

[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) 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:** The 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](http://www.pacourts.us/forms) under the For-the-Public category. The forms posted on the website are capable of on-line completion.

In 2019, Rule 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.

### **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