin* pursuant to Pa.R.J.A. No. 103(d). Submissions after December 1, 2018 will be accepted; however, the Committee may not be able to give late submissions sufficient priority to clear the review process before June 1, 2019. The effective date of the new local rules and new Chapter IV rules should coincide, *i.e.*, June 1, 2019.

Editor's note: Amended June 1, 2018, effective June 1, 2019.

Rule 1.6. *Mediation by Agreement, Local Rule, or Court Order*

All parties having an interest in a matter may participate by written agreement, or the court by local rule or order in a particular matter may provide for the parties to participate, in private mediation or in court-supervised 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 any one of the following means:
- (1) filing an entry of appearance with the clerk or the Register;
 - (2) signing a legal paper that is filed with the clerk or the Register; or
 - (3) as prescribed by local rule, which may include submitting an appearance slip to the court, entering counsel's information when a legal paper is filed, or signing a cover sheet.
- (b) *Withdrawal.* Counsel who has entered an appearance before the court as provided in subparagraph (a) shall

not be permitted to withdraw without filing a petition to withdraw and obtaining the court's leave, unless co-counsel, if any, will continue representing 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.

Explanatory Comment: Admission *pro hac vice* in accordance with Pennsylvania Bar Admission Rule 301 shall proceed by request, the disposition and content of which shall conform to the requirements of Pennsylvania Rule of Civil Procedure No. 1012.1.

This rule does not address the procedure for withdrawal of counsel who has entered an appearance before the Register. Withdrawal of counsel before the Register shall be in accordance with local rule or at the discretion of the Register.

Editor's note: Amended October 31, 2019, effective January 1, 2020.

Rule 1.8. *Forms*

- (a) The forms approved by the Supreme Court for statewide practice and procedure before the Registers and courts shall be used exclusively and accepted for filing by all Registers and clerks; provided, however, versions of a Supreme Court-approved form shall be acceptable for filing if identical in content and sequential ordering.
- (b) The forms approved 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 Pennsylvania Courts.
- (c) The Court Administrator of Pennsylvania, in consultation with the Orphans' Court Procedural Rules Committee and the Advisory Council on Elder Justice in the Courts, shall prescribe forms necessary to implement Pa.R.O.C.P. 14.8(a).
- (d) A court may require a legal paper to be accompanied by a cover sheet or checklist. A court that imposes such requirements must promulgate a local rule, numbered Local Rule 1.8(d), stating the requirements and setting forth the form of the cover sheet or checklist.

Comment: Pa.R.O.C.P. 1.8 is substantively similar to former Pa.R.O.C.P. 1.3, but with some modifications. The statewide forms are set forth in the Appendix to these rules. The current website for electronic access to the forms is found at <https://www.pacourts.us/forms/for-the-public/orphans-court-forms>. The forms posted on the website are capable of on-line completion.

In 2019, Pa.R.O.C.P. 1.8 was revised to permit versions of Supreme Court forms to be accepted for filing, provided the replication was identical in content. This revision was intended to permit forms to differ stylistically as to format if content requirements do not differ. This revision was not intended to permit the re-ordering of content required by a form.

Editor's note: Amended October 31, 2019, effective January 1, 2020; amended December 18, 2024, effective immediately.

Rule 1.40. *In Forma Pauperis.*

Pa.R.C.P. No. 240 shall apply in every action or proceeding before a court covered by these Rules.

Explanatory Comment: Under Pa.R.C.P. No. 240, a party who is found by the court to be without financial resources to pay the costs of filing a legal paper or other costs of an action or proceeding before the court shall have such costs waived. This Rule does not apply in matters before a Register of Wills.

Editor's note: Adopted January 2, 2020, effective April 1, 2020.

Rule 1.99. *Confidential Information and Confidential Documents. Certification.*

Unless public access is otherwise constrained by applicable authority, any attorney, or any party if unrepresented, who files a legal paper pursuant to these rules with the clerk shall comply with the requirements of Sections 7.0 and 8.0 of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* (Policy) including a certification of compliance with the Policy and, as necessary, a Confidential Information Form or a Confidential Document Form, in accordance with the Policy.

Comment: Applicable authority includes but is not limited to statute, procedural rule, or court order. The *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* (Policy) can be found on the website of the Supreme Court of Pennsylvania at <https://www.pacourts.us/public-records>. Sections 7.0(D) and 8.0(D) of the Policy provide that the certification shall be in substantially the following form:

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

The Confidential Information Form and the Confidential Document Form can be found at <https://www.pacourts.us/public-records>.

ADOPTION REPORT

Amendment of Pa.R.O.C.P. 1.99

On December 1, 2021, the Supreme Court amended Pennsylvania Rule of Orphans' Court Procedure 1.99 to conform with recent amendments to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* ("Policy"). See Order of October 6, 2021, No. 556 Judicial Administration Docket. The Orphans' Court Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process as it relates to Pa.R.O.C.P. 1.99. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, Comment. The statements contained herein are those of the Committee, not the Court.

The amendments to the Policy, effective on January 1, 2022, require the statewide use of the Confidential Information Form to safeguard confidential information and eliminate the ability of a court to adopt a rule or order permitting the filing of any document in two versions, redacted and unredacted. In response to this change to the Policy, Pa.R.O.C.P. 1.99 has

been amended to remove the exception to the Rule requiring the attachment of a Confidential Information Form, if necessary. The Comment to Pa.R.O.C.P. 1.99 has been amended to delete the last sentence referencing Section 7.0(C) of the Policy, which previously referenced the ability of a court to adopt a rule or order permitting the filing of any document in two versions, redacted and unredacted.

Editor's note: Amended June 1, 2018, effective July 1, 2018; amended December 1, 2021, effective January 1, 2022.

[This is an entirely new chapter.]

CHAPTER II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

Rule 2.1. *Form of Account*

- (a) Except where otherwise provided by an 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 in conformity with 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 an 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 pages signed by all the accountants stating the Account and verified by at least one of the accountants. 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, such corporation or company may file its financial statements for its three most recent fiscal years in lieu of filing an Account in the form required by this Rule. Financial statements shall be verified to be true and correct by a representative of the non-profit corporation or cemetery company.
- (1) The court may require the corporation or company to submit its financial information in some other form or for some longer period.
 - (2) 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 by-laws.

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).

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

Explanatory Comment: Piggy-backed Accounts and limited Accounts are permitted pursuant to 20 Pa.C.S. §§ 762, 3501.2, and 7799.1.

Editor's note: Amended June 1, 2018, effective July 1, 2018; amended October 31, 2019, effective January 1, 2020.

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

Assets that are appointed pursuant to the exercise of a power of appointment shall be accounted for separately, and testamentary assets shall be segregated from appointive assets.

Note: Rule 2.2 has been revised but remains substantively similar to subparagraph (d) of former Rule 6.1.

Rule 2.3. *Form; Separate Accounts for Minors*

Unless the court for cause shown directs otherwise, the estate of each minor or the custodial account of each minor shall be accounted for separately.

Note: Rule 2.3 is substantively similar to former Rule 6.2, except that Rule 2.3 now also expressly encompasses the Account of a minor's custodial account.

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 filing of 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) that the proposed representative's signed consent to serve 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 paper as is required by the form.
- (d) At least one of the accountants stating the Account shall sign and verify the petition for adjudication/statement of proposed distribution in accordance with Rules 3.12 and 3.13.
- (e) Counsel for the accountant shall sign the petition for adjudication/statement of proposed distribution in accordance with and pursuant to Rule 3.12.

Comment: Although substantially modified, Pa.R.O.C.P. 2.4 is derived from former Pa.R.O.C.P. 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 subdivision (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.Civ.P. 1023.1—1023.4. (*See* Pa.R.O.C.P. 3.12.)

See Pa.R.O.C.P. 5.50 for procedures governing petitions for the settlement of small estates filed pursuant to 20 Pa.C.S. § 3102.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. *See* Pa.R.O.C.P. 1.99.

The Supreme Court has adopted form petitions for adjudication/statements of proposed distribution 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/statements of proposed distribution are the exclusive forms for adjudicating an Account, and consequently, the local court and clerk must accept these statewide forms and may not accept or allow any other forms previously permitted under local rules. The exclusive statewide form petitions for adjudication/statements of proposed distribution appear in the Appendix to these rules and are available electronically at <https://www.pacourts.us/forms/for-the-public/orphans-court-forms>.

Cover sheets or checklists may be required by local rule as permitted by Pa.R.O.C.P. 1.8(d).

Editor's note: Amended June 1, 2018, effective July 1, 2018; amended December 18, 2024, effective immediately.

Cover sheets or checklists may be required by local rule as permitted by Rule 1.8(c).

Rule 2.5. Notice of Account Filing

- (a) No Account shall be confirmed or statement of proposed distribution approved unless the accountant has given written notice of the filing of the Account as provided in subparagraph (d) of this Rule 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;
 - (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;
 - (4) for an Account where a charitable interest is involved, refer to Rule 4.4; and
 - (5) to each co-fiduciary who does not join in the statement of Account.
- (b) Notice to an individual or entity shall be given in accordance with Rule 4.2; 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(a), notice shall be given to counsel and the individual or entity.

- (c) If the proposed distribution is to an estate having a charitable interest or to a trust, and a charity is a "qualified beneficiary," as defined in 20 Pa.C.S. § 7703, of that trust, then notice shall be given to the Attorney General on behalf of the charitable beneficiary. If the proposed distribution is to an estate or trust and any one of the accountants stating the Account is a personal representative or a trustee of the recipient estate or trust, then 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) of this Rule, shall be mailed at least 20 days prior to the audit in those counties having a separate Orphans' Court Division or 20 days prior to the date by which objections must be filed in all other counties, and the written notice shall state the date of the audit or the date by which objections must be filed, and the time and place of the audit, if one is to be held, to the extent then known. A party residing outside of the United States shall have 60 days, rather than 20 days, within which to file an objection. If an audit is to be held and the date, time, and place of the audit is not known at the time the notice is mailed, the notice shall state that the date, 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 paper filed therewith shall be sent with the notice, unless the recipient of the notice is a trust beneficiary who is not a "qualified beneficiary" as defined in 20 Pa.C.S. § 7703, or unless the court orders otherwise in a particular matter.
- (e) If the audit of an Account is continued or the date for filing written objections is extended, additional notice shall be mailed at least 20 days prior to the date of the continued audit or the new date for filing written objections to all of those who initially received notice of the Account's filing. The additional notice shall state the date of the continued audit or the date by which objections must be filed, and the time and place of the continued audit, if one is to be held, to the extent then known. If the time and place of the continued audit is not known at the time the additional notice is mailed, the additional notice shall state that the time and place of the continued audit will be provided upon request.
- (f) All notices and additional notices shall be sent by first-class United States mail, postage prepaid. Service by mail is complete upon mailing.
- (g) A certificate of service and a copy of the 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, in those counties having a separate Orphans' Court Division, or by the date when objections must be filed in all other counties.

- (h) The 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 known dispute or interpretation question, 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 notice pursuant to subparagraph (d) of this Rule, the 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 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 in accordance with Rule 2.7 with the clerk on or before the audit date in those counties holding an audit and by a specified date in all other counties, and if there is no such objection, then no action need be taken as such recipient will be 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 with the accountant's proposed disbursements and distribution.

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.

It is permissible for a party to waive the written notice required by this Rule.

Editor's note: Amended October 31, 2019, effective January 1, 2020.

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 or Petitions for Adjudication/Statements of Proposed Distribution

- (a) Objections to an Account and/or a petition for adjudication/statement of proposed distribution shall be filed with the clerk on or before the time and date of the audit in those counties holding an audit, and by a specified date in all other counties, with a copy served on the accountant or the accountant's counsel, if represented, and to each interested party and claimant who received the notice pursuant to Rule 2.5, to the extent known, pursuant to Rule 4.3.
- (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 3.12. Objections shall be verified by at least one of the objectors in accordance with Rule 3.13.
- (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) The court may extend the time for filing objections.

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

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

Explanatory Comment: If the 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 notice under Rule 2.5, the objector must mail his or her objections to every name and address appearing on the service list.

Editor's note: Amended June 1, 2018, effective July 1, 2018; amended October 31, 2019, effective January 1, 2020.

Rule 2.8. 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 any of the foregoing. If an answer to objections is filed, no responsive pleading to the answer is permitted.
- (b) Preliminary objections to objections shall be limited to lack of jurisdiction over the subject matter and lack of standing.
- (c) If filed, answers to objections, preliminary objections to objections, and answers to preliminary objections must be filed within 20 days after service of the applicable preceding pleading, with a copy served upon the accountant, if applicable, and to each interested party and claimant who received the notice pursuant to Rule 2.5, or to his or her counsel, if represented.
- (d) 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.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

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. No. 1028).

Editor's note: Amended June 1, 2018, effective July 1, 2018.

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.

- (c) The practice related to Schedules of Distribution shall be prescribed by local rule.

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 order of the court.

Note: With only minor modifications, Rule 2.10 is substantively similar to former Rules 13.2 and 13.3. Former Rule 13.1 has been deleted.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

Editor's note: Amended June 1, 2018, effective July 1, 2018.

Rule 2.11. *Appointment of Official Examiners*

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

Comment: Rule 2.11 is substantively identical to former Rule 9.1. The appointment and conduct of Auditors and Hearing Officers is provided for in Chapter IX.

Editor's note: Amended January 6, 2022, effective April 1, 2022.

[This is an entirely new chapter.]

CHAPTER III. PETITION PRACTICE AND PLEADING

Part A. 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/statements of proposed distribution 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 procedure 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 Division 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. *Headings; Captions*

Pleadings shall include the docket number, if one has been assigned to the matter by the clerk or Register, and shall include a heading identifying the type of pleading filed, and in the case of a petition, identifying the nature of the relief requested therein. In those counties having a separate Orphans' Court Division, pleadings shall be captioned "Court of Common Pleas of _____ County, Orphans' Court Division".

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

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

The following rules shall apply to all pleadings:

- (a) Every pleading shall be divided into consecutively numbered paragraphs. Each paragraph shall contain as far as practicable only one material allegation.
- (b) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.
- (c) Averments of fraud or mistake shall be averred with particularity. Malice, intent, knowledge, and other conditions of mind may be averred generally.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) Averments of time and place shall be specifically stated.
- (h) 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.

- (i) When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.
- (j) 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 therefor, 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. No. 206.1(c) and Pa.R.C.P. No. 1019.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

Editor's note: Amended June 1, 2018, effective July 1, 2018.

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) if the trust includes a charitable interest for which notice is required under Rule 4.4, whether the Office of the Attorney General has been given notice, whether the Office of the Attorney General has issued a statement of no objection to the petition, or the reason for failing to give the Office of the Attorney General notice;
 - (5) the names and addresses of every interested party who has an interest in the matter that is the subject of the petition;
 - (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 non-*sui juris* individual is proposed to be represented in the matter at issue by another individual or entity pursuant to 20 Pa.C.S. §§ 751(6) or 7721-7726, then subparagraph (7) of this Rule 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) that the proposed representative's signed consent to serve is attached as an exhibit to such petition; and
- (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 therefor.
- (d) The petition shall be verified by at least one of the petitioners in accordance with Rule 3.13 and signed by counsel, or if not represented by counsel, then signed by all the petitioners in accordance with Rule 3.12.

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. Nos. 1023.1 through 1023.4. (See Rule 3.12.)

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

Editor's note: Amended June 1, 2018, effective July 1, 2018.

Rule 3.5. *Mode of Proceeding on Petition*

(a) Citation Practice.

- (1) When personal jurisdiction is required and has not previously been obtained or conferred by statute, or when a citation is otherwise required by 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. Nos. 402 through 404, Pa.R.C.P. No. 420, and Pa.R.C.P. Nos. 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. No. 430. Service of a citation as original process shall not be permitted by electronic means, unless agreed to by the respondent.
- (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.
- (6) 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 4.2.
- (7) Proof of service of the citation shall be filed with the clerk on or before the date when a responsive pleading is due.

- (8) 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 on or before the date provided in the citation.

(b) Notice Practice.

- (1) In all cases where personal jurisdiction is not required or has been previously obtained, or conferred by statute, 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 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 on or before the date when the pleading is to be filed, whichever is later, or the court may deem that you have no objection to the relief requested therein 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) 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 4.2.

(c) 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. The final sentence of subparagraph (a)(2) is identical to former Rule 3.7(h)(1); it merely has been relocated to this section. Subparagraph (c) of this Rule has no counterpart in former Orphans' Court Rules.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

Explanatory Comment: Personal jurisdiction is conferred by statute in certain circumstances. See e.g., 20 Pa. C.S. § 7712. A sheriff does not need to serve the citation issued by the clerk; instead, any adult person may serve the citation and file the proof of service in accordance with subparagraph (a)(7) of this Rule 3.5. See 20 Pa.C.S. § 765. If a citation is not being issued with the petition, then the petition must be endorsed with a notice to plead. See Rule 3.5(b) and Pa.R.C.P. No. 1026. The court, by local rule or by order in a particular matter, may establish a procedure for rules to show cause as provided in Pa.R.C.P. No. 206.4 *et seq.*

Editor's note: Amended June 1, 2018, effective July 1, 2018; amended October 31, 2019, effective January 1, 2020.

Part B. Responsive Pleadings

Rule 3.6. Pleadings Allowed After Petition

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

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

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

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

Explanatory Comment: Any interested party may file a new petition bringing a new issue or dispute before the court or seeking alternative relief in the same trust or estate. Motions are permitted in Orphans' Court Division, and this Rule 3.6 does not prohibit or limit motions practice.

Editor's note: Amended June 1, 2018, effective July 1, 2018.

Rule 3.7. Time for Filing and Service of Responsive Pleadings

- (a) 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. A party residing outside of the United States shall have 60 days, rather than 20 days, within which to file a responsive

pleading to the citation or the petition initiating the proceeding.

- (b) A copy of the responsive pleading shall be served on 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 or in a subsequent pleading pursuant to Rule 4.3.
- (c) 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 to the first page of preliminary objections which aver a fact that is not contained in the petition.
- (d) Regardless of the residency of any interested party, 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. No. 1026.

Explanatory Comment: The court, by local rule, may establish procedures for the disposition of matters after the pleadings are closed.

Editor's note: Amended October 31, 2019, effective January 1, 2020.

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;
 - insufficient specificity in a pleading;
 - legal insufficiency of a pleading (demurrer);
 - lack of standing or lack of capacity to sue, non-joinder of a necessary party, or misjoinder of a cause of action; and

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. No. 1028.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

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 3.14.

For preliminary objections to Objections to an Account, petition for adjudication/statement of proposed distribution or a notice, *cf.* Rule 2.8(b) for a more limited scope of permitted preliminary objections.

Editor's note: Amended June 1, 2018, effective July 1, 2018.

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 3.12. 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 3.13.

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

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

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*, 386 A.2d 1, 4 (Pa. Super. 1978).

Editor's note: Amended June 1, 2018, effective July 1, 2018.

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. No. 1030.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

Editor's note: Amended June 1, 2018, effective July 1, 2018.

Part C. Pleadings in General

Rule 3.12. Signing

- (a) Counsel who has entered an appearance for a party pursuant to Rule 1.7(a) shall sign every pleading and any brief or memorandum of law and shall include counsel's name and address. A party not represented by any counsel of record shall sign every pleading and any brief or memorandum of law and shall include the party's name, an address where legal paper may be served, and a telephone number.
- (b) If the legal paper includes a facsimile telephone number and/or email address, that party or his or her counsel agrees to accept service of legal paper by transmission of a facsimile copy or by electronic transmission.
- (c) By signing a legal paper, the party and counsel are subject to Pa.R.C.P. Nos. 1023.1 through 1023.4. The court has authority to impose sanctions and grant relief in accordance with Pa.R.C.P. No. 1023.4.

Note: Rule 3.12 has no counterpart in former Orphans' Court Rules, but subparagraphs (a) and (b) are derived from Pa.R.C.P. No. 1025. Rule 3.12(c) is based upon Pa.R.C.P. No. 1023.1 *et seq.*

Explanatory Comment: The Explanatory Comments appearing after Pa.R.C.P. Nos. 1023.1 and 1023.4 are fully incorporated by reference herein.

Rule 3.13. Verification

- (a) Every pleading shall be verified, averring as true every fact not appearing of record in the action or containing a denial of fact based 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 suf-

ficient 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 3.13 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 1024.

Rule 3.14. *Amendment*

A party may amend a pleading pursuant to Rule 3.9(d) (1), or at any other 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 3.14 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 1033.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

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

Editor's note: Amended June 1, 2018, effective July 1, 2018.

Rule 3.15. *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 3.15 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 1020.

[This is an entirely new chapter.]

CHAPTER IV. FORMAT AND SERVICE OF LEGAL PAPER BY PARTIES AND COURT; ELECTRONIC FILING

Rule 4.1. *Format of All Legal Paper*

All legal paper filed with the clerk 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 point 12. The lettering shall be on only one side of a page, except that exhibits and similar supporting documents may be double-sided.

Note: Rule 4.1 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 204.1.

Explanatory Comment: Rule 4.1 governing the format of legal paper is modeled after Pa.R.C.P. No. 204.1 and thus is substantively identical to Pa.R.A.P. No. 124(a) and Pa.R.Crim.P. 575(C). See Explanatory Comment to Pa.R.C.P. No. 204.1. The goal is to foster uniformity in the formatting of legal paper 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 4.2. *Citation or Notice to Individuals and Entities*

- (a) **To individuals.** Whenever a citation under Rule 3.5(a) is to be served or notice under Rule 2.5 or Rule 3.5(b) 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 (under the provisions of Chapter 55 of Title 20), 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) **To entities.** Whenever a citation under Rule 3.5(a) is to be served or notice under Rule 2.5 or Rule 3.5(b) is to be given to an entity, then such citation or notice shall be provided:
 - (1) to the entity through the entity's duly authorized representative; or
 - (2) 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) **Counsel.** 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) of this Rule, then such notice or citation shall instead be given to counsel, except as provided in Rule 2.5(b) wherein the notice must be given to both counsel and the individual, entity or representative.

Additional service or notice. 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 a citation or notice shall be provided.

Note: Rule 4.2 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 notice must be mailed to the individual or entity and to counsel representing such individual or entity.

Rule 4.3. *Service of Legal Paper Other than Citations or Notices*

- (a) Copies of all pleadings, and any brief or memorandum of law in connection therewith, other than 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. This 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;
 - (2) by transmitting a facsimile copy to the party's counsel of record as provided by subparagraph (c); or
 - (3) by electronic transmission as provided in subparagraph (d).
- (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 at the residence or place of business of the party, or by transmitting a facsimile copy as provided by subparagraph (c) or by electronic transmission as provided in subparagraph (d).
- (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 if the parties agree thereto or if a facsimile telephone number is included on an entry of appearance or other legal paper previously filed with the court in the action.
- (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.
- (d) Service may be effected by electronic transmission if the parties agree thereto or if an email address is included on an entry of appearance or other legal paper previously filed with the court in the action.
- (e) Service by mail is complete upon mailing, and service by facsimile is complete when transmission is confirmed. 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.
- (f) A certificate of service shall be attached to any legal paper filed or served pursuant to this Rule, setting forth the manner of service and listing the names and addresses of those individuals and entities served with the legal paper.

Note: Most of Rule 4.4 has no counterpart in former Orphans' Court Rules, but is based on Pa.R.C.P. No. 440 with modifications. Subparagraph (d) of this Rule is identical to former Rule 3.7(h)(2); it merely has been reformatted and relocated to this Chapter IV.

Explanatory Comment: The Notes and Explanatory Comment appearing after Pa.R.C.P. No. 440 are fully incorporated by reference herein. Service of legal papers as provided in Rule 4.3 can occur even if the local judicial district has not implemented electronic filing.

Editor's note: Amended October 31, 2019, effective January 1, 2020.