

IN RE; REPEAL AND ADOPTION : IN THE COURT OF COMMON PLEAS  
OF PERRY COUNTY RULES OF : OF THE 41ST JUDICIAL DISTRICT OF  
ORPHANS' COURT PROCEDURE : PENNSYLVANIA, PERRY COUNTY BRANCH  
: NO. 201607061

ORDER


RECORDED  
10/17/2016 1:12:02 PM  
WENDY H. WELFLEY  
REGISTER AND RECORDER  
PERRY COUNTY  
Pennsylvania  
Inst Num: 201607061

AND NOW, October 13, 2016, the Supreme Court Orphans' Court Procedural Rules Committee having recommended 2 minor changes to our Proposed Orphans' Court Rules and those changes having been made and approved, it is hereby ordered and decreed that all Perry/Juniata County Rules of Orphans' Court Procedure are hereby repealed effective immediately. The Court hereby adopts the attached Perry/Juniata County Rules of Orphans' Court Procedure to be effective as follows:

(1) All attached local rules shall be effective 30 days following publication in the Pennsylvania Bulletin. It is further ordered that the District Court Administrator shall file:

- (a) one (1) certified copy of the Local Rules with the Administrative Office of Pennsylvania Courts;
- (b) two (2) certified copies to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin; along with one copy to the Bureau on CD Rom;
- (c) publish a copy of the local rules on the website of the County Clerk of Orphans' Court Office, and the Local Rules shall be kept continuously available for public inspection and copying in the Office of the Clerk of Orphans' Court and upon request and payment of reasonable costs of reproduction and/or mailing the Clerk of Orphans' Court shall furnish to any person a copy of the requested Local Rules.

BY THE COURT,

  
KATHY A MORROW, P.J.

# PERRY AND JUNIATA COUNTIES

## Local Rules of Orphans' Court Procedure

### Rule 1 Judges Local Rules

#### Rule 1.1-1 Citation of Rules

These rules shall be known as the Rules of the Court of Common Pleas of Perry and Juniata Counties, Orphans' Court Division, adopted pursuant to PA O.C. Rule 1.5.

#### Rule 1.2-1 Certificates of Appointment of Fiduciary

The Clerk of the Orphans' Court Division shall not issue a certificate of the appointment of any fiduciary until the security, if required by the Court, has been entered.

#### Rule 1.2-2 Corporate Sureties. Approval

Surety companies authorized to do business in this Commonwealth may become surety on any bond or obligation required to be filed in the Court; provided that a current certificate of the right to do business, issued by the Insurance Department of this Commonwealth; shall be on file with the Clerk of the Orphans' Court, and provided, further, that no bond shall be executed by any surety company after May of any year, until such certificate, issued after March 31 of that year, shall have been on file with the Court.

#### Rule 1.6 Orphans' Court Mediation Program

- (a) Cases filed in the Orphans' Court division may be ordered into the Orphans' Court Mediation Program by the Judge to whom the case is assigned, or by request of any of the parties by filing a Request for a Court Appointed Mediator. Upon filing a request for a Court appointed mediator, the Judge to whom the case is assigned, shall appoint said mediator.
- (b) The mediators shall be practicing attorneys that are members of the Perry County Bar Association and/or the Juniata County Bar Association with

an emphasis in their practice on Orphans' Court matters. A list of mediators shall be maintained by the District Court Administrator, and selected by the Court from said list.

- (c) Upon appointment, the mediator shall schedule the mediation within forty five (45) days of the order of Court. The attendance of legal counsel, the parties and a representative, including an insurance carrier, with authority to enter into a full and complete compromise and settlement is mandatory, if applicable. If lead counsel, the parties or a representative fail to appear after having been properly notified, absent good cause, the mediation will be held as schedule.
- (d) At least ten (10) days prior to the mediation, each party shall file and serve on the other party a mediation statement which must include the following: (1) a succinct explanation of the facts and relief sought; (2) significant legal issues that remain unsolved; (3) summary of medical and expert reports (if applicable); (4) itemized list of damages; and (5) settlement posture and rationale. Failure to file a mediation statement may result in sanctions if requested by the mediator.
- (e) Each party to the case selected for mediation shall pay a mediation fee to be made payable to the Clerk of the Orphans' Court and submitted to the Clerk of the Orphans' Court. The mediation fee shall be set by administrative order, and information with regard to the fee shall be available from the Clerk of the Orphans' Court.
- (f) If the case has not been resolved, within fourteen (14) days from the date of the mediation, the mediator shall send a report setting forth the mediator's assessment of the case and the mediator's recommendation regarding settlement. A copy of the report shall be provided to and maintained by the District Court Administrator until the case is closed.
- (g) If the case is resolved and a settlement agreed upon, the mediator shall send a letter to the Judge, with copies to counsel and the District Court Administrator.
- (h) The mediator shall not be subpoenaed or requested to testify or produce documents by any party in any pending or subsequent litigation arising out of the same or similar matter. Any party, person, or entity that attempts to compel such testimony or production shall be liable and indemnify the mediator and other protected participants for all reasonable costs, fees and expenses. The mediator shall have the same limited immunity as judges pursuant to the applicable law as it relates to Common Pleas Judges. Notwithstanding the preceding subsections the court may in its discretion set a case for an alternative dispute resolution ("ADR") before a private mediator. The method of selection of the

private mediator shall be in the discretion of the Court. All parties shall bear equally the costs of any Court-ordered private mediation; provided, however, that the Court shall take appropriate steps to assure that no referral to ADR results in an unfair or unreasonable economic burden on any party.

#### 1.6-1 Forms.

Attached to these rules, is the form to be used for the Request for a Court Appointed Mediator in Orphans' Court matters.

### Rule 5.10 Public Sale of Real Property

- (a) After allowance of public sale of real property, the petitioner shall, in addition to such notice as required by law, give notice of the sale to each interested party. The notice may be given by first class mail and must be given at least twenty (20) day prior to the date of the proposed sale. In addition, notice of the sale must be published at least one time in a newspaper of general circulation in the county where the real property is located.
- (b) The published public notice of the sale shall contain the following information:
  - (i) the address of the property and the municipality in which it is located;
  - (ii) the area of the property in terms of acres or square feet;
  - (iii) a list of the improvements of the property, if one is available;
  - (iv) a deed or survey description of the property, if one is available
  - (v) the name of the grantee of the last recorded deed for the property, together with the deed/record book or instrument number.

### Rule 5.16-1 Procedure under §3102.

Probate, Estates and Fiduciaries Code of 1972.

- (a) Contents of Petition. A Petition under section 3102 of the Probate, Estates and Fiduciaries Code of 1972 (20 Pa C.S. Section 3102), for the settlement of a small estate shall set forth
- (1) the name, date of death and residence of decedent;
  - (2) the name and address of the petitioner, his relationship to the decedent and whether or not he formed a part of the decedent's household at the date of his death;
  - (3) if petitioner be the surviving spouse, the date and place of the ceremonial marriage, and the name and official capacity of the person who performed the ceremony; or, in the case of a common law marriage, all averments necessary to establish the validity of such marriage;
  - (4) whether the decedent died testate or intestate; where, when and to whom letters were granted, and the amount of bond given by the personal representative;
  - (5) the names, relationships and a brief description of the interest of all persons entitled to share in the decedent's estate under the will or intestate laws, stating which are minors, incapacitated persons or deceased, with the names of their fiduciaries, and whether any of them has received or retained any property of the decedent by payment of wages under Section 3101 of the Probate, Estates and Fiduciaries Code (20 Pa. C.S. Section 3101) or otherwise;
  - (6) the person entitled to the family exemption, and the facts on which the claim is based;
  - (7) an itemized statement of the property of the decedent and an appraisal thereof;
  - (8) the disbursements made prior to the filing of the petition; the date and name of the person to whom paid; and the nature and amount of each payment;
  - (9) the names and all unpaid claimants of whom the petitioner has notice or knowledge; the nature and amount of each claim; and whether such claims are admitted;
  - (10) that a schedule of assets and deductions for inheritance tax purposes has been filed with the Register; the amount of any inheritance tax assessed; and the date of payment thereof;
  - (11) that ten days' written notice of intention to present the petition has been given to every unpaid beneficiary, heir or

- claimant who has not joined in the petition, or to the Attorney General, if the decedent's heirs are unknown; and
- (12) a prayer for distribution of the property, setting forth the persons entitled and their distributive shares and requesting the discharge of the personal representative and the release of their surety, if letters have been granted and advertised.
- (b) Exhibits. The following exhibits will be attached to the petition;
- (1) a copy of decedent's will;
  - (2) consents of the surety, and of unpaid beneficiaries, heirs and claimants who consent thereto;
  - (3) a copy of the notice given; and
  - (4) the inheritance tax voucher, or in lieu therefore a statement from the Pennsylvania Department of Revenue that no tax is due.
- (c) Appraisal. No formal appraisal is required, unless ordered by the Court.

#### Rule 5.16-2 Procedures Under §3546.

Probate, Estate and Fiduciaries Code of 1972.

- (a) Contents of Petition. A petition under section 3546 of the Probate, Estates and Fiduciaries Code of 1972 (20 Pa. C.S. Section 3546) for the determination of title shall set forth
- (1) the name of the petitioner and his relationship to the decedent;
  - (2) the facts on which the claim of the petitioner is based;
  - (3) whether the decedent died testate or intestate, and where, when and to whom letters were granted;
  - (4) a description of the real property located within the Commonwealth, and the place, book and page and/or instrument number of recording of the last deed thereto;
  - (5) the names and addresses of all known creditors and interested Parties; and
  - (6) the facts material to a determination of the title.
- (b) Exhibits. The following exhibits shall be attached to the Petition:
- (1) the notice which has been given to creditors, and interested parties; if the heirs of the decedent are unknown, a copy of the notice given to the Attorney General; and a
  - (2) a copy of the decedent's will.

## **Rule 9.1 Notice of Hearings**

Notice of the initial hearing shall be given by regular mail not less than twenty (20) days before the date of the scheduled hearing to the counsel of record for the Estate, counsel of record for the exceptant(s), each heir at the last known address, to each unpaid creditor and to the Department of Revenue, the Department of Human Services, or other agency of the Commonwealth of Pennsylvania, if such Department or agency has, according to the information of the Clerk, a claim against the estate to be audited. If a party is unrepresented, notice shall be mailed to the last known address of record.

To the extent possible, the auditor shall expedite the hearings, and any interested party may apply to the Court for an order on the auditor to proceed and file a report or else give the reasons for the alleged delay, if there be an unreasonable delay.

### **9.1-1 Pre-Hearing Conference**

The auditor shall schedule a pre-hearing conference at which time the accountant or his attorney shall present to the auditor all written notices of claims of creditors, legatees, devisees, next of kin and other interested parties in the estate given the accountant and also a list of all other creditors of which he/she has any information and mention the claims of creditors he recommends for allowance.

## **Rule 9.6 Notice of Filing Report**

When the auditor has his report completed, he/she shall present it to the Court along with a proposed Decree Nisi for consideration by the Court. A copy of said report and the signed Decree Nisi shall be mailed via regular mail to all attorneys who appeared before him and all exceptants who appeared without attorneys.

### **9.7 Confirmation of Report**

When an auditor's report is presented to the Court, it will be confirmed nisi and filed. Exceptions to the Report must be filed within twenty (20) days of the date of the Decree Nisi. When no exceptions to an auditor's report are filed within the said period, the Clerk of the Orphans' Court shall endorse the absolute confirmation on the report.

### 9.8-1 Security for Expenses and Fees.

The Estate and exceptant(s) shall each provide to the auditor an estimate of the amount of time needed to present their case. Thereafter, the auditor shall recommend to the Court an amount to be held in escrow by the Register of Wills. Said deposit shall be applied to the auditor's bill of costs as submitted by the auditor and approved by the Court.

If exceptions are filed to the Report prior to confirmation absolute or if an appeal is filed after the confirmation, the party filing the same must pay in full all outstanding auditor's fees and costs as set forth on the auditor's bill of costs, regardless of the recommendation of the auditor as to allocation of the payment. The Court may address the issue of auditor's fees and costs at the time of the disposition of the exceptions or appeal.

### 10.1-1 Certification of Record.

(a) Contents of Petition. A Petition to fix a date for a hearing from a certification of record to the court from the Register shall be promptly presented to the court and shall set forth;

- (1) the nature of the proceedings before the Register;
- (2) the basis for the certification of record; and
- (3) the names and address of all interested parties including

those who have not been made parties to the record.

(b) Certification by Register. When the record has been certified by the Register, the petition required by subparagraph (a) shall be presented by the party who instituted the contest, or, in special circumstances, as the Court may direct.

(c) Citation. Upon allowance of the petition, a citation will be issued, directed to all interested parties, including those not represented on the record, to show cause why the matter upon which the certification is requested or based, as the case may be, should not be determined by the Court on a day certain therein indicated.

### 10.4 Appeals for the Register of Wills

(a) Contents of Petition. When an appeal is taken from a judicial act of, or proceeding before, the Register, the contestant shall promptly present a petition to the Court, which shall set forth:

- (1) the nature of the proceeding before the Register;
- (2) the basis for the appeal; and



- (3) the names and address of all interested parties, including those who have not been made parties to the record.
- (b) Citation. If the petition sets forth a prima facie case, a citation will be issued, directed to all interested parties, including those not represented on the record, to show cause why the appeal should not be sustained and the judicial act or proceeding complained of be set aside.

#### 10.4-1 Grant of Jury Trial

- (a) On appeal from the Register, or in a proceeding removed from or certified by the Register, the Court in its discretion may impanel a jury at any stage of the proceedings and forthwith proceed with a jury trial.
- (b) On appeal from the Register, or in a proceeding removed for or certified by the Register, the Court in its discretion may, either at the conclusion of all the evidence presented by proponents and contestants or before all such evidence has been produced, when it is satisfied that sufficient evidence has been presented so as to warrant, grant a jury trial at a future date.
- (c) If a jury trial is granted, as provided in subparagraph (a) or (b) hereof, the Court shall enter a decree specifying the issues to be tried, which may be in the form agreed upon by the parties, or as the court shall determine.

In Re:

IN THE COURT OF COMMON PLEAS OF THE  
41<sup>ST</sup> JUDICIAL DISTRICT, PENNSYLVANIA  
PERRY COUNTY BRANCH  
ORPHANS' COURT DIVISION  
NO.

REQUEST FOR A COURT APPOINTED MEDIATOR IN ORPHANS' COURT

1. Name and address of party requesting mediation \_\_\_\_\_  
\_\_\_\_\_

2. If represented by counsel, name, address and phone number of counsel \_\_\_\_\_  
\_\_\_\_\_

3. Name and address of other parties involved in case \_\_\_\_\_  
\_\_\_\_\_

(Please attach additional pages as required)

4. Brief Description of the issues to be involved in mediation \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Please attach additional pages as required)

Please be advised that the party requesting the appointment of a mediator will be required to deposit \$750.00 with the Clerk of the Orphans' Court at the time of filing of the this form.

ORDER OF COURT

AND NOW, \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_

is appointed mediator in the above captioned case to determine the following issues: \_\_\_\_\_  
\_\_\_\_\_

BY THE COURT,

\_\_\_\_\_  
P.J. or J.