

PROPOSED LOCAL RULES TO

**RULES OF THE COURT OF THE NINTH JUDICIAL DISTRICT,
COURT OF COMMON PLEAS,
ORPHANS' COURT DIVISION**

CHAPTER I. PRELIMINARY RULES

Rule 1.1. Short Title and Citation

These Rules shall be known as Cumberland County Orphans' Court Rules and shall be cited as C.C.O.C.R.

Rule 1.6. Mediation by Agreement, Local Rule, or Court Order

All interested parties in a matter may use mediation to resolve issues pending before the Court, and, upon either partial or complete resolution, may petition the Court to approve the agreement of all interested parties as an order or decree of the Court.

(a) The interested parties may engage the services of a mediator, either prior to or after any interested party has filed a Pleading before the Court, including an account filed by a fiduciary.

(b) Upon the filing of a Pleading before the Court, including an account filed by a fiduciary, the Clerk may provide the filing party with generic information, regarding availability of mediation for the resolution of disputes prior to adjudication by the Court.

(c) The filing party may provide such information to other interested parties. The information, which does not bind the Court, and which may be in the form of a standard brochure, should include:

- (1) A brief description of the mediation process;
- (2) The anticipated benefits of mediation for litigants and associated professionals; and
- (3) Contact information to initiate mediation.

(d) All the interested parties in a matter docketed before the Court may request to engage in mediation at any time during the pendency of the matter.

(e) In such request for mediation, all interested parties shall identify:

- (1) The proposed mediator and the proposed source of payment of fees and costs of the mediator;
- (2) Names and contact information of all interested parties and any counsel who shall participate in the mediation;
- (3) Names and information regarding any interested parties having diminished capacity or a legal disability, whose interests must be adequately protected; and
- (4) The scheduled date for the initial mediation conference.

(f) All interested parties shall execute an agreement for confidential mediation, which is not inconsistent with this local rule, and which shall remain confidential.

(g) Mediation shall not delay the required filing of any Pleading or ordered return dates, or the scheduling of Court hearings, unless specifically requested by joinder of the interested parties and so ordered by the Court.

(h) The Court will respect the confidentiality of the mediation process and of the mediator's obligation of confidentiality.

(i) Upon completion of mediation, all interested parties shall sign a memorandum of principal terms, which either shall acknowledge that no resolution was reached, or shall embody the resolutions attained. This memorandum of principal terms shall clearly state partial resolutions or complete resolution attained. The memorandum of principal terms shall include a list of unresolved issues to be determined by the Court. Where appropriate, the principal terms could provide for future review in light of changed circumstances or a change in the operative facts. The memorandum of principal terms agreed upon, or the statement of no resolution, shall be filed with the Court.

(j) In no event shall the terms agreed upon depart from or violate any provisions of applicable law, specifically including the Older Adults Protective Services Act, the Act of Dec. 18, 1996, P.L.1125, No.169 (35 P.S. §§10225.101 — 10225.5102), as may be amended.

(k) The interested parties may request that the Court approve the final mediated agreement, which embodies the principal terms agreed upon in the memorandum referenced above. The Court may grant approval in an order or decree. Alternatively, the Court may recommend any changes that the Court deems appropriate for approval. The parties to the mediation may accept the Court's recommendations, in which event the terms agreed upon, as modified, shall be approved, or the parties may decline to accept the Court's recommendations, in which event the matter is deemed not to have resulted in an agreement.

Note: Local rule based on proposed Model Local OC Rule 1.6 recommended by Subcommittee of PBA's Alternative Dispute Resolution Committee.

CHAPTER II ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

Rule 2.6. Filing with the Clerk

(a) Accounts to be confirmed shall be filed not later than 4:30 p.m. (Eastern Prevailing Time) of the fifth Friday preceding the date fixed for confirmation of accounts.

(b) The Court Calendar, including the dates for confirmation of accounts, shall be determined in accordance with C.C.R.P. 551.

(c) Advertisement by the Clerk as required by PEF Code §745, shall be in the Cumberland Law Journal and The Sentinel.

(d) The advertisement of the account shall indicate whether a statement of proposed distribution is included.

Note: Formerly Local Rule 6.4-1., 1.2-3., and 6.9-3. No equivalent Pa. O.C. Rules.

Rule 2.9. Confirmation of Accounts; Awards

(c) If no objections are filed to the statement of proposed distribution, the Court may, on the day fixed for the presentation thereof, make a final decree directing distribution in accordance with the statement of proposed distribution.

Note: Local rule based on former C.C.O.C.R. 6.11-1.

Rule 2.11. Appointment of Official Examiners

Rules pertaining to auditors and masters in Chapter IX of Pa. O.C. Rules shall extend to official examiners insofar as applicable.

Note: Local rule based on former C.C.O.C.R. 9.1-1. See PEF Code §751.

CHAPTER III. PETITION PRACTICE AND PLEADING

Rule 3.4. Form of Petition; Exhibits; Consents; Signing and Verification

(b) Where notice of the entry of any decree is required, the petitioner or moving party shall include in the proposed decree, the names of all parties or their counsel, if represented, who are required to be notified of the proposed decree, and shall provide the Clerk with stamped envelopes addressed to the said parties or their counsel, if represented.

Rule 3.7. Time for Filing and Service of Responsive Pleadings

(e) Disposition of Matters after Pleadings are Closed – No Answer. If no responsive pleading is filed, upon proof of service of the citation or notice and the petition, the Court may grant the desired relief requested.

CHAPTER V. RULES GOVERNING SPECIFIC TYPES OF PETITIONS

Rule 5.16. Small Estates

Petitions for settlement of small estates under PEF Code §3102 shall set forth:

(a) The name and address of the petitioner and petitioner's relationship to the decedent;

(b) The name, date of death and domicile of decedent;

(c) Whether the decedent died testate or intestate, the date of the probate of the will, if applicable, and the date of grant of letters, if any, and whether the personal representative has been required to give bond and, if so, the amount of the bond;

(d) The name and relationship of all beneficiaries entitled to any part of the estate under the will or intestate laws, a brief description of their respective interests, whether any of them has received or retained any property of the decedent by payment of wages under PEF Code §3101, or otherwise, and whether any of them is a minor, incapacitated or deceased with the name of his fiduciary, if any;

(e) The person(s), if any, entitled to the family exemption and, if a claim therefore is made in the petition, any additional facts necessary to establish the right to the family exemption;

(f) An inventory of the real and personal estate of the decedent, the value ascribed to each item, either incorporated in the petition or attached as an exhibit;

(g) A list showing the nature, amounts and preferences of all unpaid claimants against the estate and indicating which claims are admitted;

(h) If any unpaid beneficiary, heir or claimant has not joined in the petition, a statement that notice of the intention to present the petition has been given as required by Pa. O.C. Rule 4.2; and

(i) A prayer for distribution of the personal property to those entitled, and in appropriate cases, for the discharge of the personal representative.

(j) There shall be attached to the petition the following exhibits:

- (1) The original of the decedent's will if it has not been probated, or a copy thereof if it has been probated;
- (2) The joinders or consents of unpaid beneficiaries, heirs and claimants insofar as they are obtainable;
- (3) An itemized list of disbursements made prior to the filing of the petition, indicating the payee and whether the disbursements were in payment of administration expenses, preferred or ordinary debts, items of distribution or the family exemption; and
- (4) A certificate of the Register showing the status of payment of the inheritance tax.

(k) No appraisal shall be required unless ordered by the Court.

Note: Formerly Local Rule 6.11-2. No equivalent in Pa. O.C. Rules.

CHAPTER VII. RULES RELATING TO PRE-HEARING AND HEARING PROCEDURE

Rule 7.5. Argument Court

The procedure for disposition of matters at argument court shall be as follows:

(a) The matter shall be listed by filing a praecipe with the Clerk. The party listing the case for argument shall serve a copy of the praecipe on all counsel or any unrepresented party.

(b) The Clerk shall promptly coordinate with the Prothonotary's Office to place the matter on the next regularly scheduled session of argument court.

(c) Otherwise, C.C.R.P. 1028(c) shall be applicable.

Note: No prior equivalent C.C.O.C.R. The rule is recommended to coordinate the procedure for Orphans' Court matters with C.C.R.P. and to codify local practice.

CHAPTER IX. AUDITORS AND MASTERS

Rule 9.1. Notice of Hearings

(a) On appointment, the auditor shall schedule a hearing and give notice thereof to all parties in interest at least twenty days prior to the hearing in accordance with Chapter IV of Pa. O.C. Rules.

(b) Rules pertaining to auditors shall extend to masters insofar as applicable.

Note: Local rule based on former C.C.O.C.R. 8.1-1 and 8.1-2. See PEF Code §751.

Rule 9.2. Filing of Report

Reports of auditors and masters shall be filed with the Clerk.

Note: Local rule based on former C.C.O.C.R. 8.2-1.

Rule 9.6. Notice of Filing of Report

The auditor or master shall give notice of filing the report to all interested parties.

Note: Local rule based on former C.C.O.C.R. 8.6-1. See also Chapter IV of Pa. O.C. Rules, and PEF Code §§764, 766, 767 and 768.

Rule 9.7. Confirmation of Report

(a) If no objections are filed, the Clerk shall transmit the auditor's report to the Court for confirmation. If objections are filed, the Court shall, after argument, make such disposition as the Court shall determine.

(b) Objections to the auditor's report shall be filed with the Clerk within twenty days after service of the notice of filing of said report. Objections shall be specific as to the basis of the objections whether as to the findings of fact or conclusions of law, or both.

(c) If objections are filed, any interested party may list the matter for argument in accordance with C.C.O.C.R. 7.5.

Note: Local rule based on former C.C.O.C.R. 8.7-1, 8.7-2 and 8.7-3.

CHAPTER X. REGISTER OF WILLS

Rule 10.2. Petition Practice

When offering for probate a holographic will or will containing alterations from the original instrument, petitioner shall attach a typewritten version of what petitioner proffers the will to read.

Rule 10.4. Appeals from the Register of Wills

Appeals taken from the judicial acts or proceedings of the Register shall be filed with the Register, addressed to the Court and shall set forth the following information insofar as appropriate:

(a) The nature of the proceedings before the Register;

(b) The basis for the appeal, including the facts or circumstances upon which the appeal is based; and

(c) The names and addresses of all interested parties, including any not a party of record.

Note: Local rule based on former C.C.O.C.R. 10.2-1. See PEF Code §908.