

ORPHANS' COURT RULES
COURT OF COMMON PLEAS
43RD JUDICIAL DISTRICT
MONROE COUNTY

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CHAPTER I – PRELIMINARY RULES

RULE 1.1 – Short Title and Citation

These Rules shall be known as the Monroe County Orphans' Court Rules and shall be referred to individually herein as "Rule" and cited as "Monroe County O.C. Rule ____".

RULE 1.2 – Construction and Application

These Rules supplement the Pennsylvania Orphans' Court Rules which govern all other aspects of the Rules of the Orphans' Court.

RULE 1.6 – Mediation

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 party in interest has filed a Pleading before the Court, including an Account filed by a fiduciary for audit.
- b) All interested parties in a matter docketed before the Court may motion to engage in mediation at any time during the pendency of the matter. Such mediation shall take place within ninety (90) days of the request being made to the Court, unless extended by order of Court upon motion of any interested party.
- c) The motion for mediation 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, if known in advance.
- d) All interested parties shall keep matters discussed in mediation confidential.
 - e) Mediation shall not delay the required filing of any Pleading or ordered return dates, or the scheduling of Court Hearings, unless specifically requested by interested parties and so ordered by the Court.
 - f) Within twenty (20) days of completion of mediation, all interested parties, or their counsel where appropriate, 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, together with a petition to approve any agreement reached by the parties shall be filed with the Clerk of the Orphans' Court and a copy served on the presiding judge.
 - g) 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.
 - h) The parties may select a mediator of their own choosing and conduct the mediation in conformance with this Local Rule, or may participate in the Monroe County Mediation Program as set forth in the Monroe Co. R.C.P. 212.5 in conformance with this Local Rule and the requirements of Monroe Co. R.C.P. 212.5.

RULE 1.7 – Entry and Withdrawal of Counsel

- a) Appearance. The written appearance required by Pa. Orphans' Court Rule 1.7 shall include the attorney's name, address, telephone number and attorney I.D. number.
- b) Withdrawal. Counsel who has entered an appearance in a matter pending solely before the Register of Wills, shall be permitted to withdraw upon good cause provided to the Register of Wills by filing a written notice of the withdrawal with the Register of Wills and a copy to all interested parties, heirs, and any other counsel in the matter by first class United States mail postage pre-paid. Counsel who have entered an appearance before the Court may only withdraw as counsel as set forth in Pa. Orphans' Court Rule 1.7(b).

CHAPTER II – ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

RULE 2.5 – Notice of Account Filing

In addition to the requirements set forth in Pa. Orphans' Court Rule 2.5, notice of an account filing shall also be made by the Clerk of the Orphans' Court giving notice by advertisement of the date, time, and place of each monthly submission of accounts to the Court.

Such advertisement shall be published once per week for two (2) successive weeks immediately preceding the date of submission of the accounts to the Court in the Monroe Legal Reporter and a newspaper of general circulation in Monroe County.

RULE 2.9 – Confirmation of Accounts/Schedules for Distribution

a) Accounts. If no objections are filed, or if a written approval of all interested parties who may be affected thereby is attached to the Account, then the Account shall be forwarded by the Clerk of the Orphans' Court to the Court for approval.

b) Schedules for Distribution.

1. Filing.

The Court in the adjudication, when requested or found advisable, or in any case when real estate is to be awarded in kind, may direct the accountant to file a schedule of distribution in conformity with the awards of the adjudication.

Attached to such schedule when filed shall be a certification by the accountant and counsel for the accountant:

a) That the schedule is correct and in accordance with the adjudication;

b) That the notice of the filing thereof has been duly given, or that the same is unnecessary by reason of a written approval of the schedule filed therewith by all interested parties affected thereby or by counsel of record.

2. Notice.

Notice of the filing of a schedule of distribution shall be given in writing, together with a copy of the schedule, prior to the filing thereof, to all interested parties who may be affected thereby, or their counsel of record, who do not attach or file their written approval with the schedule. Proof of notice shall be filed with the Court as set forth in Pennsylvania Orphans' Court Rule 4.3.

3. Confirmation.

Confirmation of a schedule of distribution shall be in the same manner as Monroe County O.C. Rule 2.9(a) pertaining to Accounts.

4. Objections.

Written objections, if any, to a schedule of distribution shall be filed within twenty (20) days after the filing of the schedule and shall indicate in what respect the schedule is incorrect or fails to conform with the adjudication.

RULE 2.10 – Filing Report of Unknown Distributees

The report required by Pa. Orphans’ Court Rule 2.10 regarding Unknown Distributees shall be submitted in writing and acknowledged by a notary public. The report shall be filed with the Clerk of the Orphans’ Court no later than the time of filing the account and statement of distribution.

CHAPTER III – PETITION PRACTICE AND PLEADING

(Intentionally left blank – Local Rule Rescinded on 9/1/16)

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

(Intentionally left blank – Local Rule Rescinded on 9/1/16)

CHAPTER V – RULES GOVERNING SPECIFIC TYPES OF PETITIONS

(Intentionally left blank – Local Rule Rescinded on 9/1/16)

CHAPTER VI – RESERVED

(Local Rule Rescinded on 9/1/16)

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

(Intentionally left blank – Local Rule Rescinded on 9/1/16)

CHAPTER VIII – RECONSIDERATION

(Intentionally left blank – Local Rule Rescinded on 9/1/16)

CHAPTER IX – AUDITORS AND MASTERS

(Intentionally left blank – Local Rule Rescinded on 9/1/16)

CHAPTER X – REGISTER OF WILLS

RULE 10.4 – Appeals From Register of Wills

a) Contents of Petition.

A petition appealing the decision of the Register of Wills shall be filed with the Clerk of the Orphans' Court and shall set forth:

1. an outline of the proceedings before the Register of Wills;
2. the nature of the dispute which has arisen;
3. the names and addresses of all interested parties, including those who have not been made parties to the record;
4. a request for certification of the record;
5. a request that any testimony taken before the Register of Wills be transcribed;
6. a request that a citation be issued to show cause why the relief should not be granted;

b) Petition Where Record Certified on Register of Wills' Own Motion.

When the certification of the Register of Wills' record has been prepared and filed on the Register of Wills' own motion, a petition requesting a citation with rule to show cause to be issued, shall be filed by any interested party.

c) Service of Petition and Citation.

The citation and a copy of the petition for appeal shall be served by the moving party on all other interested parties and a certificate of service shall then be filed within five (5) days with the Clerk of the Orphans' Court.

- d) Order to place on Hearing List or Request for Argument.
Subsequent to the return date of the citation, and after the proof of service has been filed with the Clerk of the Orphans' Court, any interested party may file a motion requesting the Court schedule a hearing, or if appropriate, file a Request for Argument in the manner proscribed by Monroe Co. R.C.P. 208.3 (a)(3).

CHAPTER XI – RESERVED

(Local Rule Rescinded on 9/1/16)

CHAPTER XII – RESERVED

(Local Rule Rescinded on 9/1/16)

CHAPTER XIII – RESERVED

(Local Rule Rescinded on 9/1/16)

CHAPTER XIV – GUARDIANSHIP OF INCAPACITATED PERSONS

RULE 14.3 – Alternative Proof of Incapacity; Expert Report in Lieu of In-Person or Deposition Testimony of Expert.

- (a)(1) In a contested matter where no demand has been made for the testimony of the expert, the court may still require in-person or deposition testimony which shall be determined at time of hearing.
- (a)(2) In an emergency guardianship proceeding, where a temporary guardian is sought pending a final hearing, an expert report may be offered in lieu of testimony, provided the petitioner(s) have attached a copy of the expert report concerning incapacity to the petition for guardianship.

RULE 14.8 – Guardianship Reporting, Monitoring, Review and Compliance.

- (a) Reporting.
6. In addition to the requirements of the Pa. O.C. Rules for Guardianship Reporting, the guardian shall, within ten (10) days of the appointment as guardian, file a "List of Interested Parties Requiring Notice," using

Form G-14.8(a)(6) provided in the Appendix to these rules, which shall include the names and addresses of all interested parties entitled to copies of the inventory, the annual reports of the guardian, and court orders. The interested parties shall be as determined by the court at the guardianship hearing. The Clerk of Orphans' Court shall mail a copy of all court orders to everyone set forth in the "List of Interested Parties Requiring Notice." The guardian shall send a copy of the inventory and the annual reports of the guardian to everyone set forth in the "List of Interested Parties Requiring Notice."

7. The guardian shall notify the Clerk of Orphans' Court of any change in address for the guardian and/or incapacitated person within thirty (30) days of the change.
8. Upon the death of the incapacitated person, the guardian shall file a notice of death within sixty (60) days of the date of death, and otherwise comply with the requirements of Pa.O.C. Rule 14.8(a)(4).

CHAPTER XV – ADOPTIONS

RULE 15.1 – Caption and Docket Entry.

The caption for all pleadings and docket entry for voluntary relinquishment to an agency, voluntary relinquishment to an adult intending to adopt child, involuntary termination of parental rights, and adoption shall carry the given name of the child.

RULE 15.2 – Investigation of Adoption.

The investigation of adoption performed as required by 23 Pa.C.S.A. §2535 shall be completed and filed no later than six (6) months after the filing of the notice of intention to adopt filed under 23 Pa.C.S.A. §2531. The investigation of adoption shall be sealed by Court order with the adoption file.

RULE 15.3 – Informational Statement – Investigation of Financial Arrangements.

In all adoption proceedings, in which a voluntary relinquishment is contemplated, at the time of the agreement for voluntary placement of the child, the intermediary shall provide the Court with a written informational statement setting forth the name of the birth parents, their addresses and telephone numbers, and the names of the proposed adoptive parents, their address and telephone number. Any written agreements between the parties regarding financial arrangements shall be attached to the informational statement. Thereafter, the Court may have an adoption investigator investigate all financial arrangements made between the birth parents,

intermediary, and the adoptive parents, and provide a report to the Court. No payments of any type may be made to either of the birth parents or the intermediary, unless they are disclosed to the Court or the Court investigator, and specifically approved by the Court prior to payment.

RULE 15.4 – Voluntary Agreement for Continuing Contact.

Any voluntary agreement for continuing contact between the parties pursuant to 23 Pa. C.S.A. 2731 et. seq. shall be filed with the Petition for Adoption or at the time of the Termination of Parental Rights and/or Adoption Hearing.

RULE 15.5 – Request for Adoption Information.

- a) A “Request for Adoption Information About or Contact With Specified Persons” pursuant to Act 101 of 2010, set forth at 23 Pa. C.S.A. §2911, et seq. shall be filed with the Clerk of Courts who shall treat it as a motion to the Court.
- b) An Authorized Representative of the Court, as appointed by Administrative Order of the President Judge, shall have limited special authority to supply nonidentifying information from the Court’s record to the Requestor and to investigate identifying information pursuant to Act 101 of 2010.
- c) Nonidentifying Information Requests:

Pursuant to 23 Pa. C.S.A. §2932(b), Nonidentifying Information shall be provided by the Authorized Representative to the Requestor, at Requestor’s expense. Such information shall be provided within 120 days of the Requestor making payment of reasonable fees to the Authorized Representative.

- d) Identifying Information Requests.

If identifying information is sought by the Requestor, the following shall apply:

1. Authorized Representative and Requestor shall each review Sections 2932, 2933, and 2934 (relating to medical and social history information if such a statement was filed in the adoption proceeding) of the Adoption Act “Nonidentifying Information”, “Identifying Information.”, and “Medical and Social History Information”.
2. Prior to the Authorized Representative beginning any investigative work, Requestor and Authorized Representative should discuss and agree upon all aspects of reasonable compensation related to Authorized Representative’s investigation, including costs and expenses, how Requestor will be billed for time expended, and when payment is due. If Requestor and Authorized Representative cannot agree as to all aspects of compensation, Requestor may withdraw his/her

Request for Adoption Information by filing a letter stating such with the Clerk of the Orphans' Court.

3. In conducting its investigation and attempting to contact Requestor's natural parents, Authorized Representative shall "ensure that no individual, other than a birth parent is informed of the adoptee's existence and relationship to the birth parent."
4. Authorized Representative is authorized to take "reasonable efforts to locate the subject of the search" and "obtain written authorization from the subject before identifying information is released or contact between the parties is made." If Authorized Representative has concerns or needs additional court authority to exercise its duties, Authorized Representative may state such in a letter to the Court and file it with the Clerk of Orphans' Court.
5. If Requestor's natural parent(s) consent to the release of his/her/their identity and present a place of residence to the Requestor-adoptee, Authorized Representative should obtain written consent from the natural parent(s) and file that consent with the Clerk of the Orphans' Court.
6. If the natural parent(s) have consented to the release of their identity and present place of residence, Authorized Representative is authorized to contact Requestor directly and disclose this information, unless Authorized Representative recommends by letter to the Court that Requestor be notified in a different manner.
7. Authorized Representative shall file a final report with the Clerk of Orphans' Court summarizing what investigative actions were taken, what information was learned, and what information, if any, was disclosed to Requestor and when it was disclosed, even if only "non-identifying" information was requested.
8. Until the Authorized Representative files a final report, the Authorized Representative shall file with the Clerk of Orphans' Court, a status report within one year of the original Request and on each annual anniversary of the filing of the Request.
9. Any documents or letters received by the Clerk of Orphans' Court and related to this matter shall contain a caption referencing the adoptee's name and the docket number so they remain confidential and properly filed.
10. If Authorized Representative wishes to cease being involved in this or other cases, it shall inform the Court immediately in writing by filing a motion with the Orphans' Court.

11. The Authorized Representative shall commence search for “identifying information” if requested, within 120 days of payment of reasonable fees to the Authorized Representative for services to be rendered.

**CHAPTER XVI – PROCEEDINGS PURSUANT TO SECTION 3206
OF THE ABORTION CONTROL ACT**

RULE 16.5 – Assistance in Preparation of Filings/Right to Legal Representation.

- a) The Clerk of the Orphans’ Court shall have appropriate personnel, familiar with Pa. O.C. Rule 16.1 et seq. and Section 3206 of the Abortion Control Act, available to assist parties in preparing the application.
- b) The applicant shall be entitled to legal representation. In the event the applicant does not have private legal counsel, the Court shall appoint legal counsel/guardian ad litem upon its own motion to represent the applicant in proceedings under Section 3206 of the Abortion Control Act.

RULE 16.10 – Forms for Filing.

Parties filing an application with the Court pursuant to 18 Pa. C.S.A. §3206 shall use forms prepared and filed in substantial conformity with the requirements of Pa. O.C. Rule 16.10 and as may be provided on the AOPC website. The Clerk of Courts shall, when necessary, direct parties to use the forms available on the AOPC website.

APPENDIX – GUARDIANSHIPS

Form G-14.8(a)(6)

IN RE: _____, : NO. _____ O.C. _____
: _____
: _____
An Alleged Incapacitated Person : _____
: _____
: _____

LIST OF INTERESTED PARTIES REQUIRING NOTICE

The following parties were determined by the court to be interested parties and shall receive a copy of the inventory, annual reports and all court orders in this matter:

<u>NAME</u>	<u>ADDRESS</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

GUARDIAN NAME

ADDRESS

TELEPHONE #