

RULE 3. [Reserved]

- Rule
- 3.1. [Reserved].
- 3.2—3.6. [Reserved].
- 3.7. [Reserved].

Rule 3.1. [Reserved].

Source

The provisions of this Rule 3.1 amended December 10, 2013, effective February 10, 2014, 43 Pa.B. 7545; reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial page (370011).

Rules 3.2—3.6. [Reserved].

Source

The provisions of these Rules 3.2—3.6 reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial pages (370011) to (370012).

Rule 3.7. [Reserved].

Source

The provisions of this Rule 3.7 adopted October 18, 2004, effective immediately, 34 Pa.B. 5891; reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial pages (370012) and (307577) to (307579).

CHAPTER III. PETITION PRACTICE AND PLEADING

Part

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C.	Pleadings in General	3.12

Source

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

Part A. Petition Practice

- Rule
- 3.1. Petitions Generally.
- 3.2. Headings; Captions.
- 3.3. Contents of All Pleadings; General and Specific Averments.
- 3.4. Form of Petition; Exhibits; Consents; Signing and Verification.
- 3.5. Mode of Proceeding on Petition.

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.

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.)

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. Subparagraphs (c) and (d) of this Rule have no counterpart in former Orphans' Court Rules.

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.*

Part B. Responsive Pleadings

- Rule
 3.6. Pleadings Allowed After Petition.
 3.7. Time for Filing and Service of Responsive Pleadings.
 3.8. Headings of Responsive Pleadings.
 3.9. Preliminary Objections.
 3.10. Denials; Effect of Failure to Deny.
 3.11. Answer with New Matter.

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.

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.

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 sent to the petitioner or his or her counsel, if represented, and all interested parties identified in the petition or counsel representing an interested party if so identified in the petition or in a subsequent pleading. A certificate of service, listing the names and addresses of those individuals and entities receiving a copy of the responsive pleading shall be appended to, or filed contemporaneously with, the responsive pleading.

(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.

Rule 3.8. Headings of Responsive Pleadings.

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

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

Rule 3.9. Preliminary Objections.

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

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

- (1) lack of jurisdiction over the subject matter of the action or lack of jurisdiction over the person, improper venue, or improper form of service;
- (2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;
- (3) insufficient specificity in a pleading;
- (4) legal insufficiency of a pleading (demurrer);

- (5) lack of standing or lack of capacity to sue, nonjoinder of a necessary party, or misjoinder of a cause of action; and
- (6) pendency of a prior action or agreement for alternative dispute resolution.
- (c) *Form.* All preliminary objections shall be raised at one time in one pleading, shall state specifically the grounds relied upon, and may be inconsistent.
- (d) *Disposition of Preliminary Objections.*
- (1) A party may file an amended pleading, without consent of any other party and without leave of court, within 20 days after service of the preliminary objections. If a party files an amended pleading, the preliminary objections to the original pleading shall be deemed moot.
- (2) In all other instances, the court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall consider evidence by deposition or otherwise.
- (e) *Pleadings Allowed Subsequent to the Disposition of Preliminary Objections.*
- (1) If the preliminary objections are overruled, the party who filed the preliminary objections shall have the right to file an answer within 20 days after entry of the order overruling the preliminary objections or within such other time as the court shall direct.
- (2) If the filing of an amended petition or a new petition is allowed or required, it shall be filed within 20 days after entry of the order concerning such amended or new petition or within such other time as the court shall direct.
- (3) New preliminary objections may be filed to any amended or new petition in accordance with this Rule.

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

Explanatory Comment: Preliminary objections raising an issue under subparagraphs (b)(2), (b)(3), (b)(4), and in some instances (b)(1), may be determined from the facts of record so that further evidence is not required. In such situations, the court may summarily decide preliminary objections prior to the filing of an answer.

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

Pleadings may be amended only in accordance with subparagraphs (d)(1), (e)(2) or Rule 3.14.

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.

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.

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).

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.

Part C. Pleadings in General

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|-------|--|
| Rule | |
| 3.12. | Signing. |
| 3.13. | Verification. |
| 3.14. | Amendment. |
| 3.15. | Pleading More Than One Cause of Action; Alternative Pleadings. |

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 sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party.

Note: Rule 3.13 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.

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

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.

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(382120) No. 502 Sep. 16

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