

PART II. ORPHANS' COURT RULES

Rule

- 1—13. [Reserved].
- 14—16. [Renumbered].
- 17. [Reserved].

Chapter

- I. PRELIMINARY RULES
 - II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS
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ABORTION CONTROL ACT
- APPENDIX

Source

The provisions of this Part II amended December 5, 1975, 5 Pa.B. 3133, unless otherwise noted.

(Editor's Note: Rules 1—13 and 17 are rescinded and Rules 14 and 16 are amended under Supreme Court Order No. 682, dated December 1, 2015, effective September 1, 2016. See 45 Pa.B. 7098 (December 19, 2015). This order will be codified in the September 2016 Pennsylvania Code Reporter. Supreme Court Order No. 683, dated December 1, 2015, addresses local orphans' court rules. See 45 Pa.B. 7126 (December 19, 2015).)

RULE 1. [Reserved]

Rule

- 1.1—1.3. [Reserved].

Source

The provisions of this Rule 1 amended April 26, 1979, effective August 1, 1979, 9 Pa.B. 1514, unless otherwise noted.

Rule 1.1. [Reserved].**Source**

The provisions of this Rule 1.1 adopted April 26, 1979, effective August 1, 1979, 9 Pa.B. 1514; reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial pages (379783) to (379784).

Rule 1.2. [Reserved].**Source**

The provisions of this Rule 1.2 amended April 26, 1979, effective August 1, 1979, 9 Pa.B. 1514; reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial page (379784).

Rule 1.3. [Reserved].**Source**

The provisions of this Rule 1.3 adopted October 16, 2006, effective 30 days from date on entry, 36 Pa.B. 6760; amended July 16, 2012, effective immediately, 42 Pa.B. 4908; reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial page (379784).

CHAPTER I. PRELIMINARY RULES

Rule	
1.1.	Short Title and Citation.
1.2.	Construction and Application of Rules.
1.3.	Definitions.
1.4.	Extension of Time Limitations.
1.5.	Local Rules.
1.6.	Mediation by Agreement, Local Rule, or Court Order.
1.7.	Entry and Withdrawal of Counsel.
1.8.	Forms.

Source

The provisions of this Chapter I adopted December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098, unless otherwise noted.

Rule 1.1. Short Title and Citation.

These Rules shall be known as the Pennsylvania Orphans' Court Rules, 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 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;

“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.

Note: This definitional section is new; but, some of the definitions are substantively identical to the definitions in former Rule 2.3 and other definitions are taken from and are similar to Pa.R.C.P. No. 76.

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 14 regarding guardianship of incapacitated persons, Chapter 15 regarding adoptions, and Chapter 16 regarding proceedings pursuant to section 3206 of the Abortion Control Act.

(b) 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).

(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 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.

Note: Effective August 1, 2016, Pennsylvania Rule of Judicial Administration 103 was amended to consolidate and include all local rulemaking requirements. Accordingly, the rule-making 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.

Source

The provisions of this Rule 1.5 rescinded and replaced June 28, 2016, effective August 1, 2016, 46 Pa.B. 3804. Immediately preceding text appears at serial pages (382095) to (382096).

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.

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 by all Registers and clerks. Where a Supreme Court-approved form exists, no other form shall be allowed or required by local rule or practice.

(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) 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(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 statewide forms promulgated by the Supreme Court. Previously, forms approved or mandated for use pursuant to local rule could be accepted by the local register and clerk so long as the local register 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 is the only one that can be accepted by the local register or clerk. The mandatory statewide forms are set forth in the Appendix attached hereto. The current website for electronic access to the forms is found at www.pacourts.us/forms under the For-the-Public category. The forms posted on the website are capable of on-line completion.

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