

IN RE:

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

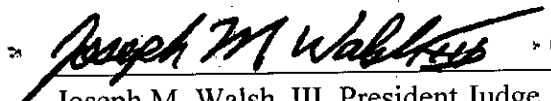
: IN THE COURT OF COMMON PLEAS
: OF ERIE COUNTY, PENNSYLVANIA

: DOCKET NO. 360 of 2022
:
:

ORDER

AND NOW, this 16th day of November, 2022, it is hereby **ORDERED** that the attached Erie County Orphans' Court Rules, having been approved by the Pennsylvania Orphans' Court Procedural Rules Committee, are adopted effective 30 days after their publication in the Pennsylvania Bulletin. These rules shall supersede all previously adopted Erie County Orphans' Court Rules. This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration 103(d).

BY THE COURT:



Joseph M. Walsh, III, President Judge

cc. Clerk of Records (Clerk of Orphans' Court / Register of Wills)
Court Administration
Erie County Bar Association

FILED
NOV 16 2022
REGISTER OF WILLS

**ERIE COUNTY ORPHANS' COURT DIVISION RULES
TABLE OF CONTENTS**

CHAPTER I. PRELIMINARY RULES

Rule 1.1	Short Title and Citation.....	3
Rule 1.2	Construction and Application of Rules.....	3
Rule 1.3	Definitions.....	3
Rule 1.4	Extension of Time Limitations	4
Rule 1.5	Local Rules	4
Rule 1.6	Mediation by Agreement, Local Rule, or Court Order	4
Rule 1.7	Entry and Withdrawal of Counsel.....	4
Rule 1.8	Forms	4

CHAPTER II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

Rule 2.4	Petition for Adjudication/Statement of Proposed Distribution; Virtual Representation (Supplements / Additions)	5
Rule 2.6	Filing with the Clerk	5
Rule 2.7	Objections to Accounts or Petitions for Adjudication/Statements of Proposed Distribution	5
Rule 2.9	Confirmation of Accounts; Awards	5
Rule 2.10	Foreign Heirs and Unknown Distributees.....	5

CHAPTER III. PETITION (AND MOTION) PRACTICE AND PLEADING

Rule 3.0	Mode of Proceeding on Motion	6
Rule 3.5	Mode of Proceeding on Petition	7
Rule 3.9	Preliminary Objections	8

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

Rule 4.1	Format of All Legal Paper	8
Rule 4.5	Service of Legal Paper by Court and Clerk	8

CHAPTER V. RULES GOVERNING SPECIFIC TYPES OF PETITIONS

Rule 5.0	Mode of Proceeding on Petition	9
Rule 5.2	Family Exemption.....	9
Rule 5.6	Appointment of a Guardian for the Estate or Person of a Minor (Emergency Guardian).....	9
Rule 5.10	Public Sale of Real Property	9
Rule 5.16	Determination of Title to Real Property (PEF Code Section 3546)	10

Rule 5.17 Filing of Dispositive Instruments Including Wills without Issuance of Letters	10
Rule 5.50 Settlement of Small Estates by Petition	11

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

Rule 7.1 Depositions, Discovery, Production of Documents, Perpetuation of Testimony, and Subpoenas to Attend and Testify	11
Rule 7.2 Motion for Judgment on the Pleadings	11
Rule 7.3 Motion for Summary Judgment	12
Rule 7.4 Injunctions.....	12

CHAPTER IX. AUDITORS AND HEARING OFFICERS

Rule 9.1 Notice of Hearings	12
Rule 9.6 Notice of Filing Report	13
Rule 9.7 Confirmation of Report.....	13
Rule 9.8 Security for Expenses and Fees	13

CHAPTER X. REGISTER OF WILLS

Rule 10.2 Petition Practice	13
Rule 10.4 Appeals from the Register of Wills	13

CHAPTERS XI – XIII. RESERVED

CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS

Rule 14.2 Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person	14
Rule 14.4 Counsel	14
Rule 14.6 Determination of Incapacity and Selection of Guardian.....	15

CHAPTER XV. ADOPTIONS

Rule 15.1 Local Adoption Rules	15
--------------------------------------	----

***APPENDIX OF FORMS**

Form A Motion Cover Sheet

*Additional forms are available for reference on the Erie County website:

www.eriecountypa.gov/departments/clerk-of-records/register-of-wills-estate-records/
www.eriecountypa.gov/departments/clerk-of-records/clerk-of-orphans-court/
www.eriecountypa.gov/courts/court-information/general-forms/

IN RE: : IN THE COURT OF COMMON PLEAS
ORDER ADOPTING ERIE : OF ERIE COUNTY, PENNSYLVANIA
COUNTY ORPHANS' COURT
RULES : DOCKET NO. 360 of 2022
:
:

ORDER

AND NOW, this 16th day of November, 2022, it is hereby **ORDERED** that the attached Erie County Orphans' Court Rules, having been approved by the Pennsylvania Orphans' Court Procedural Rules Committee, are adopted effective 30 days after their publication in the Pennsylvania Bulletin. These rules shall supersede all previously adopted Erie County Orphans' Court Rules. This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration 103(d).

BY THE COURT:

Joseph M. Walsh, III, President Judge

cc. Clerk of Records (Clerk of Orphans' Court / Register of Wills)
Court Administration
Erie County Bar Association

ERIE COUNTY ORPHANS' COURT DIVISION RULES TABLE OF CONTENTS

CHAPTER I. PRELIMINARY RULES

Rule 1.1	Short Title and Citation.....	3
Rule 1.2	Construction and Application of Rules.....	3
Rule 1.3	Definitions.....	3
Rule 1.4	Extension of Time Limitations	4
Rule 1.5	Local Rules	4
Rule 1.6	Mediation by Agreement, Local Rule, or Court Order.....	4
Rule 1.7	Entry and Withdrawal of Counsel.....	4
Rule 1.8	Forms	4

CHAPTER II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

Rule 2.4	Petition for Adjudication/Statement of Proposed Distribution; Virtual Representation (Supplements / Additions)	5
Rule 2.6	Filing with the Clerk	5
Rule 2.7	Objections to Accounts or Petitions for Adjudication/Statements of Proposed Distribution	5
Rule 2.9	Confirmation of Accounts; Awards	5
Rule 2.10	Foreign Heirs and Unknown Distributees.....	5

CHAPTER III. PETITION (AND MOTION) PRACTICE AND PLEADING

Rule 3.0	Mode of Proceeding on Motion	6
Rule 3.5	Mode of Proceeding on Petition	7
Rule 3.9	Preliminary Objections	8

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

Rule 4.1	Format of All Legal Paper	8
Rule 4.5	Service of Legal Paper by Court and Clerk	8

CHAPTER V. RULES GOVERNING SPECIFIC TYPES OF PETITIONS

Rule 5.0	Mode of Proceeding on Petition	9
Rule 5.2	Family Exemption.....	9
Rule 5.6	Appointment of a Guardian for the Estate or Person of a Minor (Emergency Guardian).....	9
Rule 5.10	Public Sale of Real Property	9
Rule 5.16	Determination of Title to Real Property (PEF Code Section 3546)	10

Rule 5.17 Filing of Dispositive Instruments Including Wills without Issuance of Letters	10
Rule 5.50 Settlement of Small Estates by Petition	11

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

Rule 7.1 Depositions, Discovery, Production of Documents, Perpetuation of Testimony, and Subpoenas to Attend and Testify	11
Rule 7.2 Motion for Judgment on the Pleadings	11
Rule 7.3 Motion for Summary Judgment	12
Rule 7.4 Injunctions	12

CHAPTER IX. AUDITORS AND HEARING OFFICERS

Rule 9.1 Notice of Hearings	12
Rule 9.6 Notice of Filing Report	13
Rule 9.7 Confirmation of Report	13
Rule 9.8 Security for Expenses and Fees	13

CHAPTER X. REGISTER OF WILLS

Rule 10.2 Petition Practice	13
Rule 10.4 Appeals from the Register of Wills	13

CHAPTERS XI – XIII. RESERVED

CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS

Rule 14.2 Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person	14
Rule 14.4 Counsel	14
Rule 14.6 Determination of Incapacity and Selection of Guardian	15

CHAPTER XV. ADOPTIONS

Rule 15.1 Local Adoption Rules	15
--------------------------------------	----

***APPENDIX OF FORMS**

Form A Motion Cover Sheet

*Additional forms are available for reference on the Erie County website:

www.eriecountypa.gov/departments/clerk-of-records/register-of-wills-estate-records/
www.eriecountypa.gov/departments/clerk-of-records/clerk-of-orphans-court/
www.eriecountypa.gov/courts/court-information/general-forms/

CHAPTER I - PRELIMINARY RULES

1.1 Short Title and Citation. These rules ("Local Rules") shall be known as the Erie County Orphans' Court Rules and may be cited as "Erie O.C.R. []."

1.2 Construction and Application of Rules.

(a) The numbered chapters, paragraphs, and subparagraphs within these Local Rules are intended to correspond with Pennsylvania Rules of Orphans' Court Procedure ("State Rules") numbering. Not all State Rules have corresponding local rules. For additional court information and individual judges' preferences *see*: www.eriecountypa.gov/courts and www.eriecountypa.gov/departments.

1.3 Definitions.

"Business Days." Mondays through Fridays, except for weekdays when the Erie County Courthouse is closed.

"Clerk." The office of the Clerk of the Orphans' Court Division of the Erie County Clerk of Records.

"Court Administration." The office of the Deputy Court Administrator for the Orphans' Court and Family Divisions of Erie County Court Administration.

"Interested Party." Also referred to in these Local Rules as "Party".

"Legal Periodical." The Erie County Legal Journal is the legal periodical for publication of legal notices in Erie County.

"Local Rule." The within Erie County Orphans' Court Rules, singular or plural, promulgated in accordance with P.A.R.J.A. No. 103(d).

"Motion Cover Sheet." The Family / Orphans' Division Motion Cover Sheet and Notice referenced in Local Rule 1.8(c) is appended to these Local Rules as "Form A".

"Orphans' Motion Court." Unless ordered otherwise, Orphans' Motion Court is held every Monday through Thursday at 9:00 a.m. concurrently with Family Division Motion Court. Also referred to herein as "Motion Court." The Motion Court schedule may be found online at: www.eriecountypa.gov/courts.

"PEF Code." The Pennsylvania Probate, Estates and Fiduciaries Code, 20 Pa.C.S.A. §101 et seq.

"Proposed Order." An unsigned order granting the specific relief requested in a petition, motion, or other pleading.

"Register." The office of the Register of Wills Division of the Erie County Clerk of Records.

"Scheduling Order." As used in these Local Rules, any order used to schedule argument or hearing before the court, including, but not limited to, a rule to show cause, preliminary decree or other order of court.

1.4 Extension of Time Limitations.

(a) No agreement to vary time limitations set by law, procedural rule, or court order is enforceable unless made in writing or of record in open court.

(b) Notice of a written agreement to extend any time limitation shall be provided to the court if a judge is actively involved in the case.

(c) No agreement to continue or reschedule an argument or hearing date is enforceable unless a request for same is granted by the judge before whom the argument or hearing is scheduled, upon written Motion or request in open court.

1.5 Local Rules.

(e) The local rules applicable to practice in the Civil Trial Division of the Erie County Court of Common Pleas shall not be applicable to the Orphans' Court Division unless directed by State Rule or specifically indicated by Local Rule.

1.6 Mediation by Agreement, Local Rule, or Court Order. The court may order mediation upon motion of any Interested Party or *sua sponte*. Mediation shall not delay time limitations, or hearing or argument dates, unless ordered by the court upon written motion or request in open court.

1.7 Entry and Withdrawal of Counsel.

(a) An appearance by legal counsel shall include counsel's name, law firm, office address, email address, telephone number, and Pennsylvania Supreme Court attorney identification number.

(b) Requests for leave to withdraw filed by counsel shall aver that the client is on notice of the request, and state whether the client is in agreement with the withdrawal.

(i) If a matter is scheduled for argument or hearing at the time of entry or withdrawal of appearance, notice of same shall be provided to the judge before whom the argument or hearing is scheduled.

(ii) Requests for leave to withdraw shall proceed following the procedure for Motion practice under Erie O.C.R. 3.0.

(iii) Leave to withdraw appearance may not be granted if the court determines withdrawal would unduly prejudice a Party or unduly delay the litigation.

1.8 Forms.

(c) A Motion Cover Sheet in the form appended to these Local Rules as Form A shall accompany all motions, petitions, and other requests for relief presented in Motion Court.

CHAPTER II - ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

2.4 Petition for Adjudication/Statement of Proposed Distribution; Virtual Representation (Supplements / Additions).

(a) **Supplements/Additions.** Receipts received or disbursements made after filing an account and petition for adjudication/statement of proposed distribution may be accounted for in a supplemental account. The supplemental account shall be signed and verified by the accountant(s) and filed with the Clerk, with notice in the same manner as required by Pa.R.O.C.P. 2.5 with respect to an account.

2.6 Filing with the Clerk. For accounts to appear on a particular audit list, they must be filed in accordance with the audit calendar published by the Clerk.

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

(a) Within twenty (20) days of filing an objection, the objecting party or their attorney shall schedule a hearing thereon following the procedure for petition practice under Erie O.C.R. 3.5. The objecting party scheduling the hearing shall notify all Parties receiving notice pursuant to Pa.R.O.C.P. 2.5 and the orphans' court auditor of the date and time of the hearing.

(i) The orphans' court auditor may periodically identify accounts for which objections have been filed and no hearing scheduled and notify the court. The court may direct that notice be sent to the objecting party directing the objecting party or their attorney to schedule a hearing thereon following the procedure for petition practice under Erie O.C.R. 3.5.

2.9 Confirmation of Accounts; Awards.

(a) **Schedule of Distribution.** Approval of a schedule of distribution of real estate shall be in the nature of a confirmation of title in the respective distributees.

(i) Each award of real property shall be set forth in a separate paragraph.

(ii) Real property shall be described in the manner appearing in the last deed of record and include information pertinent to the derivation of decedent's title.

2.10 Foreign Heirs and Unknown Distributees. The report required by Pa.R.O.C.P. 2.10(b) shall be submitted at the audit to the court and auditor, and shall include substantially the following:

(a) 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, which shall 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.
- (b) 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, which shall set forth:
- (i) The nature of the investigation made to locate the heirs of the decedent, in complete detail. The term "investigation," as used in this Local 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; 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.

CHAPTER III – MOTION AND PETITION PRACTICE AND PLEADING

3.0 Mode of Proceeding on Motion.

- (a) Orphans' Motion Court is held every Monday through Thursday at 9:00 a.m. concurrently with Family Division Motion Court.
- (b) Prior to presentation of a contested motion in Orphans' Motion Court, all counsel and unrepresented Parties shall be given notice as follows:
 - (i) Two (2) full business days' written notice must be given by personal delivery or facsimile transmission to all counsel and unrepresented Parties, or
 - (ii) Five (5) full business days if notice is by regular mail.
- (1) Motions shall be deemed contested unless all Parties have joined in the motion or written consents are attached to the motion.
- (iii) The notice shall give the date and time when the motion will be presented at Motion Court and be accompanied by a copy of the motion and Proposed Order.
- (iv) The motion must contain a certification signed by counsel or unrepresented moving Party verifying that proper notice was given under this Local Rule.

(v) If the motion is presented on an emergency basis without the above-required notice, it shall contain a certification that the requested relief is necessary to prevent immediate and irreparable harm.

(c) All motions shall be accompanied by a completed Motion Cover Sheet in the form appended as Form A to these Local Rules.

(d) A Proposed Order shall be attached to all motions.

(e) **Uncontested Motions.** Uncontested motions may be presented in Motion Court or delivered to the Motion Court judge's chambers. However, if a judge is actively involved in the case, uncontested motions not presented in Motion Court shall be delivered to that judge's chambers.

(i) Uncontested motions delivered to a judge's chambers must first be filed with the Clerk. A copy of the uncontested motion, accompanied by a completed Motion Cover Sheet, shall then be delivered to the judge's chambers.

(1) If an uncontested motion is filed by mail, a copy shall be simultaneously mailed to the judge accompanied by a completed Motion Cover Sheet and Proposed Order.

(f) **Contested Motions.** Contested motions may be presented in Motion Court or taken directly to Court Administration to obtain an argument date. Motion Court is intended for minor matters only. The Motion Court judge may issue a Scheduling Order if the matter is deemed unsuitable for disposition in Motion Court; if so, the movant shall take the original motion and Scheduling Order, along with a copy of each, to Court Administration to obtain an argument date.

(g) All motions scheduled through Court Administration shall proceed following the procedure for petition practice under Erie O.C.R. 3.5(d).

3.5 Mode of Proceeding on Petition.

(d) The original and one copy of all petitions requesting a hearing shall first be taken to Court Administration for assignment of a hearing date. If a judge is actively involved in the case, the petitioner shall notify Court Administration and the hearing shall be scheduled before that judge whenever practicable. Immediately after obtaining a hearing date, the petitioner shall file the original petition and signed Scheduling Order with the Clerk and serve copies of same in accordance with applicable State Rules. All orders shall be filed on the date the order is signed.

(i) Counsel should attempt to verify the availability of all Parties or their counsel before hearing dates are set, or if that is not feasible, immediately after such dates have been set, and promptly notify the court of any anticipated scheduling issues.

(ii) Except with regard to petitions requesting emergency relief, or preliminary or special injunction, hearings will not be scheduled earlier than thirty (30) days from the date of the Scheduling Order.

(iii) Uncontested petitions shall be presented in the same manner as uncontested motions under Erie O.C.R. 3.0(e).

3.9 Preliminary Objections.

(c) All preliminary objections shall be accompanied by a Proposed Order and supporting brief. If a judge is actively involved in the case, a time-stamped copy of the preliminary objections, Proposed Order and supporting brief shall be provided to that judge. If no judge is actively involved in the case, the filing party shall request a judicial assignment from Court Administration, then provide a copy of the preliminary objections, Proposed Order and supporting brief to the assigned judge.

(d) If an amended pleading is not filed in accordance with Pa.R.O.C.P. 3.9(d)(1), a brief in opposition to preliminary objections shall be filed within twenty (20) days of the date of service of the preliminary objections, and copies provided to the assigned judge.

(i) Failure to timely file a brief in opposition to preliminary objections may result in judgment in favor of the moving party if the requested relief is supported by law, or, if argument is ordered the court may preclude the noncomplying party from participating in oral argument.

(ii) Any Interested Party may request oral argument. However, the court may sustain or overrule preliminary objections without oral argument if the requested relief is supported by law.

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

4.1 Format of All Legal Paper. In addition to the requirements of Pa.R.O.C.P. 4.1, all legal paper filed with the Clerk shall be endorsed by the filing party. If the filing party is represented by counsel, the attorney shall provide their name, law firm, office address, email address, telephone number, and Pennsylvania Supreme Court identification number. If the filing party is unrepresented, their endorsement shall include their name, address and telephone number.

4.5 Service of Legal Paper by Court and Clerk. In addition to the methods set forth at Pa.R.O.C.P. 4.5, the Clerk, Register and court may serve orders and other legal paper via counsel's courthouse mailbox located on the ground floor of the Erie County Courthouse. This rule does not permit service via courthouse mailbox by anyone other than the Clerk, Register and court.

CHAPTER V - RULES GOVERNING SPECIFIC TYPES OF PETITIONS

5.0 Mode of Proceeding on Petition. Unless stated otherwise by state or local rule, petitions under this Chapter shall proceed following the procedure for petition practice under Erie O.C.R. 3.5(d).

5.2 Family Exemption. A family exemption petition under Pa.R.O.C.P. 5.2 may be included in a petition for settlement of small estate under Pa.R.O.C.P. 5.50.

5.6 Appointment of a Guardian for the Estate or Person of a Minor (Emergency Guardian).

(d) Emergency Guardian.

(i) A petition seeking appointment of emergency guardian for the estate or person of a minor may be presented in Motion Court following the procedure set forth at Erie O.C.R. 3.0 only if the petition avers specific facts upon which the court may find that failure to make an immediate appointment of guardian will result in irreparable harm to the person or estate of the minor.

(ii) The Proposed Order accompanying petitions requesting appointment of emergency guardian shall state, or designate a blank space for stating, the specific date the order will expire. If the emergency petition is joined with a petition for appointment of a permanent guardian, the expiration date shall be no later than the date set for the permanent guardianship hearing.

(iii) If a petition for appointment of an emergency guardian is joined with a petition for a permanent guardian, the petitioner shall, immediately following Motion Court, take the petition to Court Administration for assignment of a hearing date following the procedure for petition practice under Erie O.C.R. 3.5(d).

5.10 Public Sale of Real Property.

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

(i) By advertisement once a week for three (3) 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 by one of the following methods:

(1) By handbill, which shall be posted at a conspicuous place on the real property to be sold, at least twenty (20) days prior to the date set for the sale of the property, and proof of posting filed with the Clerk; or

(2) By personal notice, as required by Chapter III of the State Orphans' Court Rules, 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 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 Rules, set forth:

- (i) The name of the petitioner and the relationship of the petitioner to the decedent;
- (ii) The facts on which the claim of the petitioner is based;
- (iii) Whether the decedent died testate or intestate, and where, when and to whom letters were granted;
- (iv) 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;
- (v) The names and addresses of all known creditors and interested parties; and
- (vi) The facts material to a determination of the title.

(b) **Exhibits.** The following documents shall be attached as exhibits to the petition:

- (i) 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
- (ii) A copy of the decedent's will.

(c) **Notice.** Notice shall be given in conformity with PEF Code Section 3546(f) and Pa.R.O.C.P. Chapter 3.

5.17 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:

- (i) The name of the creator of the property interest;
- (ii) The nature of the property interest created;
- (iii) 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
- (iv) The address where a copy of the dispositive interest instrument can be acquired if desired.

COMMENT: 20 Pa.C.S.A. § 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.A. § 3357(a) provides that beneficiaries and/or heirs, as applicable, can convey good title 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 asset(s) is/are real estate and there are no significant creditors. The purpose of Local Rule 5.17, 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 the will has been probated.

5.50 Settlement of Small Estates by Petition. In addition to the requirements of the State Rules, the following documents shall be attached as exhibits to the petition:

- (a) If probate has not been opened, an original death certificate;
- (b) If probate has not been opened, the decedent’s original will, or a copy thereof, if any, as set forth in Pa.R.O.C.P. 5.50(b)(1)(iii); and
- (c) If distributees are identified in accordance with Pa.R.O.C.P. 5.50(b)(4)(i) and/or (b)(4)(ii), a statement of distribution of the assets of the decedent’s estate.

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

7.1 Depositions, Discovery, Production of Documents, Perpetuation of Testimony, and Subpoenas to Attend and Testify.

(a) Absent agreement of the Parties, leave of court is required to engage in discovery, including depositions and written discovery. Requests to conduct discovery shall be presented by motion in accordance with Erie O.C.R. 3.0.

(b) Perpetuation of testimony in a pending action shall be by deposition in accordance with subparagraph (a) above. Where no action is pending, a petition to perpetuate testimony shall be filed and presented in accordance with Erie O.C.R. 3.5 and include the averments required by Pa.R.Civ.P. 1532.

7.2 Motion for Judgment on the Pleadings.

(a) All motions for judgment on the pleadings shall be accompanied by a Proposed Order and supporting brief. If a judge is actively involved in the case, a time-stamped copy of the motion for judgment on the pleadings, Proposed Order and supporting brief shall be provided to

that judge. If no judge is actively involved in the case, the filing party shall obtain a judicial assignment from Court Administration, then provide a time-stamped copy of the motion, Proposed Order and supporting brief to that judge.

(b) An answer to motion for judgment on the pleadings and brief in opposition to the motion shall be filed within twenty (20) days of service of the motion for judgment on the pleadings.

(c) Failure to timely file an answer and brief in opposition may result in judgment in favor of the moving party where the requested relief is supported by law, or, if argument is ordered the court may preclude the noncomplying party from participating in oral argument.

(d) Any Interested Party may request oral argument, however, the court may grant or deny motions for judgment on the pleadings without oral argument if the requested relief is supported by law.

7.3 Motion for Summary Judgment.

(a) All motions for summary judgment shall be accompanied by a Proposed Order and supporting brief. If a judge is actively involved in the case, a time-stamped copy of the motion for summary judgment, Proposed Order and supporting brief shall be provided to that judge. If no judge is actively involved in the case, the filing party shall obtain a judicial assignment from court administration, then provide a copy of the motion, Proposed Order and supporting brief to that judge.

(c) Any interested party may request oral argument, however, the court may grant or deny motions for summary judgment without oral argument if the requested relief is supported by law.

7.4 Injunctions. Petitions for injunctive relief shall proceed in accordance with Erie O.C.R. 3.5. If the petitioner is seeking preliminary injunctive relief, they shall alert Court Administration if an emergency hearing is requested.

CHAPTER IX – AUDITORS AND HEARING OFFICERS

9.1 Notice of Hearings.

(a) An auditor or hearing officer shall give at least twenty (20) days' notice of the time and place of their first hearing to all Interested Parties in the manner set forth in Chapter IV of the State Orphans' Court Rules.

(b) Notice of succeeding hearings given by an auditor or hearing officer at a hearing of which proper notice has been given shall constitute sufficient notice of such succeeding hearings.

9.6 Notice of Filing Report. An auditor or hearing officer shall give notice of the filing of their report or of the intention to file their report to all interested parties in the manner set forth in State Rule 4.3.

9.7 Confirmation or Approval of Report. Any Interested Party may request a hearing on the confirmation of an auditor's report or the approval of a hearing officer's report by petition following the procedure for petition practice under Erie O.C.R. 3.5.

9.8 Security for Expenses and Fees. The auditor or hearing officer shall be compensated as directed by the court and from such sources as the court shall direct.

CHAPTER X – REGISTER OF WILLS

10.2 Petition Practice.

(a) A death certificate for the decedent shall be presented to the Register for inspection and verification of information at the time of presentation of a petition for grant of letters.

(b) The Register, upon their own motion, or upon the motion of any Interested Party, may extend any limitation of time prescribed by these Local Rules.

(c) Leave to engage in discovery may be granted upon application to the Register by an Interested Party and shall be limited to depositions, requests for production of documents, requests for admissions, and subpoenas.

(i) Motions for discovery beyond the scope of this Local Rule shall be presented to the court in accordance with Erie O.C.R. 3.0

(ii) Objections to discovery shall be addressed to and decided by the Register.

10.4 Appeals from the Register of Wills. Appeals to the court from an order or decree of the Register shall proceed following the procedure for petition practice under Erie O.C.R. 3.5(d) and PEF Code §908.

CHAPTER XIV - INCAPACITATED PERSONS

Rule 14.2 Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person.

(a) **Petition Contents.** In addition to requirements of Pa.R.O.C.P. 14.2(a), the petition shall state the following:

(i) The name, address and telephone number of a contact person or office for use by the Orphan's Court investigator to schedule an appointment with the alleged incapacitated person.

(ii) Whether a language interpreter service is required to communicate with the alleged incapacitated person, and what language the alleged incapacitated person understands.

(d) **Emergency Guardian.** A petition for emergency guardian may be filed separately or joined with a petition for permanent guardianship.

(i) If a petition for appointment of emergency guardian is joined with a petition for permanent guardian, the petition shall also be presented to Court Administration following the procedure for petition practice under Local Rule 3.5(d). The petitioner shall provide an additional copy of the petition and signed Scheduling Order to the Clerk for service upon the alleged incapacitated person by the Orphans' Court investigator.

(ii) The Proposed Order for emergency guardianship shall state, or designate blank space for stating, the specific date the order will expire.

(iii) If the need for emergency guardianship continues beyond the 72 hour time limitation set forth at PEF Code Section 5513, the petitioner may present a motion to extend the emergency guardianship following the procedure for Motion Court under Erie O.C.R. 3.0. The proposed order extending emergency guardianship shall state the date it expires, which shall be no later than 20 days from the date of expiration of the initial emergency order for guardianship of the person, or 30 days from the date of expiration of the initial emergency order for guardianship of the estate, unless a permanent guardianship proceeding has been initiated pursuant to section PEF Code Section 5511.

(f) **Citation with Notice.**

(i) Erie County employs the services of an Orphans' Court investigator to investigate and explain petition content to alleged incapacitated persons. The Orphans' Court investigator will serve the citation with notice, petition, and signed Scheduling Order on alleged incapacitated persons located within Erie County in satisfaction of the requirements of Pa.R.O.C.P. 14.2(f)(1).

(1) The Orphans' Court investigator shall promptly notify the court if their investigation reveals facts or circumstances that may necessitate appointment of counsel for the alleged incapacitated person under Pa.R.O.C.P. 14.4(c).

(2) If, in the discretion of the Orphans' Court investigator, a disinterested language interpreter is required to facilitate service on an alleged incapacitated person, they may utilize InterpreTalk, or other court-designated language assistance services, or notify the court if such service is unavailable or inadequate under the circumstances.

(ii) Proof of service under Pa.R.O.C.P. 14.2(f)(2) shall state with specificity the names and addresses of all persons and entities served and the manner in which each was served.

Rule 14.4 Counsel.

(c) **Appointed Counsel.** The Orphans' Court investigator shall maintain a list of counsel available to serve as court appointed counsel for alleged incapacitated persons. Attorney fee rates and responsibility for payment shall be set by court order.

Rule 14.6 Determination of Incapacity and Selection of Guardian.

(a) Petitions for adjudication of incapacity and appointment of a guardian shall be submitted to Court Administration for assignment of a hearing date following the procedures for petition practice under Erie O.C.R. 3.5(d).

(b) A petition for appointment of emergency guardian shall be presented following the procedures for Motion Court under Erie O.C.R. 3.0.

***COMMENT:** Under PEF Code Section 5513, emergency guardianship of the person may be extended no longer than 20 days from the date of expiration of initial emergency order if no petition for permanent guardianship is filed, or the date of the hearing on the petition for permanent guardianship if such petition is filed; and guardianship of the estate, no more than 30 days from the date of expiration of the initial emergency order if no petition for permanent guardianship is filed, or the date of the hearing on the petition for permanent guardianship if such petition is filed.*

CHAPTER XV - ADOPTIONS

Rule 15.1 Local Adoption Rules.

(a) Petitions requiring a hearing, including those pertaining to adoptions, involuntary termination of parental rights, voluntary relinquishment of parental rights, and confirmation of consent to adoption, shall be presented following the procedure for petition practice under Erie O.C.R. 3.5(d).

(b) Court Administration may delay scheduling an adoption hearing until after parental rights are terminated in cases where termination of parental rights is likely to be contested.

(c) Absent leave of court, all State Orphans' Court Rule requirements for content of petitions, exhibits, notice, filing and service shall be strictly enforced.

***COMMENT:** Under State Rule. 15.6 (Filing of Termination Petitions when an Agency is Not Involved), "Except in cases involving an agency or as otherwise provided by law, a petition to terminate parental rights shall not be granted unless a Report of Intention to Adopt under 23 Pa.C.S.A. § 2531 or an adoption petition under Rule 15.13 has been filed." Further, under State Rule 15.13 (Adoption), unless the petition for adoption contains averments explaining why they are not attached, criminal history and child abuse clearance reports for each prospective adoptive parent must be attached to the petition for adoption. Accordingly, absent good cause stated in the adoption petition and substantiated at the termination of parental rights hearing, the requisite adoption petition and clearances must be filed before termination of parental rights.*

APPENDIX OF FORMS

Form A. Motion Cover Sheet

Additional forms are available for reference on the Erie County website:

www.eriecountypa.gov/departments/clerk-of-records/register-of-wills-estate-records/

www.eriecountypa.gov/departments/clerk-of-records/clerk-of-orphans-court/

www.eriecountypa.gov/courts/court-information/general-forms/

www.eriecountypa.gov/courts/court-and-trial-schedules/motion-court-procedures/

**FAMILY / ORPHANS' DIVISION
MOTION COVER SHEET AND NOTICE**

DATE: _____, _____
MOTIONS JUDGE: _____
CAPTION: _____

vs.

DOCKET NO: _____

NOTICE

You are hereby notified that the attached motion/petition will be presented
by me in Motion Court on: _____, **at 9:00 a.m.**
(Date)

CERTIFICATION OF SERVICE

A. CONTESTED MOTION

The undersigned represents that a copy of this motion and proposed order have been served upon all parties or their counsel of record on _____, _____, in accordance with Local Rule No. 440 (Civil Procedure) or Orphans' Court Local Rule No. 3.0 (Orphans' Court Procedure), hereby providing:

- ☐ Two full business days' prior notice by ☐ hand delivery, ☐ fax; or
☐ Five full business days' prior notice by mail.

By: _____ Attorney for: ☐ Plaintiff ☐ Defendant
(Signature of counsel or unrepresented party)

Print Name: _____

(OR)

B. UNCONTESTED MOTION

The undersigned represents that all counsel and unrepresented parties have consented to the motion and consents are attached to the motion.

By: _____ Attorney for: ☐ Plaintiff ☐ Defendant
(Signature of counsel or unrepresented party)

Print Name: _____

C. INDICATE MOTION TYPE ON BACK OF THIS PAGE (OVER)

MOTION TYPE

FAMILY COURT MOTIONS

CUSTODY: Petition/Motion relating to:

- ☐ Temporary custody
- ☐ Approval of custody agreement
- ☐ Waive attendance at seminar
- ☐ Custody Other:_____

- ☐ In Forma Pauperis
- ☐ Special relief (Cust)
- ☐ Cust Contempt
- ☐ Continuance (Cust)
- ☐ Counsel fees & expenses(Cust)

DIVORCE: Petition/Motion relating to:

- ☐ Exclusive possession of property
- ☐ Bifurcation
- ☐ Filing Inven/Pre-Trial Stmt
- ☐ Waive Attendance at seminar
- ☐ Alimony Pende Lite
- ☐ Divorce Other:_____

- ☐ In Forma Pauperis
- ☐ Approve QDRO
- ☐ Divorce Contempt
- ☐ Divorce, Special Relief
- ☐ Amend pleadings divorce
- ☐ Counsel fees & expenses(Div)

SUPPORT: Petition/Motion relating to:

- ☐ Cont conf/de novo hrg (support)
- ☐ Support Other:_____

- ☐ In Forma Pauperis
- ☐ Paternity/Blood tests
- ☐ Support Contempt

ORPHANS' COURT MOTIONS

DECEDENTS' ESTATES: Petition/Motion relating to:

- ☐ Inheritance Tax Return
- ☐ Family Exemption
- ☐ Settlement of Small Estate
- ☐ Approval of sale of property
- ☐ App settlement/Wrongful Death, et
- ☐ Decedents' Estates Other:_____

ADOPTIONS: Petition for:

- ☐ Adoption
- ☐ Voluntary Relinquishment
- ☐ Involuntary Termination
- ☐ Confirm Consent Adoption
- ☐ Adoption Other: _____

MINOR'S ESTATES: Petition for:

- ☐ Appr Set of Minor's Claim
- ☐ Auth to Release Funds from Minor's Account
- ☐ Minor's Estates Other:_____

GUARDIANSHIPS: Petition for:

- ☐ Minor guardianship
- ☐ Alleged Incapacitated
- ☐ Emergency Intervention
- ☐ Discharge/Sub/Guardian
- ☐ Guardianship Other:_____

ORPHANS' COURT OTHER:_____