

**RULE 3: PLEADING AND PRACTICE**

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**Rule 3.1. Conformity to equity practice; in general.**

Except where otherwise provided by a rule adopted by the Supreme Court or by an Act of Assembly or by general rule or special order of the local Orphans' Court, and except for the Notice to Defend required by Rule of Civil Procedure 1018.1, which form of notice shall be required only if directed by general rule or special order of the local Orphans' Court, the pleading and practice shall conform to the pleading and practice in equity in the local Court of Common Pleas.

**Explanatory Note:** The deletion of the word "Exceptions" from the title avoids confusion with the understanding of this word as it is employed in Rule 7.

**Rule 3.2. Petition, answer and reply.**

(a) On or before the return day fixed in the citation or order, and in all other cases within twenty days after service upon him of a copy of any petition, a party opposing the granting of the prayer of the petition shall file an answer admitting or denying the averments of fact of the petition and specifically stating his objections thereto and averring the facts relied upon by him.

(b) Within twenty days after service upon him of a copy of an answer, a petitioner may file a reply thereto and admit, deny or avoid the facts averred in the answer.

**Rule 3.3. Averment of incapacity.**

Whenever the name of a person must be set forth in a pleading or statement of proposed distribution and such person is not sui juris, that fact shall be set forth, together with the name and address of the guardian, trustee, or other representative of such person, if any. If the person not sui juris is a minor who has no guardian of his estate, the minor's age, the name and address of his parents and of the person with whom he resides shall also be set forth.

**Explanatory Note:** The word "committee" is deleted as no longer applicable to a person or persons managing the estate or person of an incompetent.

**Rule 3.4. Form of petition; exhibits; consents.**

- (a) A petition shall set forth
  - (1) the caption;
  - (2) a heading indicating briefly the purpose of the petition;
  - (3) a concise statement of the facts relied upon to justify the relief desired, together with the citation of any Act of Assembly relied upon; and
  - (4) a prayer for the relief desired.
- (b) The petitioner shall attach to the petition
  - (1) a form of decree; and
  - (2) such exhibits, consents or approvals as may be required by Act of Assembly or by local rule.
- (c) If the petitioner is unable to attach any necessary exhibit, consent or approval, he shall so state in his petition, together with the reason for his inability.

**Rule 3.5. Mode of proceeding on petition.**

Proceeding on petition shall be by citation to be awarded by the Court upon application of petitioner in any case where jurisdiction over the person of the respondent is required and has not previously been obtained. In all other cases, proceedings on petition shall be by notice. In either event a copy of the petition shall be served with the citation or notice unless service thereof is made by publication. Neither a citation nor notice shall be required where all parties in interest are the petitioners or their consents or joinders are attached.

**Explanatory Note:** The distinction between commencement of proceedings by petition with notice as contrasted with petition with citation has been generally a hazy one for most of the profession. A misstep can be quite troublesome if not fatal, viz: Hicks Estate, 414 Pa. 131, 199 A.2d 283, 1964. For this reason it is suggested that an explicit statement thereof would be of value even though possibly redundant. Similarly the last sentence seems obvious but members on the Orphans' Court bench have reported otherwise.

**Rule 3.6. Depositions, discovery, production of documents and perpetuation of testimony.**

The local Orphans' Court, by general rule or special order, may prescribe the practice relating to depositions, discovery, production of documents and perpetuation of testimony. To the extent not provided for by such general rule or special order, the practice relating to such matters shall conform to the practice in the Trial or Civil Division of the local Court of Common Pleas.

**Rule 3.7. Electronic filing and service of legal papers.**

- (a) *Authorization for Electronic Filing.*

(1) A local Orphans' Court may permit or require electronic filing of legal papers. Any Court which implements electronic filing shall establish procedures governing such filing by local rule which shall be consistent with the procedures set forth herein.

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

(2) This rule does not mandate the implementation of electronic filing by a local Orphans' Court.

(b) *Electronic Filing of Legal Paper.*

(1) A filing party may file a legal paper with the Clerk by means of electronic filing.

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

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

(4) Any party may require the filing party to file the original or a hard copy of a legal paper or exhibit by filing a notice to file with the Clerk and serving a copy of the notice upon the filing party. The filing party shall file the specified document with the Clerk within fourteen (14) days after service of the notice. Upon disposition of the matter before the Court, an original document may be returned to the party who filed it, or retained by the Court, as the Court may determine.

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

(1) The original legal paper shall be properly signed, and where required, verified.

(2) The electronic filing of a legal paper constitutes a certification by the filing party that the original document was signed, and where applicable, verified.

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

(i) the disposition of the case;

(ii) the entry of an order resolving the issue raised by the legal paper;

or

(iii) the disposition by an appellate court of the issue raised by the legal paper.

(d) *Website and Filing Date.*

(1) The Court shall designate a website for the electronic filing of legal papers. A user name and password shall be issued to authorized users.

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

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

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

(f) *Fees.*

(1) A filing party shall pay the fee for electronically filing a legal paper as provided by the Court.

(2) The Court may assess an additional automation fee for each legal paper electronically filed which shall be used for the development, implementation, maintenance, and training in the use of the Orphans' Court electronic filing system, and other related uses.

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

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

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

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

(i) *Notices.* The Clerk and the Court may serve all notices via electronic means.

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

Nothing in this Rule is intended to change the procedural requirements of Orphans' Court practice, as embodied in the statutes and rules of court. Rather this Rule is intended to facilitate the delivery of legal papers to the Court and the parties, as well as to reduce record management burdens in the office of the Clerk. The terms "electronic filing," "filing party," and "legal paper" are defined in Rule 2.3.

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

Existing procedures regarding record retention for paper documents by the Clerk shall apply to electronically filed documents. A local Orphans' Court which permits electronic filing may require filing and maintenance of paper documents or exhibits; it may also accept paper documents, convert such documents to electronic format, and destroy the paper documents. (See *Record Retention & Disposition Schedule with Guidelines*, adopted by the Supreme Court of Pennsylvania by Order, dated November 28, 2001, as part of the amendment to Pa.R.J.A. No. 507).

**Source**

The provisions of this Rule 3.7 adopted October 18, 2004, effective immediately, 34 Pa.B. 5891.

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