

## **Pennsylvania Supreme Court Orphans' Court Rules**

**(Current through September 2009)**

Purdon's Pennsylvania Statutes and Consolidated Statutes [Currentness](#)  
Title 20 Pa.C.S.A. Decedents, Estates and Fiduciaries ([Refs & Annos](#))  
[Chapter 7](#). Orphans' Court Divisions

### **Rule 1.1. Powers of judges**

Any judge of an Orphans' Court Division, whether or not it consists of more than one judge, may hear and determine all matters jurisdiction of which is exercised through the Orphans' Court Division.

*Explanatory Note:* This is the same as the first sentence of Section 731 of the Probate, Estates and Fiduciaries Code. The Judiciary Act Repealer Act repeals Section 731 effective June 27, 1980. This addition to the Supreme Court Rules is intended to clarify the situation as it will exist after June 27, 1980.

### **Rule 1.2. Local rules**

The Orphans' Courts of the several judicial districts of this Commonwealth may adopt local rules regulating practice and procedure, but such rules shall not be inconsistent with any rule adopted by the Supreme Court of this Commonwealth or any Act of Assembly regulating the practice and procedure in the Orphans' Courts of this Commonwealth.

*Explanatory Note:* This is substantially identical to what formerly was Rule 1 before the addition of [Rule 1.1](#).

### **Rule 1.3. Forms**

The Supreme Court hereby adopts forms for practice and procedure before the Registers of Wills and Orphans' Court Divisions of this Commonwealth which shall be acceptable in all jurisdictions in addition to forms otherwise approved or mandated for use pursuant to local rules. These forms 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 a website designated by the Supreme Court.

*Committee Comment--2006:* A number of forms previously recommended by the Committee for use before the Register of Wills, but not formally adopted by the Court, had appeared following [Rule 10.1](#). Most of those forms have now been consolidated or revised and set forth in the Appendix hereto. However, certain forms have been deleted because they are properly generated by the Register of Wills rather than counsel. The forms formerly set forth in the body of Rules 5.7, 6.12, 14.5, 16.11 and 16.12, some with minor revisions, have been moved to the Appendix as well. In addition, a number of new forms for use in the Orphans' Court have been adopted by the Court. The current website for electronic access to the forms is found at <http://www.aopc.org/Index/Forms/IndexForms.asp>. The forms posted on the website are capable of on-line completion.

### **Rule 2.1. Construction of rules**

The rules adopted by the Supreme Court regulating the practice and procedure of the Orphans' Courts of this Commonwealth, and the rules adopted by such courts, shall be liberally construed to secure the just, speedy and inexpensive 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 which does not affect the substantial rights of the parties in interest.

**Rule 2.2. Waiver of time limitation**

The court, upon its own motion or the motion of any party, may extend any limitation of time prescribed by these rules.

**Rule 2.3. Definitions**

The following words when used in these rules, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this rule:

“Clerk” means the Clerk of the Orphans' Court Division.

“Court”, “Orphans' Court” or “Orphans' Court Division” means the Orphans' Court Division of the Court of Common Pleas, or any judge thereof, having jurisdiction.

“Electronic Filing” means the electronic transmission via the internet of legal papers to the Clerk of the Orphans' Court Division.

“Fiduciary” includes executors, administrators, guardians, agents acting under a power of attorney and trustees, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the Orphans' Court Division.

“Filing party” means a party or an attorney acting on behalf of a party who files a legal paper by means of electronic filing.

“Legal paper” means a petition, pleading, or other document.

“Register of Wills” or “Register” means the Register of Wills having jurisdiction.

*Explanatory Note:* Rule 2.3 is added principally to avoid the necessity of changing the wording in some of the rules to conform to [Article V Section 5 of the Constitution of Pennsylvania](#) as amended in 1968.

**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](#)).

#### **Rule 4.1. Generally**

- (a) When any period of time is referred to in any rule, such period in all cases, except as otherwise provided in Rules 2 and 3 of this Section, shall be so computed as to exclude the first and include the last day of such period.
- (b) Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the laws of this Commonwealth or of the United States, such day shall be omitted from the computation.

#### **Rule 4.2. Publication for successive weeks**

Whenever in any rule or Act of Assembly providing for the publishing of notices, the phrase “successive weeks” is used, weeks shall be construed as calendar weeks. The publication upon any day of such weeks shall be sufficient publication for that week, but at least five days shall elapse between each publication. At least the number of weeks specified in “successive weeks” shall elapse between the first publication and the day for the happening of the event for which publication shall be made.

#### **Rule 4.3. Computation of months**

Whenever in any rule or Act of Assembly the lapse of a number of months after or before a certain day is required, such number of months shall be computed by counting the months from such day excluding the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the same numerical order as the day of the month from which the computation is made, unless there are not so many days in the last month so counted, in which case the period computed shall expire with the last day of such month.

#### **Rule 5.1. Method**

Except where otherwise provided by a rule adopted by the Supreme Court or by an Act of Assembly, whenever notice is to be given a person, it shall be given

- (a) by service upon the attorney appearing of record for such person; or
- (b) if there is no such attorney, by personal service, delivery at the residence of such person or by mail, if his residence is known; or
- (c) if his residence is not known, by publication once a week during three successive calendar weeks in the legal periodical, if any, and in a newspaper of general circulation published at or near his last known residence within the county; or
- (d) in such other manner as the court shall direct.

#### **Rule 5.2. Method; person under incapacity**

Whenever notice is to be given a person who is not sui juris, notice shall be given to his guardian or trustee, but if there is no such guardian or trustee, notice shall be given in such manner as the court by general rule or special order shall direct. The return of such notice or an averment of such notice in a pleading shall set forth the incapacity of the person who is not sui juris and the name and address of his representative or other person who has been notified on his behalf.

*Explanatory Note:* See the explanation to [Rule 3.3](#).

### **Rule 5.3. Time for notice**

Whenever notice of the intention to do any act is required, such notice shall be given at least ten days prior to the doing of the act, unless a different period is specified by a rule adopted by the Supreme Court or by an Act of Assembly.

### **Rule 5.4. Return of notice**

Return of notice shall be by affidavit of the person serving, mailing, publishing or delivering such notice.

### **Rule 5.5. Charities; notice to the Attorney General**

In every proceeding in the Orphans' Court involving or affecting a charitable interest with the exception hereinafter set forth, at least fifteen days advance written notice thereof shall be given to the Attorney General of the Commonwealth of Pennsylvania at his principal office at Harrisburg, Pennsylvania, or to a deputy of his whom he shall have 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

- (a) the caption of the case;
- (b) a description of the nature of the proceeding;
- (c) the date, time and place when the matter is to be heard by the court to the extent then known;
- (d) the name of the decedent, settlor, incompetent or minor, if not disclosed by the caption;
- (e) a copy of the will or other instrument creating the charitable interest;
- (f) the name and address of any specific charity which may be affected by the proceeding;
- (g) if the charitable interest is a present interest, a description and the approximate market value of that interest;
- (h) if the charitable interest is a future interest and the estimated present value of the property involved 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;
- (i) 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;
- (j) the names and addresses of all fiduciaries;

(k) the name and address of counsel for the fiduciary; and

(l) the name and address of counsel for any charity who has received notice or has appeared for it and the name of the charity which he represents.

Proof of service of the above notice by registered or certified mail or an acknowledgment of such notice received from the Attorney General or his deputy shall be filed of record in every proceeding involving a charitable interest prior to the entry of any decree.

Unless the Orphans' Court directs otherwise by local rule adopted after the effective date hereof, no notice to the Attorney General or his designated deputy 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.

*Explanatory Note:* This is an adaptation from rules presently in effect in a number of counties which in turn were derived from informal recommendations made by Mr. Justice McBride when he was Attorney General, published in *Fiduciary Review*, April 1958. That same article lists many non-accounting type proceedings in which notice would also be required.

Reproduction and mailing costs for the sender, as well as voluminous filing problems for the Attorney General seem to render it inadvisable to require submission of a copy of the account, pleadings, or other documents with the initial notice. The 15-day period should be adequate to enable the Attorney General to request and obtain a copy thereof in any proceeding where he deems further consideration desirable. The rule has been drafted with the objective that it be adaptable to a printed form of charitable notice. A number of counties have already adopted printed forms with considerable success.

There has not been complete unanimity among practitioners with regard to the scope of the doctrine announced in [Pruner Estate](#), 390 Pa. 529, 136 A.2d 107, 1957. Despite the fact that the reported opinion referred only to charitable trusts and despite the distinction drawn between a charitable trust and an outright legacy to charity in [Craig Estate](#), 356 Pa. 564, 52 A.2d 650, 1947, it is thought that the underlying principles of *parens patriae* should be equally applicable to an outright pecuniary legacy to a named charity. On the other hand it seems useless to demand notice of a small pecuniary legacy which has or will be paid in full.

This notice is not intended to supplant or obviate the required application for leave of the Attorney General to institute cy pres proceedings for pre-1948 trusts under the provisions of the Act of 1855, P.L. 328, as amended.

The words "or his designated deputy" are added to conform with the wording in the initial paragraph and for further identification of the person to whom notice is usually most appropriate. The change from \$10,000 to \$25,000 avoids a nuisance for all parties in instances where the services of the Attorney General are not required.

*Committee Comment--2006:* See Appendix for form of notice under Rule 5.5.

#### **Rule 5.6. Notice to beneficiaries and intestate heirs**

**(a) Requirement of Notice.** Within three (3) months after the grant of letters, the personal representative to whom original letters have been granted or the personal representative's counsel shall send a written notice of estate administration in the form approved by the Supreme Court to:

(1) every person, corporation, association, entity or other party named in decedent's will as an outright beneficiary whether individually or as a class member;



- (2) the decedent's spouse and children, whether or not they are named in, or have an interest under, the will;
- (3) where there is an intestacy in whole or in part, to every person entitled to inherit as an intestate heir under Chapter 21 of the Probate, Estate and Fiduciaries Code;
- (4) the appointed guardian of the estate, parent or legal custodian of any beneficiary who is a minor child under the age of eighteen (18) years;
- (5) the appointed guardian of the estate or, in the absence of such appointment, the institution or person with custody of any beneficiary who is an adjudicated incapacitated person;
- (6) the Attorney General on behalf of any charitable beneficiary whose interest exceeds \$25,000 or which will not be paid in full;
- (7) the Attorney General on behalf of any governmental beneficiary;
- (8) the trustee of any trust which is a beneficiary; and
- (9) such other persons and in such manner as may be required by any local rule of court.

**(b) Definition of Beneficiary.** “Beneficiary” shall be deemed to include any person who may have an interest by virtue of the Pennsylvania anti-lapse statute, [20 Pa.C.S. § 2514](#).

**(c) Manner of Notice.** Notice shall be given by personal service or by first-class, prepaid mail to each person and entity entitled to notice under subdivision (a)(1)-(9) whose address is known or reasonably available to the personal representative.

**(d) Certification of Notice.** Within ten (10) days after giving the notice required by subdivision (a) of this Rule, the personal representative or the personal representative's counsel shall file with the Register or Clerk a certification that notice has been given as required by this Rule. No fee shall be charged by the Register or Clerk for filing the certification required by this subdivision.

**(e) Failure to File Certification.** Upon the failure by the personal representative or the personal representative's counsel to file the certification on a timely basis, the Register shall, after ten (10) days prior written notice to the delinquent personal representative and his counsel, notify the Court of such delinquency.

*Explanatory Note:* The 1998 amendment to subdivision (e) is not intended to limit the inherent power of the Court to impose sanctions upon a delinquent personal representative or counsel.

**(f) Effect of Notice.** This Rule shall not alter or diminish existing rights or confer new rights.

**(g) Copies of Rule.** The Register shall deliver a copy of Rule 5.6 and the forms of notice and certification approved by the Supreme Court to each personal representative and counsel at the time letters are granted.

*Explanatory Note:* It is not the intention of the Rule to require notice beyond the degree of consanguinity entitling a person to inherit under Chapter 21 of the Probate, Estates and Fiduciaries Code.

*Committee Comment--2006:* The form of notice and certification of notice required by Rule 5.6 and formerly set forth in [Rule 5.7](#) have been revised and moved to the Appendix. Subparagraph (f) has been restated to correct a typographical error in the prior version of the rule.

**Rule 5.7. Repealed by Order of Oct. 16, 2006, effective Nov. 15, 2006**

*Committee Comment--2006:* The form of notice and certification of notice required by [Rule 5.6](#) and formerly set forth in Rule 5.7 have been revised and moved to the Appendix.

**Rule 6.1. Form of account**

Accounts shall conform to the following rules:

(a) 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 except that 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 dates of beginning and ending of the period covered.

(b) Except where otherwise provided by a special order of the local Court in a particular case, principal and income shall be accounted for separately within the account. As illustrated in the Model Accounts set forth in the Appendix, every account shall contain:

(1) cover page;

(2) summary and index page;

(3) separate schedules, as needed, which set forth receipts, gains or losses on sales or other dispositions, disbursements, distributions, investments made and changes in holdings, and other schedules as appropriate; and

(4) signature and verification pages by the accountant(s); the verification of the personal representative's account shall contain a statement that the Grant of Letters and the first complete advertisement thereof occurred more than four months before the filing of the account unless the personal representative has been directed by the court to file an account prior to that time.

(c) Assets held by the accountant on the closing date of the account shall be separately itemized.

(d) Testamentary assets shall be segregated from appointive assets.

(e) Except where otherwise provided by a special order of the local Court in a particular case, Accounts shall be prepared and filed in substantial conformity with any form approved by the Supreme Court of this Commonwealth.

(f) The Uniform Fiduciary Accounting Principles and accompanying commentaries and illustrations recommended by the Committee on National Fiduciary Accounting Standards in collaboration with the National Center for State Courts are approved as an elaboration of the requirements of this rule. Reference may be made to them for determination of the adequacy of a particular account. The model Account formats set forth in the Appendix to the Pa.O.C. Rules are the approved forms for purposes of paragraph (e) of this Rule in lieu of all forms heretofore approved.

*Committee Comment:* For completeness, paragraph (a) of this Rule is expanded to include distributions as a category.

ry. Paragraph (b) of this Rule is expanded to delineate the individual schedules required within an account and to require that each account be signed at the end and verified. Consistent with the objective to standardize statewide practice, former paragraph (e) of this Rule was stricken and present paragraph (e) was modified to require use of forms of Account consistent with model forms except upon special order of Court. The National Fiduciary Accounting Standards Project (1983) Report of Fiduciary Accounting Standards Committee previously referenced in Pa.O.C. Rule 6.1 is now included in the Appendix following the Pa.O.C. Rules. However, the Orphans' Court Procedural Rules Committee has corrected and modified the Project's Model Estate Account and Model Trust Account attached to that Report and added a Model Charitable Remainder Unitrust Account. All Model Accounts are also now included in the Appendix following the Pa.O.C. Rules.

#### **Rule 6.2. Form; separate accounts for minors**

Unless the court upon cause shown directs otherwise, a separate account shall be filed for the estate of each minor.

#### **Rule 6.3. Notice to parties in interest**

No account shall be confirmed unless the accountant has given written notice of the filing of the account and the call there-of for audit or confirmation to every unpaid claimant who has given written notice of his claim to the accountant and to every other person known to the accountant to have or claim an interest in the estate as creditor, beneficiary, heir or next of kin.

The notice shall state the date, time and place of the audit to the extent then known; shall also state the last day to file objections to the account in counties where the local rules require written objections; and shall include a copy of the statement of proposed distribution in counties where accounts are not audited in open court.

*Explanatory Note:* Terminology in the first paragraph conforms with statutory requirements except that it also extends the benefit of notice to those who claim to have an interest even though the accountant may be convinced that they have no valid interest. The second paragraph should be helpful in outlining minimum requirements for notice. The words "to the extent known" is required in counties having more than one Orphans' Court Judge, since the court room where a particular account will be audited may not be known when the notice is given.

#### **Rule 6.4. Time for filing**

The first account of a personal representative shall not be filed until four months have elapsed from the date of the first complete advertisement of the original grant of letters, unless the personal representative has been directed by the court to file an account prior to that time.

*Explanatory Note:* The change from six to four months is in accord with an amendment to Section 3501 of the Probate, Estates and Fiduciaries Code made by Act 293 of 1974, effective December 10, 1974.

#### **Rule 6.5. Repealed by Order of April 30, 1992, imd. effective**

#### **Rule 6.6. Filing with the clerk of the Orphans' Court**

**Fiduciaries accounts.** The account of a personal representative, trustee, guardian of the estate of a minor or incompetent and custodian under the Uniform Gifts to Minors Act shall be filed with the Clerk of the Orphans' Court.

*Explanatory Note:* The Uniform Gifts to Minors Act gives the Orphans' Court jurisdiction over accounting by a custodian.

**Rule 6.7. Filing copy with the Department of Revenue**

A copy of every account filed by the fiduciary of the estate of a deceased person who was an inmate of a State-owned mental hospital or a home, asylum or other institution, wherein said inmate was maintained in part by the Commonwealth, shall be filed with the Department of Revenue.

*Explanatory Note:* The deleted words are not required and are confusing rather than helpful. As altered, the rule conforms in a greater degree to the wording of Section 3393 of the Probate, Estates and Fiduciaries Code.

**Rule 6.8. Filing copy with the United States Veterans' Administration**

A copy of every account filed by the fiduciary of the estate of a veteran of any war or of the estate of a minor child of such veteran, to which veteran or minor benefits of compensation or insurance or other gratuity is payable by the United States Veterans' Administration or its successor, shall be filed with the United States Veterans' Administration or its successor.

**Rule 6.9. Statement of proposed distribution**

(a) A fiduciary filing an account shall file a statement of proposed distribution, or, as local rules may prescribe, a request that distribution be determined by the court or an auditor.

(b) The statement of proposed distribution shall be filed at such place and time, shall be in such form and shall be accompanied by such papers, and shall be advertised or such notice thereof shall be given, as prescribed by rules adopted by the Supreme Court or, in the absence thereof, the local Orphans' Court Division.

*Committee Comment--2006:* Form petitions for adjudication of a decedent's estate, trust, guardianship of an incapacitated person, guardianship of a minor and estate of a principal to be stated by an agent under a power of attorney have been adopted and appear in the Appendix.

**Rule 6.10. Objections to accounts and statements of proposed distribution**

Objections to an account or statement of proposed distribution shall be made or filed at such place and time, shall be in such form, and such notice thereof shall be given as local rules shall prescribe.

**Rule 6.11. Confirmation of accounts; awards**

(a) No account shall be confirmed or statement of proposed distribution approved until an adjudication or a decree of distribution is filed, in conformity with local rules, by the court or by the clerk of the court, expressly confirming the account or approving the statement of proposed distribution and specifying, or indicating by reference to the statement of proposed distribution, the names of the persons to whom the balance available for distribution is awarded and the amount or share awarded to each of such persons.

(b) Except where otherwise provided by a rule adopted by the Supreme Court or by an Act of Assembly, any distribution made by a fiduciary shall be made at his own risk unless directed by an adjudication, decree of distribution or order of the court.

**Rule 6.12. Status report by personal representative**

(a) **Report of uncompleted administration.** If administration of an estate has not been completed within two years of the

decedent's death, the personal representative or counsel shall file at such time, and annually thereafter until the administration is completed, a report with the Register of Wills showing the date by which the personal representative or counsel reasonably believes administration will be completed.

**(b) Report of completed administration.** Upon completion of the administration of an estate, the personal representative or his, her or its counsel shall file with the Register of Wills a report showing:

- (1) completion of administration of the estate;
- (2) whether a formal account was filed with the Orphans' Court;
- (3) whether a complete account was informally stated to all parties in interest;
- (4) whether final distribution has been completed; and
- (5) whether approvals of the account, receipts, joinders and releases have been filed with the Clerk of the Orphans' Court.

**(c) Form of report.** The report required by this Rule shall be in substantially the form adopted by the Supreme Court.

**(d) No fee.** No fee shall be charged for filing the report required by this Rule.

**(e) Copy of rule.** Upon the grant of letters, the Register shall give a copy of this Rule to each personal representative and his, her or its counsel.

**(f) Failure to file a report.** After at least ten (10) days prior notice to a delinquent personal representative and counsel, the Clerk of the Orphans' Court shall inform the Court of the failure to file the report required by this Rule with a request that the Court conduct a hearing to determine what sanctions, if any, should be imposed.

*Committee Comment--2006:* The form of status report has been revised and moved to the Appendix.

**Rule 6 App. Rescinded by Order of March 29, 2007, effective 30 days from entry of order**

**Rule 7.1. Exceptions**

**(a) General Rule.** Except as provided in Subdivision (e), no later than twenty (20) days after entry of an order, decree or adjudication, a party may file exceptions to any order, decree or adjudication which would become a final appealable order under [Pa.R.A.P. 341\(b\)](#) or [Pa.R.A.P. 342](#) following disposition of the exceptions. If exceptions are filed, no appeal shall be filed until the disposition of exceptions except as provided in Subdivision (d) (Multiple Aggrieved Parties). Failure to file exceptions shall not result in waiver if the grounds for appeal are otherwise properly preserved.

**(b) Waiver.** Exceptions may not be sustained unless the grounds are specified in the exceptions and were raised by petition, motion, answer, claim, objection, offer of proof or other appropriate method.

**(c) Time for Filing Exceptions.** If a party files timely exceptions, any other party may file cross exceptions within ten (10) days after the filing of exceptions.

**(d) Multiple Aggrieved Parties.** Where more than one party is aggrieved by a final appealable order under [Pa.R.A.P. 341\(b\)](#) or [Pa.R.A.P. 342](#), a timely appeal filed by any party renders exceptions a nullity by any other party and the order

shall be submitted directly to the appellate court.

**(e) Adoptions and Involuntary Terminations.** No exceptions shall be filed to any order in involuntary termination or adoption matters under the Adoption Act, [23 Pa.C.S. Section 2501, et seq.](#)

**(f) Time Limits for Decision on Exceptions.** The Orphans' Court shall decide exceptions including supplemental exceptions and cross exceptions within one hundred and twenty (120) days of the filing of the initial exceptions. If the Orphans' Court fails to decide the exceptions within one hundred and twenty (120) days, the exceptions shall be deemed denied by operation of law on the one hundred and twenty first (121st) day and the clerk is directed to enter the deemed denial on the docket as of that date. The appeal period shall begin to run as of the one hundred and twenty first (121st) day.

**(g) Exceptions.** Exceptions shall be the exclusive procedure for review by the Orphans' Court of a final order, decree or adjudication. A party may not file a motion for reconsideration of a final order.

*Explanatory Note:* The 2000 amendment discontinues the prior practice permitting local rules to govern whether exceptions are required after entry of an order, decree or adjudication. The 2000 amendment limits the filing of exceptions to order, decree or adjudication which are final appealable orders after disposition of exceptions under [Pa.R.A.P. 341\(b\)](#) or amended [Pa.R.A.P. 342](#). If an aggrieved party appeals from such order, that appeal shall not affect proceedings with regard to other aspects of the case.

It is understood that failure to appeal shall constitute a waiver of any issues in the order which the Orphans' Court has determined as final.

The 30 day appeal period pursuant to [Pa.R.A.P. 903](#) from such final orders begins to run from the date of entry of an order disposing of exceptions or on the date of a deemed denial pursuant to Subdivision (f) of this rule. Where no exceptions are filed, the 30 day appeal period runs from entry of the final appealable order.

If an order would not become final within the definition of [Pa.R.A.P. 341\(b\)](#) or [Pa.R.A.P. 342](#), then no exceptions may be filed until subsequent entry of a final order within the definition of [Pa.R.A.P. 341\(b\)](#) or [Pa.R.A.P. 342](#). This will eliminate the practice in some counties of permitting issues to be raised by exception following entry of an otherwise interlocutory order and raising the same issues in exceptions to a final order, decree or adjudication. *See, e.g., Estate of McCutcheon*, 699 A.2d 746 (Pa.Super. 1997).

Rule 7.1 permits but does not require exceptions to orders pursuant to [Pa.R.A.P. 341\(b\)](#) and [Pa.R.A.P. 342](#). The election of an aggrieved party not to file exceptions will not result in waiver of issues on appeal. However, nothing in this rule is intended to abrogate the requirement of decisional law or court rule mandating that issues on appeal be preserved by a timely petition, answer, claim, objection, offer of proof or other appropriate vehicle.

The 2000 amendments to Rule 7.1 resolve the dilemma that the judiciary and litigants have faced in determining whether exceptions are required under local practice and whether issues have been preserved for appeal in accordance with the disparate rules throughout the Commonwealth. The prior practice also made it difficult to draw conclusions as to whether an appellate decision constituted controlling authority on a statewide basis or whether the holding was based in whole or part on the vagaries of a local rule. Making exceptions optional with an aggrieved party will expedite the appeals process where the issues have been fully litigated and the reasons for the trial court's decision are clear and the aggrieved party reasonably believes the trial court cannot be convinced that its decision is in error.

Parties frequently overlook the requirement that the order from which a party seeks to appeal and notice of that order from the prothonotary be entered on the docket before an appeal can be taken. *See* [Pa.R.A.P. 301\(c\)](#), [Pa.R.C.P. 236](#) and [Orphans' Court Rules 1.2](#) and [3.1](#). *See also Frazier v. City of Philadelphia*, 735 A.2d 113 (Pa. 1999). This re-

quirement applies to Orphans' Court orders. See [Estate of Keefauver, 518 A.2d 1263 \(Pa.Super. 1986\)](#).

Local practice shall continue to govern with respect to place of filing, briefs, oral argument, courts en banc, etc. Neither [Pa.R.C.P. 227.1](#) nor [Pa.R.C.P. 1517](#) shall apply to Orphans' Court matters.

Subdivision (d) provides that where there are multiple aggrieved parties to a final order, any aggrieved party may file an appeal without filing exceptions. If any other party has filed exceptions prior to a timely appeal by any other party, those exceptions are nullified by the appeal. Once any aggrieved party has filed a timely appeal, no other party may file exceptions even if the time period for filing exceptions has not otherwise expired. Any exceptions filed after an appeal has been taken will be deemed a nullity. See also [Pa.R.A.P. 1701\(b\)](#).

In order to avoid delay of final determination of adoption and termination matters, see [In Re A.L.A., 719 A.2d 363 \(Pa.Super. 1998\)](#), Subdivision (e) eliminates post-trial practice in such cases.

### **Rule 7.2. Transcript of testimony**

All exceptions shall contain a request designating a portion of the record to be transcribed in order to enable the court to dispose of the exceptions. Within ten days after the filing of the exceptions, any other party may file an objection requesting that an additional, lesser or different portion of the record be transcribed. If no portion is indicated, the transcription of the record shall be deemed unnecessary to the disposition of the exceptions. The trial judge shall promptly decide the objection to the portion of the record to be transcribed.

### **Rule 8.1. Notice of Hearings**

An auditor or master shall give notice of hearings held by him in such manner and to such parties as local rules shall prescribe.

### **Rule 8.2. Filing of report**

An auditor or master shall file his report within ninety days after his appointment, unless, upon application, the court extends the time; and, in default thereof, his appointment may be vacated and compensation and reimbursement for services and expenses denied.

### **Rule 8.3. Form of auditor's report**

An auditor's report shall include a statement of the questions involved, findings of fact, conclusions of law, and, if the account is approved by the auditor, it shall also expressly confirm the account and shall specify, or indicate by reference to the statement of proposed distribution, the names of the persons to whom the balance available for distribution is awarded and the amount or share awarded to each of such persons.

### **Rule 8.4. Form of master's report**

A master's report shall state the number, times, dates and duration of the hearings before him, the number, extent and causes of any delays or continuances, and the basis of the court's jurisdiction, and shall include a statement and discussion of the questions involved, findings of fact and conclusions of law, and specific recommendations.

### **Rule 8.5. Transcript of testimony**

The transcript of testimony taken before an auditor or master shall be filed with his report.

**Rule 8.6. Notice of filing report**

An auditor or master shall give notice of the filing of his report or of the intention to file his report in such manner and to such parties as local rules shall prescribe.

**Rule 8.7. Confirmation of report**

- (a) The report of an auditor shall be confirmed in such manner as local rules shall prescribe.
- (b) The report of a master shall not be approved until a decree is entered adopting its recommendations.

**Rule 8.8. Security for expenses and fees**

An auditor or master, the accountant or any party in interest may apply to the court at any time for leave to require security for the payment of the auditor's or master's expenses and fees, and, when such leave is granted, the auditor or master may decline to proceed until security is entered.

**Rule 9.1. Appointment of official examiners**

The court by general rule or special order may appoint an official examiner or examiners who shall examine the assets held by any fiduciary in his fiduciary capacity whenever directed by the court.

**Rule 10.1. Procedure and forms**

The practice, procedure and forms used before a Register of Wills shall be in substantial conformity with the practice, procedure and forms approved by the Supreme Court of this Commonwealth or, in the absence thereof, the practice, procedure and forms approved by the local Orphans' Court Division.

*Committee Comment--2006:* The forms adopted by the Supreme Court appear in the Appendix. The forms previously recommended by the Committee, which followed Rule 10, have been revised. Certain forms previously recommended by the Committee, but which are generated by the Register of Wills instead of counsel, have been eliminated.

**Rule 10.2. Appeals from the Register of Wills**

Appeals from judicial acts or proceedings of the Register of Wills and the practice and procedure with respect thereto shall be as prescribed by local rules.

*Explanatory Note:* This is substantially identical to what formerly was [Rule 10.1](#) before the addition to Rule 10.

**Rule 11.1. Selection of jurors**

When any issue is to be tried by a jury in the Orphans' Court Division, a request shall be made to the Trial or Civil Division of the Court of Common Pleas of the county for a panel of jurors. A jury shall be selected from this panel and if additional jurors are required they shall be similarly obtained on request to the Trial or Civil Division of the Court of Common Pleas.

*Explanatory Note:* As amended, the changed wording conforms to the recognition of the Orphans' Court as a sepa-



rate division of the Court of Common Pleas rather than a constitutionally established separate court. The numbers “twenty” and “twelve” relating to jurors are omitted as unnecessary and to avoid inconsistency with possible future legislation.

**Rule 11.2. Conduct of a trial**

The selection of a jury, the conduct of a trial and motions after trial shall conform to the practice and procedure in jury trials in the local Court of Common Pleas.

**Rule 12.1. Family exemption**

(a) A petition for a family exemption shall set forth

- (1) facts establishing a prima facie right of the petitioner to the exemption;
- (2) if the exemption is claimed from real estate, a request for the appointment of two appraisers to appraise the same;
- (3) a description of the property claimed; and
- (4) whether allowance of the claim prior to the audit or confirmation of the account is requested.

(b) The manner of appraising the property, of filing and confirming the appraisal, and of advertising or giving notice thereof shall be prescribed by local rules.

(c) The court may, at the request of the petitioner, award in distribution, specific real estate included in the account in satisfaction of, or on account of, the family exemption without the necessity of compliance with the procedure outlined in subparagraphs (a) and (b) of this rule, provided, however, that all parties in interest agree in writing to the valuation at which the real estate is to be awarded.

*Explanatory Note:* The Act of 1959, Nov. 10, P.L. 1450 (20 P.S. § 320.211) [see now, [20 Pa.C.S.A. § 3121](#)] increased the exemption to \$1,000.00 [now \$3,500] where decedent died after that date. The Act of 1963, June 11, P.L. 124 (20 P.S. § 320.211) added parents as possible claimants. The suggested general language not only avoids exception for effective dates but also may obviate future revisions of the Rule should the Legislature continue to expand the scope of the exemption.

Paragraph (c) is an adaptation of a similar provision in Rule 2 of this Section. It would facilitate the award where all parties in interest are in accord.

**Rule 12.2. Allowance to surviving spouse of intestate**

(a) When no account is filed and all or part of the spouse's statutory allowance is claimed from real estate, the claim shall be presented by petition, which shall set forth

- (1) facts establishing a prima facie right of the spouse to the allowance;
- (2) a description of the real estate; and
- (3) a request for the appointment of two appraisers to appraise the real estate.

(b) The manner of appraising the property, of filing and confirming the appraisal, and of advertising or giving notice thereof shall be prescribed by local rules.

(c) The court may, at the request of the surviving spouse, award specific real estate in satisfaction of, or on account of, the spouse's statutory allowance without compliance with the procedure outlined in subparagraphs (a) and (b) of this rule if all parties in interest agree in writing that the surviving spouse is entitled to the allowance and to the valuation at which such real estate is to be awarded.

*Explanatory Note:* Deletion of specific reference to the former statutory allowance of \$10,000.00 recently increased to \$20,000.00 allows greater flexibility. The rules would not have to be amended in the future if the statutory amount should be increased. With the broader language employed there is no longer any need to refer to the specific statutory provisions.

As amended, the rule recognizes the present, practice of making the award of real estate in satisfaction of the spouse's allowance a part of the distribution decree when a court accounting is filed. While this rule will be employed only in a minimum of instances for the foregoing reason and also because of the availability of Section 3546 of the Probate, Estates and Fiduciaries Code, it, nevertheless, is considered advisable to preserve it in its altered form as a guide when it is to be employed.

**Rule 12.3. Revocation, vacating and extension of time for filing of surviving spouse's election**

(a) A petition to revoke or vacate an election of a surviving spouse to take under or against the will and other conveyances of the decedent shall set forth

(1) the date of the decedent's death, whether his will has been probated and, if so, a reference to the place of recording;

(2) the name and capacity of the fiduciary of the decedent's estate, if any, and a reference to the record of his appointment;

(3) the names, addresses and relationship, if known, of those interested in the estate and the extent of the interest of each of them;

(4) the names of the parties in interest who have consented to the revocation or vacating of the election, and the names of those who have not consented and the reason, if any, for so refusing;

(5) a description and valuation of the decedent's real and personal property affected by the election;

(6) the date and manner of executing the election desired to be revoked or vacated; whether the same has been recorded, registered or filed, and if so, the date and place thereof;

(7) whether the surviving spouse has made or executed and delivered at any place an election contrary to that desired to be revoked or vacated and whether that election has been recorded, registered or filed, and if so, the date and place thereof;

(8) the facts relied upon to justify the revocation or vacating of the election; and

(9) a request for a citation upon the parties in interest who have not joined in the petition or who have not consented thereto to show cause why the election should not be revoked or vacated.

(b) A petition for the extension of the time in which the surviving spouse may file an election to take against the will and

other conveyances shall be filed at such place and time and shall be in such form as local rules may prescribe.

*Explanatory Note:* The amendments are required to implement the right to elect against conveyances as authorized by Section 6111 of the Probate, Estates and Fiduciaries Code.

**Rule 12.4. Appointment of a guardian ad litem or a trustee ad litem**

(a) On petition of the accountant or any party in interest, or upon its own motion, the court may appoint (1) a guardian ad litem to represent a minor or an incompetent not represented by a guardian or (2) a trustee ad litem to represent an absentee, a presumed decedent, or unborn or unascertained persons not already represented by a fiduciary, unless the court considers that the interests of such persons are adequately represented.

(b) The same person may be appointed as guardian ad litem and trustee ad litem when the interests represented are not conflicting. Application for such an appointment may be made in one petition.

(c) The petition shall set forth

(1) the name, age and address of the minor or incompetent for whom a guardian ad litem is to be appointed and his relationship, if any, to any party in interest and to the decedent or settlor; and

(2) the interest of the minor, incompetent, absentee, presumed decedent, or the unborn or unascertained interests to be represented by a guardian ad litem or a trustee ad litem, the provisions of any instrument creating such interests, the necessity for such interests being represented and the proceedings in which they are to be represented.

(d) A decree appointing a guardian ad litem or a trustee ad litem shall specify the period or proceedings during which he shall act as such.

**Rule 12.5. Appointment of a guardian for the estate or person of a minor**

(a) A petition for the appointment of a guardian for the estate or person of a minor shall be filed by the minor, if over fourteen years of age and, if under such age, by his parent or parents, the person with whom he resides or by whom he is maintained or by any person as next friend of the minor.

(b) The petition shall set forth

(1) the name, address and age of the minor, and the names and addresses of his parents, if living;

(2) the name, address and relationship to the minor of the petitioner, if the petition is not filed by the minor;

(3) that the minor's parents consent to the petition, if it is not filed by them, or the reason why they do not consent;

(4) the necessity of the appointment of a guardian and that the minor has no guardian or that a guardian already appointed has died or has been discharged or removed by the court, together with the date of such death, discharge or removal and a reference to the court record of such discharge or removal;

(5) the name, address and age of the proposed guardian and his relationship to the minor, if any;

(6) the nature of any interest of the proposed guardian adverse to that of the minor including inter alia a reference to any es-

tate in which the minor is interested and in which the proposed guardian is a fiduciary or surety or employee of a fiduciary or surety therein.

(7) if the petition is for the appointment of a guardian of the person, the religious persuasion of the parents of the minor and of the proposed guardian;

(8) if the petition is for the appointment of a guardian of the estate, an itemization of the assets of such estate, their location, approximate value and income, if any;

(9) if the minor is entitled to receive any money as a party to any action or proceeding in any court, a reference to the court record and the amount to which the minor is entitled; and

(10) that notice has been given to the United States Veterans' Administration or its successor, if the minor is the child of a veteran and insurance or other gratuity is payable to him by the United States Veterans' Administration, or its successor.

(c) The proposed guardian's written consent to the appointment shall be attached to the petition.

(d) If the appointment of the same person is requested as guardian of the estates or persons of several minors who are children of the same parents, a single petition shall be filed for such appointment.

(e) If the minor is over the age of fourteen his appearance in court at the time of the presentation of the petition shall be governed by local rule.

#### **Rule 12.6. Appointment of a trustee**

(a) A petition for the appointment of a trustee may be filed by any party in interest and shall set forth

(1) the reason for filing the petition;

(2) the provisions of the instrument creating the trust;

(3) the general character, location and value of the trust property;

(4) the names, addresses and relationships of all parties in interest and that those who have not joined in or consented to the petition have been given notice of the intention to file the petition, or the reason for failing to give such notice; and

(5) the name and address of the proposed trustee and his relationship, if any, to any party in interest and his interest, if any, in the trust.

(b) The proposed trustee's written consent to the appointment shall be attached to the petition.

#### **Rule 12.7. Discharge of a fiduciary and surety**

**(a) Account Previously Filed.** A petition for the discharge of a fiduciary and his surety, or of the surety alone, subsequent to an account having been filed and confirmed, shall set forth

(1) the nature of the fiduciary capacity;

- (2) the date and a reference to the record of the fiduciary's appointment;
- (3) the date of filing the fiduciary's account and that it has been confirmed absolutely; and
- (4) that the entire estate has been distributed to the creditors and parties entitled thereto and that no other property belonging to the estate has been received or remains to be accounted for by the fiduciary.

**(b) Account Annexed.** In lieu of filing and advertising an account, a personal representative who is distributing an estate under the provisions of Section 3531 of the Probate, Estates and Fiduciaries Code, or the guardian of the estate of a minor who has attained his majority and whose gross estate does not exceed the statutory limitation of an administration without appointment of a guardian, may annex his account to the petition for discharge with the information required above, modified to indicate any previous distribution and to suggest the proper distribution of any balance on hand.

#### **Rule 12.8. Partition**

A petition for partition shall set forth

- (a) the date of the decedent's death and whether he died testate or intestate, in whole or in part;
- (b) a description, giving the size and location, of the property to be partitioned, the liens and charges to which it is subject and the rents due from tenants thereof, and that the property has not been partitioned or valued for partition;
- (c) the names, addresses, and relationship of those interested in the land to be partitioned, the extent of the interest of each of such persons, and, if such interest is created by a recorded deed or will, a reference to such record; and
- (d) a request for a citation upon the parties in interest who have not joined as petitioners to show cause why an inquest in partition should not be granted.

#### **Rule 12.9. Public sale of real property**

- (a) A petition for the public sale of real property shall set forth the reason for filing the petition, a description, stating the size and location of the property to be sold, and the liens and charges to which it is subject.
- (b) Public notice of the sale shall be given as required by law and as may be further required by the court by general rule or special order.

#### **Rule 12.10. Private sale of real property or options therefor**

- (a) A petition for the private sale or exchange of real property, or for the grant of an option for any such sale or exchange shall set forth
  - (1) the information required in a petition for the public sale of real property; and
  - (2) the name and address of the proposed purchaser and the terms of the proposed sale, exchange or option, the consideration therefor, and that this is more than can be obtained at public sale.
- (b) The petition shall be supported by the affidavits of at least two competent persons setting forth that they have inspected the real property to be sold, exchanged or optioned and, in the case of an exchange, the property to be received, that they

are acquainted with the value of real estate in the locality of such property, that they are not personally interested in the proposed sale, exchange or option, and that in their opinion the proposed consideration is more than can be obtained at public sale.

**Rule 12.11. Mortgage or lease of real property**

A petition to mortgage or lease real property shall set forth

- (a) the information required in a petition for the public sale of real property, as nearly as may be; and
- (b) the name of the proposed mortgagee or lessee and the terms of the proposed mortgage or lease.

**Rule 12.12. Inalienable property**

A petition under Chapter 83 of the Probate, Estates and Fiduciaries Code to sell real property at public or private sale or to mortgage real property shall set forth, in addition to the facts required to be set forth by that Act,

- (a) the names of all parties in interest who have not joined as petitioners, and their addresses, if known; and
- (b) if the petition is for the public or private sale of real property subject to a life estate with remainder over and the real property is not held in trust, the petition shall request the appointment of a named trustee to make the sale and hold the proceeds in trust.

*Explanatory Note:* The amendment is required to conform with repeal of Chapter 82 of the Probate, Estates and Fiduciaries Code and the substitution of Chapter 83 in lieu thereof.

**Rule 12.13. Designation of a successor custodian**

A petition for the designation of a successor custodian under the Pennsylvania Uniform Gifts to Minors Act [\[FN1\]](#) shall set forth as far as practicable the information required in a petition for the appointment of a guardian of the estate of a minor.

*Explanatory Note:* There are a number of adverse federal estate and income tax consequences which render it desirable for a donor to avoid acting as a custodian under the Uniform Gifts [Transfers] to Minors Act. This has led to a number of resignations and the act calls for a court designation of a successor custodian in these circumstances.

[\[FN1\]](#) See now, Pennsylvania Uniform Transfers to Minors Act, [20 Pa.C.S.A. § 5301 et seq.](#)

**Rule 12.14. Confirmation of appointment**

- (a) Where a trustee is appointed by or pursuant to a trust instrument, confirmation by the court of such appointment may be obtained on petition which shall set forth
  - (1) the reason for filing the petition; and
  - (2) the pertinent provisions of the instrument creating the trust and providing for the appointment of the trustee.
- (b) There shall be attached to the petition

- (1) a copy of the trust instrument duly certified by counsel to be a true and correct copy; and
- (2) the designated trustee's written consent to serve.

*Explanatory Note:* In many instances it is useful or necessary to establish the qualification of a trustee long before the trust would normally be refunded by distribution of the estate by the personal representative. This is particularly true where life insurance proceeds have been made payable to the testamentary trustee and both the insurer and the beneficiary wish to effect prompt payment of the proceeds. A simple petition under this rule would provide a solution.

### **Rule 12.15 Cemetery companies and non-profit corporations incorporated for charitable purposes**

When a cemetery company or non-profit corporation incorporated for charitable purposes is required to file an accounting, the filing by the company or the corporation of its financial statements for its three most recent fiscal years shall ordinarily be sufficient in lieu of an account in the form required by Rule 6 of these Rules, unless the Court allows the company or corporation to submit the financial information in some other form.

*Explanatory Note:* Upon application or its own motion, the Court may require more or less financial information as it deems appropriate.

Upon application or on its own motion, the Court may require some or all of the following:

- (1) The statute or other authority under which the company or corporation was incorporated and the date of its incorporation;
- (2) The names and addresses of the trustees or directors of the company or corporation;
- (3) A concise statement of the general purpose of the company or corporation; or
- (4) A copy of the company's or corporation's charter or articles of incorporation and bylaws.

See also OC 5.5 pertaining to notice to the Attorney General.

### **Rule 13.1. Representation by counsel**

A foreign distributee or claimant may be represented by counsel who possesses a valid duly authenticated power of attorney executed by the distributee or claimant.

### **Rule 13.2. Existence and identity**

If it appears that the decedent may have heirs in a foreign country but their location, existence or identity is unknown, the fiduciary shall notify the consulate of the country prior to audit of such facts as the fiduciary has which led him to the belief that the decedent may have had heirs in the country in question.

### **Rule 13.3. Report by fiduciary**

Whenever the existence, identity or whereabouts of a distributee is unknown or it appears that a distributee may not have the actual benefit, use, enjoyment or control of the money or other property if awarded to him or the court is requested to

withhold distribution or to make an award other than to the distributee or his nominee, the fiduciary or his counsel shall submit to the court or auditor, as the case may be, a written report outlining the investigation made by him and the facts relevant thereto. The report shall be in such form and may be filed at such place and time as shall be prescribed by general rule or special order of the local Orphans' Court.

*Explanatory Note:* Repeal of the Act of July 28, 1953, P.L. 674, and Section 1314 of the Fiscal Code, enactment of legislation regarding abandoned and unclaimed property and developments in Federal law regarding distribution to residents of foreign countries have prompted deletion of some of the wording in the former Section 13 of the rules. The reference to the beneficiary's "actual benefit, use, enjoyment or control" is not limited to distribution to foreign residents and it is believed that a consideration of these factors will not be in violation of Federal or State constitutional limitations when properly applied.

#### **Rule 14.1. Local rules**

The practice and procedure with respect to incapacitated persons' shall be as prescribed by local rules which shall not be inconsistent with Rules 14.2-5.

#### **Rule 14.2. Adjudication of incapacity and appointment of a guardian of the person and/or estate of an incapacitated person**

A petition to adjudicate incapacity shall meet all requirements set forth at [20 Pa.C.S. § 5511](#). A citation and notice in the form approved by the Supreme Court shall be attached to and served with a petition. The procedure for determination of incapacity and for appointment of a guardian shall meet all requirements set forth at [20 Pa.C.S. §§ 5512](#) and [5512.1](#).

*Committee Comment--2006:* The form of citation and notice formerly found in the body of [Rule 14.5](#) has been moved to the Appendix.

#### **Rule 14.3. Review hearing**

A petition for a review hearing shall set forth:

- (1) the date of the adjudication of incapacity;
- (2) the name and address of the guardian;
- (3) if the incapacitated person has been a patient in a mental hospital, the name of such institution, the date of admission, and the date of discharge;
- (4) the present address of the incapacitated person and the name of the person with whom the incapacitated person is living;
- (5) the names and addresses of the presumptive adult heirs of the incapacitated person; and
- (6) an averment that (i) there has been significant change in the person's capacity; (ii) there has been a change in the need for guardianship services; or (iii) the guardian has failed to perform duties in accordance with the law or act in the best interest of the incapacitated person.

*Explanatory Note:* See [20 Pa.C.S. § 5512.2](#).



**Rule 14.4. Proceedings relating to real estate**

A petition for the public or private sale, exchange, lease, or mortgage of real estate of an incapacitated person or the grant of an option for the sale, exchange or lease of the same shall conform as far as practicable to the requirements of these rules for personal representatives, trustees and guardians of minors in a transaction of similar type.

**Rule 14.5. Form of citation and notice**

The citation and notice to be attached to and served with a petition for adjudication of incapacity and appointment of guardian shall be substantially in the form approved by the Supreme Court.

*Committee Comment--2006:* The form of citation and notice formerly found in the body of Rule 14.5 has been moved to the Appendix.

**Rule 15.1. Local rules**

The practice and procedure with respect to adoptions shall be as provided by Act of Assembly and to the extent not inconsistent therewith shall conform either with the pertinent general rule or special order of the local Orphans' Court or, in the absence thereof, with this Rule 15.

**Rule 15.2. Voluntary relinquishment to agency [FN1]**

**(a) Petition.** A petition under Section 301 of the Adoption Act to relinquish parental rights and duties with respect to a child who has been in the care of an Agency shall include the following allegations:

- (1) the name, address, age, racial background and religious affiliation of each petitioner;
- (2) the information required in subparagraph (1) as to any parent who is not a petitioner, including the father of a child born out of wedlock, if he has been identified, unless the court, for cause shown, determines such information is not essential;
- (3) the marital status of the mother as of the time of birth of the child and during one year prior thereto and, if the mother has ever been married, the name of her husband or husbands and her maiden name;
- (4) the name, age, date of birth, racial background, sex and religious affiliation of the child;
- (5) the name and address of the Agency having care of the child;
- (6) the date when the child was placed with the Agency;
- (7) when the child is born out of wedlock, whether the mother and the father of the child intend to marry;
- (8) the reasons for seeking relinquishment;
- (9) that each petitioner understands the petition, has considered the alternatives, and has executed the petition voluntarily to promote what the petitioner believes to be in petitioner's and the child's best interests.

**(b) Exhibits.** The petition shall have attached to it the following exhibits:

(1) the joinder of a parent who is not a petitioner or his or her waiver of all interest in the child, if either is obtainable;

(2) a birth certificate or certification of registration of birth of the child;

(3) the written consent of a parent or guardian of a petitioner who has not reached 18 years of age;

(4) the joinder of the Agency having care of the child and its consent to accept custody of the child until such time as the child is adopted.

**(c) Notice and Hearing.** If a parent, including the parent of a child born out of wedlock, has not relinquished his or her rights and duties in and to the child or joined in the other parent's petition hereunder, then notice of the hearing on the petition to relinquish rights and duties shall be given to the first referred to parent as provided in [Rule 15.6](#). A parent may waive in writing the right to such notice. Each petitioner and each person whose joinder or consent is attached to the petition shall be examined under oath at the hearing unless excused by the court.

[\[FN1\]](#) For the rights of a father of a child born out of wedlock, see [Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 \(1972\)](#).

### **Rule 15.3. Voluntary relinquishment to adult intending to adopt child**

**(a) Petition.** A petition under Section 302 of the Adoption Act to relinquish parental rights with respect to a child who has been in the exclusive care of an adult or adults who have filed a Report of Intention to Adopt shall include the allegations required under [subparagraphs \(1\), \(2\), \(3\), \(4\), \(7\), \(8\) and \(9\) of Rule 15.2\(a\)](#) and

(5) the date when the Report of Intention to Adopt was filed;

(6) the date when the child was placed with the adult or adults;

**(b) Exhibits.** The petition shall have attached to it the first three exhibits specified in [Rule 15.2\(b\)](#) and

(4) the separate consent of the adult or adults to accept custody of the child.

**(c) Notice and Hearing.** If a parent, including the parent of a child born out of wedlock, has not relinquished his or her rights in the child or joined in the petition hereunder, then notice of the hearing on a parent's petition to relinquish rights shall be given to the first referred to parent as provided in [Rule 15.6](#). A parent may waive in writing the right to such notice. Each petitioner and each person whose joinder or consent is attached to the petition shall be examined under oath at the hearing unless excused by the court.

### **Rule 15.4. Involuntary termination of parental rights [FN1]**

**(a) Petition.** A petition for involuntary termination of parental rights under Sections 311 and 312 of the Adoption Act shall include the following allegations:

(1) the name and address of the petitioner and his or her standing;

(2) the name, age, date of birth, racial background, sex and religious affiliation of the child;

(3) the name, address, age, racial background and religious affiliation of the parent or parents, including the father of a

child born out of wedlock, if he has been identified;

(4) the marital status of the mother as of the time of birth of the child and during one year prior thereto and, if the mother has ever been married, the name of her husband or husbands and her maiden name;

(5) the date when the child was placed in the care of the petitioner;

(6) facts constituting grounds for the involuntary termination under Section 311 of the Adoption Act, and a reference to the applicable subsection or subsections;

(7) whether either parent of the child is entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended ([50 U.S.C.A. § 501 et seq.](#));

(8) that the petitioner will assume custody of the child until such time as the child is adopted.

**(b) Exhibits.** The petition shall have attached to it the following exhibits:

(1) a birth certificate or certification of registration of birth of the child;

(2) the joinder of a parent of a petitioner who is under the age of 18, unless excused by the court.

**(c) Guardian ad Litem.**

(1) When the termination of the parental rights of a parent who has not attained the age of 18 years is sought, unless the court finds the parent is already adequately represented, the court shall appoint a guardian ad litem to represent the parent. The appointment of a guardian ad litem may be provided for in the preliminary order attached to the petition for involuntary termination of parental rights.

(2) The decree appointing a guardian ad litem shall give the name, date of birth and address (if known) of the individual whom the guardian ad litem is to represent and the proceedings and period of time for which the guardian ad litem shall act.

**(d) Notice and Hearing.** Notice of the hearing on the petition shall be given, in accordance with [Rule 15.6](#) hereof, to the parent or parents whose rights are sought to be terminated, including the parent of a child born out of wedlock, to any intermediary named in a Report of Intention to Adopt, if one has been filed, and to the guardian of the person or guardian ad litem of any parent or parents who is or are under the age of 18 years. Each petitioner, each person whose joinder or consent is attached to the petition and any intermediary named in a Report of Intention to Adopt shall be examined under oath at the hearing unless they are excused by the court.

[\[FN1\]](#) For the rights of a father of a child born out of wedlock, see [Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 \(1972\)](#).

### **[Rule 15.5. Adoption \[FN1\]](#)**

**(a) Petition.** The petition shall contain all declarations and information required by Section 401 of the Adoption Act and any additional information required by local rules.

**(b) Notice or Consent--Parents of Child.** Notice as provided by [Rule 15.6](#) shall be given to each parent unless

- (1) he or she has consented in writing to the adoption and waived notice of hearing, or
- (2) he or she has voluntarily relinquished his or her parental rights in a proceeding under [Rule 15.2](#) or [Rule 15.3](#), or
- (3) his or her parental rights have been involuntarily terminated in a proceeding under [Rule 15.4](#).

**(c) Investigation.** A petition for adoption shall be subject to investigation as prescribed by local rules. The investigation report shall cover the matters alleged in the petition, any other matters that may affect the welfare of the child, and the information required by Sections 335 and 424 of the Adoption Act.

**(d) Disclosure of Fees and Costs.** At the hearing there shall be offered in evidence a report, certified by counsel for the petitioner, setting forth the amount of fees and expenses paid or to be paid to counsel, and any other fees, costs and expenses paid or to be paid to an intermediary or any other person or institution, in connection with the adoption.

**(e) Adult--Change of Name.** When the person to be adopted is over the age of 18 years and desires to assume the surname of the adopting parent or parents, evidence showing compliance with the law relating to change of name must be introduced before a decree will be made. [\[FN2\]](#)

[\[FN1\]](#) For the rights of a father of a child born out of wedlock, see [Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 \(1972\)](#).

[\[FN2\]](#) Act of April 18, 1923, P.L. 75, as amended, 54 P.S. 1 et seq. [now [54 Pa.C.S.A. §§ 702, 703](#)].

#### **Rule 15.6. Notice; method and time**

Notice to every person to be notified shall be by personal service, service at his or her residence on an adult member of the household, or by registered or certified mail to his or her last known address. If such service is not obtainable and the registered or certified mail is returned undelivered, then:

- (1) no further notice shall be required in proceedings under Rules 15.2 or 15.3, and
- (2) in proceedings under Rules 15.4 and 15.5, further notice by publication or otherwise shall be given if required by general rule or special order of the local Orphans' Court.

If, after reasonable investigation, the identity of a person to be notified is unknown, notice to him or her shall not be required.

#### **Rule 15.7. Impounding; docket entries; reports; privacy**

(a) All proceedings shall be impounded, docket entries made, report made to the Department of Public Welfare, and certificates of adoption issued as provided in Sections 505, 506, 507 and 508, respectively, of the Adoption Act, [23 Pa.C.S. § 2101, et seq.](#)

(b) The name or names of the natural parents and the name or names of the child before adoption shall not be entered on any docket which is subject to public inspection.

(c) No decision under the Adoption Act of any hearing judge or appellate court publicly reported or in any other way made

available to the public by the court shall disclose the identity of the individual parties.

*Explanatory Note:* For confidentiality requirements on appeal, see [Pa.R.A.P. 3901](#).

**Rule 15.8. Foreign adoption registration**

(a) Adoptive parent(s) may petition the court of common pleas in the county of residence to register a foreign adoption decree so that it will be given full and final effect in this Commonwealth. The petition shall be in the form approved by the Supreme Court.

(b) If the court of common pleas determines that the foreign adoption decree cannot be registered, the adoptive parent(s) may proceed under the Adoption Act and local rules of court to obtain a full and final decree of adoption.

*Explanatory Note:* Pursuant to [23 Pa.C.S. § 2908\(b\)](#), as amended by Act 96 of 2006, a set of forms consisting of a petition for registration of a foreign adoption decree, decrees approving and denying the petition, and detailed instructions for *pro se* petitioners, have been created and are set forth in the Appendix to these rules. The petition should be filed with the Clerk of the Orphans' Court Division, except in Philadelphia County, where it should be filed with the Clerk of the Family Court Division. The Clerk shall make the necessary Department of Health forms available to petitioners. If the foreign adoption is determined not to be a full and final adoption, the adoptive parent(s) may proceed under the Adoption Act and local rules to seek a decree of adoption in this Commonwealth.

**FORMS APPENDIX**

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION  
IN RE: FOREIGN ADOPTION OF \_\_\_\_\_  
FILE NO. \_\_\_\_

**PETITION TO REGISTER FOREIGN ADOPTION DECREE PURSUANT TO [23 Pa.C.S. § 2908](#)**

1. Petitioner(s), the Adopting Parent(s) of the above-named adopted child, is/are
2. Petitioner(s) reside(s) in \_\_\_\_\_ County, Pennsylvania, at \_\_\_\_\_ (Street Address) \_\_\_\_\_ (City, State, Zip)
3. The full name of the adopted child at birth was \_\_\_\_\_.
4. The full name by which the adopted child is to be known is \_\_\_\_\_.
5. The date of birth of the adopted child is \_\_\_\_\_.
6. The date of the foreign adoption decree is \_\_\_\_\_.
7. The type of visa issued to the adopted child is \_\_\_\_\_.
8. The following documents are attached to this Petition:

- a. Certified copy of child's birth certificate or other birth identification issued by country of birth; if none, an Affidavit of Parent(s) stating why none is available.
- b. Certified copy of Decree of Adoption issued by foreign government; if Decree is not in English, an English translation certified by the translator to be correct is attached.
- c. Copy of adopted child's United States visa.
- d. Pennsylvania Department of Health Form H105.091 (Vital Records Form) with Parts I and II (and Part III, if applicable) completed.
- e. Pennsylvania Department of Health Statement of Citizenship and Residence.

WHEREFORE, Petitioner(s) request(s) that this Court enter a Decree authorizing the registration and docketing of the attached Foreign Adoption Decree with the Clerk of the Orphans' Court and decreeing that \_\_\_\_\_ (Birth Name of Adopted Child) shall henceforth be known as \_\_\_\_\_ (Name of Child After Adoption) and shall have all the rights of a child and heir of the Petitioner(s).

\_\_\_\_\_  
 Adopting Parent \_\_\_\_\_  
 Adopting Parent \_\_\_\_\_

**VERIFICATION**

I/We verify that we have read and understand the information set forth in the Instructions to the Petition to Register Foreign Adoption Decree.

I/We verify that the facts set forth in the foregoing Petition are true and correct to the best of my/our knowledge, information and belief.

I/We understand that false statements made herein are subject to the penalties of [18 Pa.C.S. § 4904](#) relating to unsworn falsification to authorities.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Adopting Parent \_\_\_\_\_  
 Adopting Parent \_\_\_\_\_

IN THE COURT OF COMMON PLEAS  
 \_\_\_\_\_ COUNTY, PENNSYLVANIA  
 ORPHANS' COURT DIVISION  
 IN RE: FOREIGN ADOPTION OF \_\_\_\_\_  
 ADOPTION NO. \_\_\_\_

**FINAL DECREE**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, it is hereby ORDERED AND DECREED that the Petition of \_\_\_\_\_ (Adopting Parent(s)) to Register Foreign Adoption Decree is GRANTED and that this Court au-

thorizes the registration and docketing of the Foreign Adoption Decree entered on \_\_\_\_\_ (Date of Foreign Decree) by \_\_\_\_\_ (Name of Foreign Court) in \_\_\_\_\_ (Foreign Country).

It is FURTHER ORDERED and DECREED that the above Foreign Adoption Decree shall be enforceable as if this Court had entered the Decree and that henceforth \_\_\_\_\_ (Birth Name of Adopted Child) shall be known as \_\_\_\_\_ (Child's Name After Adoption) and shall have all the rights of a child and heir of \_\_\_\_\_ (Adopting Parent(s)).

BY THE COURT: \_\_\_\_\_  
J.

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION  
IN RE: FOREIGN ADOPTION OF \_\_\_\_\_  
ADOPTION NO. \_\_\_\_

**FINAL DECREE**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, it is hereby ORDERED and DECREED that the Petition of \_\_\_\_\_ (Adopting Parent(s)) to Register Foreign Adoption Decree is DENIED.

BY THE COURT: \_\_\_\_\_  
J.

**INSTRUCTIONS FOR FILING PETITION TO REGISTER FOREIGN ADOPTION DECREE PURSUANT TO [23 Pa.C.S. § 2908](#)**

When a child is adopted in conformity with the laws of a foreign country, the adopting parent(s) may register the foreign adoption so that the Foreign Adoption Decree is considered to be a full and final decree, enforceable as if entered pursuant to the Pennsylvania Adoption Act, and a Pennsylvania birth certificate can be obtained.

Adopting parent(s) seeking to register the Foreign Adoption Decree must:

1. Complete, sign and date the Petition to Register Foreign Adoption Decree and Verification. If a Foreign Adoption Decree shows that there are two adopting parents, both parents *must* execute the Petition to Register Foreign Adoption Decree.
2. Attach the following documents to the Petition:
  - A certified copy of the Foreign Adoption Decree;
  - A certified copy of the child's birth certificate. If no birth certificate was issued, a certified copy of any other birth identification issued by the country of birth should be attached. If no birth certificate or birth identification can be obtained, an Affidavit stating the reason should be submitted;
  - A copy of the child's United States visa;
  - An English translation of all documents not in English, certified by the translator to be true and correct;

- Form H105.091 (Pennsylvania Department of Health, Vital Records, Certificate of Adoption) with Parts I and II (and Part III if applicable) completed;
- Pennsylvania Department of Health Statement of Citizenship and Residency Form.

3. The Petition to Register with the attachments should be filed with the Clerk of the Orphans' Court Division of the Court of Common Pleas in which the adopting parent(s) reside(s), except for Philadelphia County resident(s), who must file with the Family Court Division. A filing fee will be charged in accordance with the fee schedule of the county court.

After the Petition to Register is filed, it will be submitted to the Court for review. If the Petition to Register and accompanying documents establish that the foreign adoption of the child is full and final, the Court will enter a Decree directing the registration of the Foreign Adoption Decree. The Clerk of the appropriate court will then issue a certificate of adoption and transmit form H105.091 and the Statement of Citizenship and Residency Form to the Department of Health, Division of Vital Records.

If the Court cannot determine that the foreign adoption is full and final, it will enter a Decree denying the petition. In that case, it will be necessary to proceed under the Adoption Act and any local rules of court to obtain a full and final Pennsylvania adoption decree.

Some of the following are reasons why a foreign adoption may not be a full and final adoption eligible for registration:

- both adopting parents were not present for the adoption hearing in the foreign country; or
- the sole adopting parent was not present at the adoption hearing in the foreign country; or
- the foreign court did not enter a final adoption Decree or Order or its equivalent; or
- the child's United States visa is not the type that would afford the child full United States citizenship.

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#### **Rule 16.1 Definitions. Scope**

(a) As used in Rule 16,

“**act**” means the Act of June 11, 1982, P.L. 476, No. 138, as amended, [18 Pa.C.S. Section 3201 et seq.](#), known as the Abortion Control Act.

“**applicant**” means a pregnant woman: (i) who is less than eighteen years of age and not emancipated or (ii) a person acting on behalf of a pregnant woman who has been adjudged an incapacitated person pursuant to Chapter 55 of the Probate, Estates and Fiduciaries Code, [20 Pa.C.S. Section 5501, et seq.](#);

“**application**” includes a motion or petition;

“**court**” means the Orphans' Court Division of the Court of Common Pleas, except in proceedings brought: (a) in Philadelphia in which the applicant is a minor in which case the term “court” means the Family Court Division; (b) in Allegheny County where said proceedings shall be heard in the Juvenile Court Section of the Family Court Division;



*Explanatory Note:* See Rule of Judicial Administration 2157 governing distribution of business within courts of common pleas.

“**proceeding**” means a proceeding pursuant to Section 3206(c) of the Act, [18 Pa.C.S. Section 3206\(c\)](#).

*Explanatory Note:* Section 3206(c) of the Abortion Control Act relates to proceedings seeking authorization for a physician to perform an abortion.

(b) The procedure set forth in Rule 16 shall govern proceedings pursuant to Section 3206(c) of the Act, [18 Pa.C.S. Section 3206\(c\)](#).

*Explanatory Note:* These rules implement Section 3206 of the Abortion Control Act and work with that section to provide a full procedure. Procedures which are set forth in that section rather than the rules include the following:

1. Participation in the proceeding and representation by an attorney, [Section 3206\(e\)](#). The court shall be responsible for adopting a procedure to assure that the court advises the pregnant woman of her right to counsel and that counsel is appointed upon her request;
2. Conduct of the hearing, including the exclusion of persons, evidence to be heard and notices to be given the applicant, [Section 3206\(f\)\(3\)](#) and (4) and [Section 3206\(h\)](#); and
3. Specific factual findings and legal conclusions by the court in writing, [Section 3206\(f\)\(1\)](#).

Section 3206 of the Act provides for an “expedited appeal”. See [Rule 3801 et seq. of the Rules of Appellate Procedure](#) which provide a complete procedure governing the appeal.

[Pa.R.A.P. 3804](#) requires that the court reporter, without charge to the applicant, transcribe the notes of testimony and deliver them to the clerk of the court by 5:00 o'clock p.m. of the business day following receipt of the notice of appeal to the Superior Court.

### **Rule 16.2 Confidentiality**

(a) The proceeding shall be confidential.

*Explanatory Note:* See subdivision (b) of this rule governing the sealing of the record.

See [Rule 16.6](#) for provisions governing docketing.

See Section 3206(f)(3) of the Act for the exclusion of persons from the hearing.

(b) The record, including the application, pleadings, submissions, transcripts, exhibits, orders, evidence, findings and conclusions and any other written material to be maintained, shall be sealed.

(c) The identity of the applicant shall not be disclosed in any decision of the proceeding.

### **Rule 16.3 Precedence of proceeding**

The proceeding shall be given such precedence over other pending matters as will ensure that the court renders a decision within three business days of the date of the filing of the application.

**Rule 16.4 Commencement. Venue. No filing fees**

(a) The proceeding shall be commenced by filing an application in the appropriate division of the court of common pleas of the county in which the applicant resides or in which the abortion is sought.

(b) No filing fees or court costs shall be required of the applicant.

**Rule 16.5. Application, contents, form of verification, assistance in preparation**

(a) The application shall set forth the following:

(1) the initials of the applicant;

(2) the age of the applicant;

(3) the names and addresses of each parent, guardian or, if the petitioner is a minor whose parents are deceased and no guardian has been appointed, any other person standing in loco parentis to the applicant;

(4) a statement that the applicant has been fully informed of the risks and consequences of the abortion;

(5) a statement whether the applicant is of sound mind and has sufficient intellectual capacity to consent to the abortion;

(6) a prayer for relief asking the court to enter an order authorizing a physician to perform an abortion upon applicant;

(7) an unsworn verification by the applicant stating that the information therein is true and correct and that the applicant is aware that any false statements made in the application are subject to the penalties of [18 Pa.C.S. § 4904](#) relating to unsworn falsification to authorities; and

(8) the signature of the applicant, which may consist of the applicant's initials.

(b) Where necessary to serve the interest of justice, the court shall refer the applicant to the appropriate personnel for assistance in preparing the application.

*Committee Comment--2006:* The form of unsworn verification previously found in subdivision (b) has been deleted. This unsworn verification required by subdivision (a)(7) is the standard form of verification made subject to the penalties of [Section 4904 of the Crimes Code, 18 Pa.C.S. § 4904](#).

Forms formerly found in [Rule 16.11](#) and [16.12](#) for applications and separate unsworn verifications by minors have been moved to the Appendix.

**Rule 16.6 Dockets. Document maintenance**

(a) Each court shall maintain a sealed docket which is not open to public inspection.

(b) The proceeding shall be docketed by case number only.

(c) The name or initials of the applicant shall not be entered on any docket which is subject to public inspection.

(d) Documents pertaining to the proceeding shall be maintained in a closed file which shall be marked “confidential” and identified by the case number only.

**Rule 16.7, 16.8. Rescinded by Order of March 31, 1994, imd. effective**

**Rule 16.7, 16.8. Rescinded by Order of March 31, 1994, imd. effective**

**Rule 16.10. Form; generally**

The form of application by a minor and form of separate unsworn verification shall be prepared and filed in substantial conformity with the forms approved by the Supreme Court.

*Explanatory Note:* Additional averments will be required for an application filed on behalf of a person who has been adjudged an incapacitated person pursuant to Chapter 55 of the Probate, Estates and Fiduciaries Code, [20 Pa.C.S. Section 5501, et seq.](#)

*Committee Comment--2006:* Forms formerly found in Rules 16.11 and 16.12 for applications and verifications by minors have been moved to the Appendix.

**Rule 16.11. Repealed by Order of Oct. 16, 2006, effective Nov. 15, 2006**

*Committee Comment--2006:* The form formerly found in Rule 16.11 for application by a minor has been moved to the Appendix.

**Rule 16.12. Repealed by Order of Oct. 16, 2006, effective Nov. 15, 2006**

*Committee Comment--2006:* The form formerly found in Rule 16.12 for unsworn verification by a minor has been moved to the Appendix.

**Rule 17.**

These rules shall be known as Supreme Court Orphans' Court Rules, and shall be cited as Pa.O.C. Rules.