

RULE 4. [Reserved]

Rule
4.1—4.3. [Reserved].

Rules 4.1—4.3. [Reserved].**Source**

The provisions of these Rules 4.1—4.3 reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial page (236781).

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

Rule
4.1. Format of All Legal Paper.
4.2. Citation or Notice to Individuals and Entities.
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4.6. Notice of the Date of Entry of an Adjudication or Court Order on the Docket.
4.7. Electronic Filing.

Source

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

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 1/2 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.

(d) *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.

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.

Rule 4.4. Charities—Notice to the Attorney General.

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

- (1) the caption of the case;
- (2) a description of the nature of the proceeding;
- (3) the date, time and place when the matter is to be heard by the court to the extent then known;
- (4) the name of the decedent, settlor, incapacitated person or minor, if not disclosed by the caption;
- (5) a copy of the will or other instrument creating the charitable interest;
- (6) the name and address of any specific charity which may be affected by the proceeding;
- (7) if the charitable interest is a present interest, a description and the approximate market value of that interest;
- (8) if the charitable interest is a future interest and the estimated present value of the charity's future interest in the property exceeds \$25,000, a brief description thereof including the conditions precedent to its vesting in enjoyment and possession, the names and ages of persons known to have interests preceding such charitable interest, and the approximate market value of the property involved;
- (9) a description of any unresolved claim and any material question of interpretation or distribution likely to be submitted for adjudication which may affect the value of the charitable interest;
- (10) the names and addresses of all fiduciaries;
- (11) the name and address of counsel for each fiduciary;

(12) the name and address of counsel for any charity who has received notice or has appeared for the charity and the name of the charity which counsel represents; and

(13) a copy of an Account if the proceeding involves an Account and if the charity is any one of the following:

- (i) a residuary beneficiary, including as a beneficiary of a residuary trust;
- (ii) a pecuniary legatee in an amount greater than \$25,000; or
- (iii) a pecuniary legatee where the bequest has not and will not be paid in full.

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

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

Note: Rule 4.4 is substantively identical to former Rule 5.5.

Explanatory Comment: See Appendix (OC-06) for form of notice under this Rule.

Rule 4.5. Service of Legal Paper by Court and Clerk.

(a) The clerk and the court may serve all notices, opinions, and orders via electronic means where any one of the following has occurred:

- (1) the parties have agreed to receipt of legal paper by electronic transmission;
- (2) the underlying legal paper related to the notice, opinion or order was electronically filed; or
- (3) an email address appears on an entry of appearance or other legal paper previously filed with the clerk in the action.

(b) The clerk and the court may serve all notices, opinions, and orders by facsimile in accordance with Rule 4.3(c).

Note: Rule 4.5 is based upon former Rule 3.7(i); it has been reformatted and relocated to this Chapter IV.

Explanatory Comment: This Rule 4.5 differs from its counterpart in former Rule 3.7(i) in several respects: first, this Rule permits the clerk and court to serve not only notices, but also opinions and orders, via electronic means as well as by facsimile; and second, it provides that the clerk and court are able to send notices, opinions, and orders via electronic means if the underlying legal paper was filed electronically. Service from the court and clerk as provided in Rule 4.5 can occur even if the local judicial district has not implemented electronic filing.

Rule 4.6. Notice of the Date of Entry of an Adjudication or Court Order on the Docket.

(a) The clerk shall immediately give written notice of the entry of an adjudication or court order in a particular matter to each party's counsel of record or, if unrepresented, to each party. The notice shall include a copy of the adjudication or court order.

(b) The clerk shall note in the docket the date when notice was given to the party or to his or her counsel under subparagraph (a) of this Rule.

Note: Rule 4.6 has no counterpart in former Orphans' Court Rule, but is derived from Pa.R.C.P. No. 236.

Rule 4.7. Electronic Filing.

(a) *Authorization for Electronic Filing.* A court may permit or require electronic filing of legal paper. Any court that implements electronic filing shall establish procedures governing such filing by local rule, which shall not be inconsistent with the procedures set forth herein.

(b) *Electronic Filing of Legal Paper.*

(1) If implemented by court, a filing party may file a legal paper with the clerk by means of electronic filing.

(2) Any party may require the filing party to file the original of a legal paper or exhibit by filing a notice to file with the clerk and serving a copy of the notice upon the filing party. The filing party shall file the specified document with the clerk within 14 days after service of the notice. The court for any reason may direct any party to file the original of a legal paper or exhibit with the clerk within the time specified in the order. Upon disposition of the matter before the court, an original document may be returned to the party who filed it or retained by the court, as the court may determine.

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

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

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

(3) Unless retained by the court, the filing party shall maintain the original of all documents so certified, together with any exhibits filed, for 5 years after the final disposition of the case.

(d) *Website and Filing Date.*

(1) The court shall designate a website for the electronic filing of legal paper. 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 from the clerk that the filing has been processed. Such acknowledgement shall include the date and time of filing in a form which can be printed for retention by the filing party.

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

(f) *Fees.*

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

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

Note: Rule 4.7 is substantively identical to former Rule 3.7, but has been relocated to Chapter IV of these Rules.

Explanatory Comment: 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.

Those jurisdictions which require e-filing must also provide the necessary technical assistance to those parties who lack the capacity to electronically file legal paper.

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 paper to the court and the parties, as well as to reduce record management burdens in the office of the clerk. The terms "electronic filing," "filing party," and "legal paper" are defined in Rule 1.3.

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

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