

IN RE:

**ORDER ADOPTING ERIE
COUNTY ORPHANS'
COURT RULES**

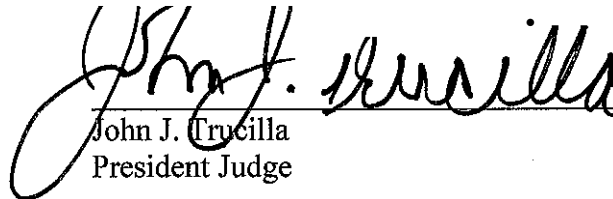
**IN THE COURT OF COMMON PLEAS
OF ERIE COUNTY PENNSYLVANIA**

DOCKET NO. 52-2017

ORDER

AND NOW, to wit, this 21st day of February, 2017, it is hereby **ORDERED** that the following Erie County Orphans' Court Rules are adopted, effective 30 days after their publication in the *Pennsylvania Bulletin*.

This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration I03(d).


John J. Trucilla
President Judge

CHAPTER I

RULE1

PRELIMINARY RULES

1.3 Additional Definitions. The following words, when used in these Rules, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

"Business days" shall be deemed to include Mondays through Fridays excepting weekdays when the Court House is closed.

"Local Rule" or "Local Rules" shall mean the Erie County Orphans' Court Rules, singularly or collectively, as the context may dictate, promulgated in accordance with PA.R.J.A. No. 103(d).

CHAPTER II

RULE 2

ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

2.4. Petition for Adjudication/Statement of Proposed Distribution; Supplements/Additions

Additional Receipts and Disbursements - Receipts and/or disbursements received or made after filing the Account and Petition for Adjudication/Statement of Proposed Distribution may be accounted for in a supplemental account, which shall be signed and verified by the accountant(s) and filed with the Clerk, with notice in the same manner as required by Pa. O.C. Rule 2.5(a)-(g) with respect to an Account.

2.6. Filing for a Particular Audit.

Accounts to appear on a particular audit list must be filed in accordance with the audit calendar published by the Clerk's office.

2.7. Objections to Accounts or Petitions for Adjudication/Statement of Proposed Distribution. Time.

- (a) Within twenty days of filing an objection, the objecting party or his/her attorney shall schedule a hearing thereon with the Court allowing ample time for the objection to be heard. The Accountant or his/her attorney may (but is not required to) schedule a hearing during the same period pursuant to the same procedure. The party scheduling the hearing shall notify all other parties who receive notice pursuant to Rule 2.5 and the Orphans' Court Auditor of the date and time thereof.
- (b) The Orphan's Court Auditor may periodically identify Accounts for which objections have been filed and no hearing scheduled to the Court and send the notice if so directed by the Court.

2.9. Schedule of Distribution: Confirmation of Title to Real Property.

Approval of a schedule of distribution of real estate shall be in the nature of a confirmation of title in the respective distributees.

- (a) Separate Awards of Real Property. A schedule of distribution shall set forth separate awards of real property in separate paragraphs.
- (b) Description of Real Property. Certification by Counsel. Real property shall be described in the manner appearing in the last deed of record and shall, in addition, include information pertinent to the derivation of decedent's title.

2.10. Foreign Heirs and Unknown Distributees. Report by Fiduciary.

(b) The report required by Pa.O.C. Rule 2.10(b) shall be submitted at the audit to the Court and the Auditor and shall include substantially the following:

- (1) Unknown Distributee. If it appears that the existence, identity or whereabouts of a distributee is unknown, or there are no known heirs, the

fiduciary shall submit the written report, verified by the fiduciary or the fiduciary's counsel, in which shall be set forth:

- (i) The nature of the investigation made to locate the heirs of the decedent, in complete detail; and
 - (ii) In cases of intestacy, or where there are no known heirs, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain. The term "investigation", as used in this Rule, shall include inquiry of or to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; beneficial organizations; insurance records; church membership; school records; social security, Veterans' Administration or military service records; naturalization records, if not native born; and such other sources of information as the circumstances may suggest.
- (2) Foreign Distributees. If the fiduciary requests the Court to withhold distribution to a foreign distributee, he or she shall submit the written report, verified by the fiduciary or the fiduciary's counsel, in which shall be set forth:
- (i) the relationship of the distributee to the decedent, and any available information concerning his/her present whereabouts;
 - (ii) in cases of intestacy, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain; and
 - (iii) the reasons for the request that distribution be withheld, and the suggested manner of withholding.

CHAPTER III

RULE 3

PETITION PRACTICE AND PLEADING

3.16 Motion Court Practice.

(1) Motion Court. Unless otherwise ordered by the Court, Motion Court will be held every Monday through Thursday at 9:00 a.m.

(2) Cover Sheet. All motions presented at motion Court shall include a completed motion Court cover sheet in the form required by the Court.

(3) Notice Requirements Prior to Presentation at Motion Court. Prior to the presentation to the Court of any motion or petition requesting an immediate Order of Court, other than a Rule to Show Cause which grants no relief, opposing counsel and unrepresented parties must be given notice, subject to the following:

- (i) Contents of Notice. The notice must give the date and time when the motion or petition will be presented to the Court and must be accompanied by a copy of the proposed motion and Order.

(ii) Certification of Notice. The motion or petition must contain a certificate signed by counsel verifying that proper notice or citation was given under this Rule.

(iii) Length of notice required. Except where otherwise required under law, the following notice shall be required:

(a) If the motion or petition is uncontested, either two (2) full business days' notice must be given by personal delivery or facsimile transmission to each party or their counsel's office, **or** five (5) full business days' notice must be given if notice is by mail.

(b) Where such motion or petition does not meet the requirements of subsection (iii)(a) above, twenty (20) days' notice as set forth in Pa. O.C. Rule 2.5(d) and 3.5(b).

(iv) Failure to give notice. The Court will not enter an Order on a petition or motion without the Certificate of Notice being attached unless a special cause **is** shown to the Court.

CHAPTER IV

RULE4

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

Rule 4.1. Format of All Legal Paper

(a) No paper or other document may be filed in the Register of Wills or Clerk other than paper 8 1/2" x 11" size. The only exception to this Rule is the filing of a will or other original document.

(b) Every pleading and motion shall be endorsed with the name, address, Pennsylvania Supreme Court Identification Number and telephone number of counsel.

Rule4.5. Service of Legal Paper by Court and Clerk

(c) The Clerk and the Court may serve all notices, opinions, and orders via delivery to the counsel's box held by such counsel or his or her firm in the Office of the Prothonotary at the Erie County Courthouse, and the Docket shall specifically note this method of service.

Explanatory Comment: This rule provides an additional alternative for the Clerk and the Court to serve notices, opinions, and orders. This rule does not permit service upon counsel via counsel's box by any persons or entities other than the Clerk and the Court.

CHAPTER V

RULES

RULES GOVERNING SPECIFIC TYPES OF PETITIONS

5.2. Family Exemption. Petition for Settlement of Small Estate.

The family exemption petition as set forth in Pa.O.C. Rule 5.2 may be included in a petition for settlement of small estate as set forth in Local Rule 5.16.

5.10. Public Sale of Real Property. Method of Serving Notice.

Notice of the public sale of real property (containing the date, time, and place of sale and any other information required by Act of Assembly) shall be given:

- (1) By advertisement once a week for three successive weeks, the first of which shall be at least twenty (20) days prior to the date set for the sale of the property, in the *Erie County Legal Journal* and in one newspaper of general circulation in Erie County; and
- (2)
 - (i) By handbills, one of which shall be posted at a conspicuous place on the real property to be sold, and at least three of which shall be posted in three public places in the vicinity of such real property, at least twenty (20) days prior to the date set for the sale of the property; and
 - (ii) By personal notice, sent via registered or certified mail, to all interested parties, of the time and place of the proposed sale, at least twenty (20) days prior to the date set for the sale of the property.

5.16. Settlement of Small Estates.

- (a) Form of Petition. Contents.

Petitions under **PEF** Code § 3102, as amended, for the settlement of small estates shall, in addition to the requirements of Chapter III of the State Orphans' Court Rules, set forth:

- (1) The name and address of the petitioner and the relationship of the petitioner to the decedent.
- (2) The name, date of death, and domicile of decedent, whether the decedent died testate or intestate, the dates of the probate of the will and of the grant of letters, if any, and whether the personal representative has been required to give bond and, if so, the amount.
- (3) The names 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 Section 3101 of the PEF Code and whether any of them are minors, incapacitated, or deceased with the names of their fiduciaries.

- (4) The person or persons, if any, entitled to the family exemption; whether or not the individual was a member of the same household as the decedent at the time of decedent's death; and, if a claim thereof is made in this petition, any additional facts necessary to establish the prima facie right thereto.
- (5) An inventory of the real and personal estate of the decedent, with values ascribed to each item, either incorporated in the petition or attached as an exhibit.
- (6) An itemization of all administrative costs, funeral expenses, debts and distributions, and of assets then remaining for distributions.
- (7) A list showing the nature, amount and preference of all unpaid claims against the estate and indicating which are admitted.
- (8) That twenty (20) 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.
- (9) 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 surety, if letters have been granted and advertised.

(b) Required Exhibits.

The following exhibits shall be attached to the petition:

- (1) The original of the decedent's will, if it has not been probated.
- (2) Joinders or notice to unpaid beneficiaries, heirs, and claimants.
- (3) A receipt for the filing of an inheritance tax return reporting the assets which are the subject of the petition.
- (4) A certification that a copy of the proposed petition and decree has been given to all beneficiaries and unpaid creditors at least twenty (20) days prior to presentation of the petition.
- (5) Written confirmation by the Pennsylvania Department of Public Welfare of the amount of any claim for assistance provided to the decedent.

(c) The family exemption petition as set forth in Pa. O.C.Rule 5.2 may be included in a petition for settlement of small estates.

5.17. Determination of Title to Real Property. PEF Code Section 3546.

(a) Contents of Petition. A petition under PEF Code Section 3546 for the determination of title to real property shall, in addition to the requirements of Chapter III of the State Orphans' Court Rules, setforth:

- decendent;
- (1) the name of the petitioner and the relationship of the petitioner to the
 - (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 real property located within the Commonwealth, and instrument number or the place, book, and page 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, interested parties, and, if the heirs of the decedent are unknown, a copy of the notice given to the Attorney General; and
- (2) A copy of the decedent's Will.

(c) Service. The decree shall be served on all known interested parties and creditors of the decedent thirty (30) days prior to final confirmation, which must be at least three (3) months after the date of the decree nisi. The final confirmation date shall be advertised once in the legal publication of the County in which the real property is located and once in a newspaper of general circulation for the County in which the real property is located, or as the Court shall otherwise direct.

5.18. Filing of Dispositive Instruments Including Wills Without Issuance of Letters.

(a) In every proceeding involving a dispositive instrument requiring the filing of a Pennsylvania Inheritance Tax Return other than a grant of letters, the fiduciary shall within six (6) months of the event giving rise to the disposition of any interest in any property, notify all individuals and entities (and the Attorney General where required) named in said dispositive instrument, and all heirs named in a Proof of Death filed in conjunction therewith, of the happening of the event giving rise to the disposition of the interest. The notice shall be submitted by regular U.S. mail and shall include the following:

- (1) The name of the creator of the property interest;
- (2) The nature of the property interest created;
- (3) Notification that the addressee has been named as a beneficiary in said dispositive instrument and a copy of such instrument or a description of the beneficiary's interest under the terms of the instrument; and

- (4) The address where a copy of the dispositive interest instrument can be acquired if desired.

COMMENT: 20 Pa.C.S. § 301(b) provides that the title to real estate is vested in beneficiaries and/or heirs, as applicable upon the death of the decedent subject to the right of the personal representative to administer the estate. 20 Pa.C.S. § 3357 (a) provides that beneficiaries and/or heirs, as applicable, can give a good deed to real estate if more than one year has elapsed after death and no letters have been issued or within such year if no letters have been issued in the Commonwealth. As a result there can be circumstances when the probate of a will or filing of a proof of death that identifies the beneficiaries and establishes the decedent died intestate may along with an inheritance tax return and notice to medical assistance, etc. serve as a less expensive form of estate "administration" when the only assets are real estate and there are no creditors to speak of. The purpose of Local Rule 5.18, which is to apply when a will is probated but letters not issued, is to provide for notice to parties named in the will that has been probated.

CHAPTER VII

RULE 7

RULES RELATING TO PRE-HEARING AND HEARING PROCEDURE

7.1. Depositions, Discovery and Production of Documents

The procedure relating to depositions, discovery and production of documents shall be governed by special Order of Court.

- (a) Leave to take depositions and/or to obtain discovery or production of documents shall be granted only upon petition with good cause shown, except upon agreement of counsel.
- (b) In the case of a will contest, no discovery shall be allowed prior to the filing of the contest or caveat.
- (c) The procedure relating to perpetuation of testimony shall be governed by special Order of Court in every case.

CHAPTER IX

RULE 9

AUDITORS AND MASTERS

9.1. Notice of Hearings

- (a) An Auditor or Master shall give at least twenty (20) days' notice of the time and place of his or her first hearing to all parties in the manner set forth in Pa. O.C. Rule 4.3.
- (b) Notice of succeeding hearings given by an Auditor or Master at a hearing of which proper notice has been given shall constitute sufficient notice of such succeeding hearings.

9.6. Filing of Report

An Auditor or Master shall, at the time of the filing of his or her report, give notice of the filing to all parties in the manner set forth in Pa. O.C. Rule 4.3.

9.7. Confirmation or Approval of Report

The Court shall hold a hearing on the confirmation of an Auditor's Report or the approval of a Master's Report. Any party may request a hearing through Court Administration.

9.8. Compensation of Auditor or Master

The Auditor or Master shall be compensated as directed by the Court and from such sources as the Court shall direct.

CHAPTERX
RULE 10
REGISTER OF WILLS

10.1. Forms - Death Certificates - Estates.

(a) A death certificate for the decedent shall be presented to the Register of Wills for inspection and verification of information at the time of the presentation of a Petition for Grant of Letters.

10.3. Hearings.

(a) Extension of Time - The Register of Wills, upon his or her own motion, or upon the motion of any party, may extend any limitation of time prescribed by these Rules.

(b)(1) Limitations on Discovery - Discovery before the Register, upon application to the Register by an interested party, shall be limited to the following: depositions, request for production of documents, request for admissions, subpoenas.

(b)(2) Objections to Discovery- Objections to discovery shall be addressed to, and shall be decided by, the Register of Wills or the Deputy Register or solicitor presiding over the hearing.

(b)(3) Additional Discovery -Requests for additional discovery beyond the scope of these rules shall be made to the Court.

10.4. Appeals from the Register of Wills

Appeals from an order or decree of the Register shall be to the Court in accordance with **PEF** Code § 908.

CHAPTER XIV

RULE 14

INCAPACITATED PERSONS

14.1 Procedure

(a) All petitions requiring a hearing shall first be submitted along with a petition cover sheet, proposed Order for scheduling a hearing and proposed final decree to the Family/Orphans' Court Administrator for assignment of a hearing date.

(1) Upon the assignment of a hearing date by the Family/Orphans' Court Administrator, the original Petition or Motion and one copy shall be filed with the Clerk of the Orphans' Court. A copy shall also be given to the Family/Orphans' Court Administrator.

(2) All other pleadings not requiring a hearing shall be filed directly with the Clerk of the Orphans' Court.

(b) Emergency petitions requiring the immediate attention of the Court shall be presented to the Family/Orphans' Court duty judge.

(c) The petitioner shall serve the petition, along with the citation and notice as set forth in Supreme Court Form G-01, on the alleged incapacitated person in accordance with PEF Code § 5511(a).

(d) The petitioner shall serve a copy of the guardianship petition, along with a copy of the citation and notice served on the alleged incapacitated, by first class mail to the following persons:

(1) All persons who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he or she died intestate at the time;

(2) The person or institution providing residential services to the alleged incapacitated person;

(3) Any attorney in fact under a durable power of attorney;

(4) Such other parties as the Court may direct.

(e) All petitions required by this Rule shall be signed by the moving party or that party's counsel.

(f) Proof of Service. Prior to a hearing under Chapter XIV of the Rules, the petitioner shall file an affidavit or verification that the proper service of notice of the petition and hearing was made to all parties listed in the petition and to any other parties required by the Court, by law, or by the Rules to be notified.

(g) Emergency Guardianships.

(1) A petition for emergency guardianship under PEF Code§ 5513 may be filed by separate petition or with a petition for appointment of a permanent guardian. Reasons for the need for emergency guardianship shall be clearly set forth in the petition.

(2) A petition for emergency guardianship may be presented in Motiop Court for the purpose of obtaining a temporary order. Once an emergency order is issued, the petitioner shall obtain a final hearing date from Court Administration.

CHAPTER XV

RULE 15

ADOPTION

15.1. Procedure.

(a) All Petitions or Motions requiring a hearing including those pertaining to Adoptions, Involuntary Terminations, Voluntary Relinquishments and Confirmation of Consent shall first be submitted to the Family/Orphans' Court Administrator at such times as provided in Erie County Civil Rule 304 for assignment of a hearing date.

(b) Upon the assignment of a hearing date the original Petition or Motion shall be filed with the Clerk and a copy of the Order setting the date of the hearing shall be given to the Family/Orphans' Court Administrator.

(c) All other pleadings not requiring a hearing shall be filed with the Clerk of the Orphans' Court.

(d) Any Motion or Petition requiring immediate attention of the Court shall be presented at Family/Orphans' Court Motion Court, with notice to all parties as required by Erie County Civil Rule 440.

15.4.1 Involuntary Termination of the Parental Rights of a Putative Father Whose Identity or Whereabouts Cannot be Ascertained.

The parental rights of a natural or putative father whose identity or whereabouts cannot be ascertained must be terminated by an involuntary termination proceeding prior to approval of a final adoption.

(a) The involuntary termination petition must aver that the natural mother does not know the identity or whereabouts of the natural or putative father, must include his last know address, if known, and must also specify all attempts made by the petitioner to determine the correct identity of the natural or putative father.

(b) Notice of the involuntary termination petition and hearing shall be served on the natural or putative father by publication in the form and manner approved by the Court following presentation of a separate Motion for Service by Publication and Affidavit of Diligent Search as required by Pa. R.C.P. 430.

(c) Publication shall include, as a minimum, the contents of the citation attached to the Involuntary Termination Petition. Proof of publication shall be submitted to the Court prior to hearing.

15.4.2 Petition to Terminate Putative Father's Rights Under §2503(d) and §2504(c)

(a) Contents. A Petition to terminate a putative father's rights under 23 Pa.C.S.A. Section 2503(d) or 2504(c) shall contain the following:

- (1) The names and addresses of the petitioners;
- (2) The names and addresses of the birth parents and the putative father;
- (3) The date the child was relinquished to an agency or to an adult intending to adopt the child, the date that a report of intention to adopt was filed, and the date of any proceedings to terminate the parental of the birth parents, including voluntary relinquishment, involuntary termination, or confirmation of consent;
- (4) A statement of any further proceedings pending in the adoption; and
- (5) The certification from the Pennsylvania Department of Vital Statistics pursuant to 23 Pa.C.S.A. § 5103 showing that no claim of paternity has been filed.

(b) Procedure.

- (1) Upon presentation of a Petition to Terminate putative father's rights under 23 Pa.C.S.A. §§ 2503(d) or 2504(c), the Family/Orphans' Court Administrator shall schedule a hearing, which shall not be less than ten (10) days after the filing of the petition.
- (2) Notice shall be provided in the form provided in 23 Pa.C.S.A. § 2513(b), and service shall be as provided in State Rule 15.6.
- (3) Notice shall be given to the birth parents and putative father, and to the parents or guardians of a birth parent or putative father who has not reached age 18.
- (4) Following hearing, the Court shall issue such decree as clearly sets forth that the parental rights of the putative father are terminated.
- (5) A Petition to Terminate Putative Father's Rights may be brought in the name of the attorney for the adopting parents.

15.5. Petition to Confirm Consent to Adoption, including Stepparent adoptions.

All written consents to adoption must be confirmed by Court prior to the entry of a final Adoption Decree.

(a) Form of Petition. Contents. The Petition to Confirm Consent shall include the following:

- (1) The names and addresses of the petitioners;
- (2) The names and addresses of the birth parents;
- (3) The date the child was relinquished to an agency or to an adult intending to adopt the child, the date that a report of intention to adopt was filed, and the date the consent to adoption was signed by the birth parent or parents. The original consent shall be attached to the petition or shall be part of prior pleadings; and
- (4) A statement of any further proceedings pending in the adoption.

(b) Procedure.

- (1) The Petition to Confirm Consent shall be presented to the Family/Orphans Court Administrator to schedule a hearing. The hearing shall be scheduled not less than ten (10) days after the filing of the petition and not less than sixty (60) days after the filing of the consent to adoption, whichever is later.
- (2) Notice shall be in the form provided in 23 Pa. C.S.A. Section 2513(b), and service shall be as provided in State Rule 15.6. Notice shall be given to the birth parents and putative father, if applicable, and to the parents or guardians of a consenting parent who has not reached age 18.
- (3) Following hearing, the Court shall issue such decree as clearly sets forth that the consent to adoption is confirmed and that all rights of the consenting birth parent are terminated.
- (4) A Petition to Confirm Consent may be brought in the name of the attorney for adopting parents.
- (5) The Adoption petition shall be filed separately from Petition to Confirm Consent, Petition for Voluntary Relinquishment, or Petition for Involuntary Termination of Parent Rights, and may be filed simultaneously with any aforesaid Petition.

(c) Hearing.

At the hearing to confirm the consent the petitioner shall present such information as may be necessary to allow the Court to review the circumstances of the execution and the submission of all written consents to adoption so as to determine their validity. The Court shall then enter an order confirming or rejecting the written consent to adoption.