

YORK COUNTY RULES OF ORPHANS' COURT PROCEDURE

Adopted June 1, 2021

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CHAPTER I. PRELIMINARY RULES

Rule 1.6.1 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 file a motion to engage in mediation at any time during the pendency of the matter.

(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. 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.

(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 completing 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.

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Rule 1.7.1 Entry and Withdrawal of Counsel

(b) Withdrawal with Leave of Court:

(1) Preferred Motion Procedure: An attorney who has given at least twenty (20) days' notice to the client and all other parties of intent to file a motion to withdraw, and who has received no opposition to such motion, may file a Motion, as follows:

(i) State that prior notice of intent to withdraw has been given to the client and all parties, the date on which such notice was given, the last known address of the client where the notice was sent, a copy of said notice, and the last known telephone number of the client.

(ii) State all proceedings that are pending, if any, the nature of the pending proceedings, and the next date of any court proceeding.

(iii) State that the attorney has sent to the client all court orders which require any action to be taken by the client.

(2) Alternate Petition Procedure: A Petition requesting leave to withdraw an appearance shall:

(i) State whether any court proceeding is pending, the nature of the pending proceeding, and the next court date of any proceeding;

(ii) State that the attorney has sent to the client all prior court orders, if any, which require the client to take any action;

(iii) Certify that the attorney served the client with all previous court orders, if any, which require the client to file documents, attend proceedings, or take any other action; and

(iv) Include the last known address and telephone number of the client in both the proposed Preliminary Decree for Rule to Show Cause and a proposed final Order permitting withdrawal.

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Rule 1.9.1. Reserved

Rule 1.10.1. Sureties

(a) **Individual Sureties.** Individuals proposed as sureties on bonds of fiduciaries shall make an affidavit to the Clerk, setting forth such information as the Clerk shall require. Each affidavit shall be filed together with its respective bond and shall be renewed annually thereafter so long as the bond shall remain in effect. No member of the bar or any employee of this Court shall act as surety in any proceeding in this court, except by special leave of court.

(b) **Corporate Sureties.** Any corporate surety allowed to do business in Pennsylvania may act as surety, providing that a current certificate evidencing approval by the Insurance Department of the Commonwealth of Pennsylvania, together with a designation of attorney in fact, is on file with the clerk.

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CHAPTER III. PETITION PRACTICE AND PLEADING

Rule 3.4.1 Form of Petition; Exhibits; Consents; Signing and Verification

(c) **Exhibits Related to *inter vivos* trusts.** When the court is required to exercise its jurisdiction over an *inter vivos* trust, the original trust instrument, all amendments, restatements, and revocations, or copies certified to be true and correct, shall be lodged with the Clerk, who shall scan or otherwise record electronically and then return to the filer, whom the Clerk shall name on the docket.

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CHAPTER V. RULES GOVERNING SPECIFIC TYPES OF PETITIONS

Rule 5.6.1. Compromise or Settlement of Action involving a Minor

(a) No action to which a minor is a party shall be compromised, settled, or discontinued, except with court approval, pursuant to a petition, presented by the guardian of the minor and a hearing before the court.

(b) The petition shall contain the following:

(1) The initials of the minor's name and reference to the Confidential Information Form (CIF);

(2) The names and addresses of the minor's parents.

(3) Written approval of the minor if the minor is over the age of 16 years;

(4) Whether a guardian has been appointed for the minor by the Orphans' Court of this, or any other, jurisdiction;

(5) The Respondent's residence or place of business;

(6) A summary of the facts of the case;

(7) An Affidavit of the parents and/or guardians, certifying the physical condition of the minor and the reasons why the parents and/or guardians approve of the settlement;

(8) A report from a physician, or other documentation, stating the physical and/or mental condition of the minor and a prognosis;

(9) A specific list of costs sought to be reimbursed from the gross settlement;

(10) A statement of the reasonableness of counsel fees, which must be based upon the settlement amount, presuming 25% of the settlement amount to be reasonable, which presumption is rebuttable at the hearing. Counsel fees shall be reduced by fees received, if any, if counsel also represented the Respondent(s) in a subrogated claim;

(11) Whether any additional counsel fees were paid or will be paid as a result of representing the Respondent(s) and subrogation claims;

(12) Sufficient reasons and legal authority for any request that funds be allocated to the parents of a deceased minor, if applicable;

(13) Sufficient reasons for any request to allocate settlement proceeds among children of a deceased minor, if applicable;

(14) A statement of any actual or potential lien of the Department of Human Services and how such liens have been resolved; and

(15) Any special request for early distribution, alternative deposit of funds, or other deviation from the order as set forth in Rule 5.6.1 shall be stated in the Petition with supporting justification for the special request. Counsel shall be prepared to address the necessity for the special request at the time of the hearing.

(c) At the time of the hearing, counsel for Petitioner shall present a proposed Order substantially in the form set forth hereinbelow.

(d) Within 14 days of receipt of settlement proceeds, counsel for Petitioner shall cause the funds belonging to the minor to be deposited as directed by the court's order approving the compromise and settlement and directing distribution.

(e) Within 14 days of depositing the funds belonging to the minor, counsel for petitioner shall file proof of deposit by way of an affidavit substantially in the form set forth hereinbelow.

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Form: Order Scheduling Hearing.

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

In re: Estate of _____, a Minor : No. 67-
(Initials only, use CIF for full name) :

**ORDER SCHEDULING A HEARING
ON THE COMPROMISE OR SETTLEMENT OF
AN ACTION IN WHICH A MINOR IS A PARTY**

AND NOW, this ____ day of _____ 20__, a hearing on the Petition is hereby scheduled before the undersigned Judge on the ____ day of _____, 20____, beginning at _____ . m. In Courtroom No. ____, on the____th Floor, York County Judicial Center, 45 North George Street, York, PA 17401.

The Petition does/does not comply with the requirements of York OC Rule 5.6.1, and, if not, then, the Petitioner shall establish those requirements at the hearing.

At the time of the hearing, counsel for the Petitioner shall present a proposed Order approving settlement substantially in the form as set forth in York OC Rule 5.6.1.

Notice of the entry of this Order shall be provided to all parties by the Clerk of the Orphans' Court in accordance with Supreme Court Orphans' Court Rule 4.6.

BY THE COURT,

Judge

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Form: Order Approving Compromise

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

In re: Estate of _____, a Minor : No. 67-
(Initials only, use CIF for full name) :

**ORDER APPROVING
COMPROMISE, SETTLEMENT AND DISTRIBUTION**

AND NOW, this _____ day of _____ 20__, upon consideration of the Petition For Leave To Compromise/Settle An Action Involving A Minor, it is hereby ORDERED that the Petition is GRANTED and

1. Petitioner is authorized to enter into a settlement with the Respondent in a gross amount of \$_____ on behalf of the minor.
2. Respondent shall forward all settlement drafts or checks to Petitioner's counsel for proper distribution.
3. The settlement proceeds shall be allocated as follows:
 - a. To: _____, (Minor's Initials), a Minor \$_____
 - b. To: _____, (Minor's Initials), a Minor \$_____
4. IT IS FURTHER ORDERED that the settlement proceeds be distributed as follows:
 - a. To: _____, Esquire (Name of Counsel)
Costs \$_____
Counsel Fees \$_____
 - b. The balance of the settlement proceeds, the sum of \$_____ as follows:

1. _____
2. _____

and any interest thereon, payable to the minor, or minors in a pro-rata share as set forth above.

5. Within 14 days of receipt of the settlement proceeds, COUNSEL, and not the parent(s) or guardian(s) of the minor, is hereby authorized and specifically DIRECTED to execute all documentation necessary to deposit the funds belonging to the minor into an interest-bearing savings account or savings certificate in a federally insured financial institution having an office in York County, IN THE NAME OF THE MINOR ONLY. The savings account or certificate shall be marked as hereinafter directed.

6. The savings account shall be titled and restricted as follows:

(Minor's Name), a minor, not to be withdrawn before minor attains majority or upon prior Order of Court.

7. The savings certificate shall be titled and restricted as follows:

(Minor's Name), a minor, not to be redeemed except for renewal in its entirety, nor to be withdrawn, assigned, negotiated, or otherwise alienated before the minor attains majority, except upon prior Order of Court.

8. If no withdrawals are made from the investments authorized by this Order, the depository may pay over the balance on deposit when the minor attains majority, as defined with reference to 20 Pa.C.S.A. § 102, upon the order of the late minor, without further Order of this Court.

9. Counsel shall file with the Clerk of the Orphans Court of York County, Pennsylvania, within 14 days from the date of deposit of the funds, proof of the establishment of the accounts as required herein, by Affidavit from counsel certifying compliance with this Order.

a. Counsel shall attach to the Affidavit a copy of this Order as well as a copy of the Certificate of Deposit or bank account showing the amount deposited and containing the required restrictions.

b. The Affidavit shall further contain a specific averment by counsel that counsel, and not the parent(s) and/or guardian(s) of the minor, established the account(s) and deposited the funds therein as directed above and that counsel has provided to the financial institution a certified copy of this Order.

c. The Affidavit shall be substantially in the form as set forth in hereinbelow.

10. Notice of the entry of this Order shall be provided to all parties by the Clerk of the Orphans' Court in accordance with Supreme Court Orphans' Court Rule 4.6.

BY THE COURT,

Judge

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Form: Affidavit of Deposit

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

Estate of _____ :
_____, a minor : No. 67
(Initials only, use CIF form) :

AFFIDAVIT OF DEPOSIT OF MINOR'S FUNDS

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF YORK :

I, _____, being duly sworn according to law, depose and say:

1. I am counsel for petitioner in the above captioned matter.

2. I am authorized to make this affidavit on behalf of _____.

3. On _____, 202_, the sum of \$ _____ was deposited into an insured, interest-bearing Savings Account / Certificate of Deposit, No. _____ (last 4 digits only, use CIF Form) with _____ (Name of Financial Institution) pursuant to the Court Order entered on _____, 202_.

4. Account / Certificate No. _____ (last 4 digits only, Use CIF Form) is entitled, _____ (initials only), a Minor.

5. The express prohibition of withdrawals of income or principal prior to _____ without FURTHER ORDER OF COURT has been noted on the depository's records and on the passbook/certificate.

6. A certified copy of the above referenced Court Order was provided to the above-named financial institution.

Name(printed): _____
Signature: _____

Sworn to and subscribed before me
this ____ day of _____, 202_.

Notary Public

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Rule 5.10.1 Public Sale of Real Property

(a) **Public Sale by Decedent's Personal Representative.** A petition by a decedent's personal representative to sell real property at public sale shall set forth:

(1) How title was acquired and reference to the document of acquisition;

(2) The name, residence, and date of death of the decedent, whether the decedent died intestate or testate, and the date of the grant of letters;

(3) That the personal representative is not otherwise authorized to sell or is denied the power to sell by will, or that it is desirable that the sale have the effect of a judicial sale, and state the reasons therefor;

(4) If an inventory has been filed, the value of the real property shown in the inventory or, if no inventory has been filed, the value of the property based upon an independent appraisal;

(5) If the personal representative entered bond with the Register, the name of the surety and the amount of the bond;

(6) The names and relationships of all parties in interest; a brief description of their interests; whether any of them is a minor, an incapacitated person, or a decedent, and if so, the name of any fiduciary and a reference to the record of his or her appointment as well as the age of any minor and the names of his or her next of kin;

(7) A legal description of the real property to be sold, the improvements thereof, by whom it is occupied, its rental value, if known, and its current tax assessment and tax parcel number; and

(8) Sufficient facts to enable the Court to determine that the sale is desirable for the proper administration and distribution of the estate.

(b) **Public Sale by Trustee.** A petition by trustee to sell real property at public sale shall conform insofar as appropriate to the requirements for a petition under Y.C.O.C. Rule 5.10.1 and shall set forth:

(1) A reference to the relevant provisions of the controlling instrument;

(2) That the trustee is not otherwise authorized to sell or is denied the power to sell by the trust provisions, or that it is desirable that the sale have the effect of a judicial sale, stating the reasons therefor; and

(3) Sufficient facts to enable the Court to determine that the sale is in the best interests of the trust and its beneficiaries.

(c) **Public Sale by Guardian.** A petition by a guardian to sell real property at public sale shall conform insofar as appropriate to the requirements for a petition under Y.C.O.C.Rule 5.10.1 and shall set forth:

(1) The age of the minor or the date of adjudication of incapacity;

(2) The names of the next of kin of the minor or incapacitated person, and the notice given to them of the presentation of the petition;

(3) The nature and the extent of the interests of the minor or incapacitated person and of any others in the real property; and

(4) Sufficient facts to enable the Court to determine that the sale is in the best interests of the minor or the incapacitated person.

(d) **Exhibits to Petition.** The following exhibits shall be attached to a petition by a personal representative, trustee or guardian, to sell property at public sale:

(1) A copy of the will, trust, or decree by which the fiduciary was appointed;

(2) All consents or joinders of parties in interest, and the names of, and a copy of the notice which has been given to, those parties who do not consent or join; and

(3) Consent by any mortgagee whose lien would otherwise not be discharged by the sale.

(e) **Notice and Confirmation of Public Sale: Additional Security.** After allowance of the petition, notice of the date, time, and place of the sale shall be given to all parties in interest.

(f) **Affidavit of Return.** Returns of public sale of real property for the purpose of approval or confirmation by the Court shall be by affidavit setting forth:

(1) The notice given;

(2) The price obtained; and

(3) The name and address of the purchaser, and an averment that the purchaser was the highest bidder.

(g) **Notice**. Notice of the filing of the return of the public sale shall be given to all parties in interest. If no objections are filed within ten (10) days of the giving of the notice, the Court may enter a decree confirming the sale and fixing or excusing the entering of additional security, if required.

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Rule 5.11.1 Private Sale of Real Property

(a) A petition for the private sale or exchange of real property at a private sale or for the exchange or granting of an option for the sale or exchange of real property shall conform insofar as appropriate to the requirements of a petition under Y.C.O.C. Rule 5.10.1.

(b) **Exhibits to Petition**. In addition to the exhibits required under Y.C.O.C. Rule 5.10.1 and the affidavits required by that Rule, there shall be attached to the petition the following exhibits:

(1) A copy of the proposed agreement of sale, exchange or option; and

(2) The consents of any party in interest who has not joined in the petition insofar as they are obtained.

(c) **Notice; Confirmation**. After filing the Petition, Notice of the sale shall be given to any party in interest who has not joined in or consented to the petition. The notice shall state that if no objections are filed within ten (10) days of the giving of such notice, the Court may enter a decree authorizing the sale upon the terms contained in the petition and fixing or excusing the entering of additional security, if required.

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

Rule 7.5.1 Pre-Hearing Conferences

(a) In any action the court, of its own motion or on motion of any party, may direct the attorneys for the parties to appear for a conference to consider:

- (1) Concise statement of the issues
- (2) Requested amendments to the pleadings
- (3) Objections to discovery
- (4) Admissions to be made part of the record
- (5) Witnesses by name and address
- (6) Stipulations
- (7) Exhibits, pre-marked
- (8) Special Requests
- (9) Estimated time needed for trial
- (10) Last Settlement offer

(b) The court may make an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and limiting the issues for trial to those not disposed of by admissions or agreements of the attorneys.

(c) Such order, when entered, shall control the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

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CHAPTER IX. AUDITORS AND MASTERS/ HEARING OFFICERS

NOTE: State Rules in this Chapter refer to the statutory term, "Master," see, 20 Pa.C.S. § 751 *et seq.*, which, in these Local Rules shall be referred to as "Hearing Officer."

Rule 9.1.1 Notice of Hearings

(a) The Court shall appoint the Hearing Officer or Auditor in a Preliminary Decree that states the following:

- (1) The issues of fact to be investigated.
- (2) The names and addresses of persons whom the Hearing Officer or Auditor is to serve Notice of the Hearing.
- (3) The manner of service of the Notice of the Hearing.
- (4) The requirement that a Court Reporter transcribe the Hearing.
- (5) The requirement that the Clerk administer oaths and record admission of exhibits.
- (6) The date, time, and place of the Hearing.

(b) The Court shall state if the alleged incapacitated person is excused from the Hearing, in accordance with 20 Pa.C.S. § 5511(a).

(c) The Court shall appoint counsel for the alleged incapacitated person, if necessary, and state when said appointment shall terminate to avoid having counsel file a Petition for Withdrawal in accordance with Pa. O.C. Rule 1.7 and York O.C. Rule 1.7.1.

Rule 9.6.1 Notice of Filing Report

(a) The Hearing Officer or Auditor shall serve Notice of filing the Report of Hearing.

(b) The Report of Hearing shall state the Findings of Fact, Conclusions of Law, and Recommendations to the Court.

(c) In matters involving the alleged Incapacity of an Individual, the Report of Hearing shall:

- (1) State the nature of the condition or disability that impairs the individual's capacity to make and communicate decisions.

(2) State the extent of the individual's capacity to make and communicate decisions.

(3) State the need for guardianship services in light of the:
(i) Availability of family, friends, and support mechanisms.
(ii) Existence and effectiveness of a durable financial power of attorney.

(iii) Existence and effectiveness of health care power of attorney.

(iv) Individual's current and recommended residence.

(v) Individual's current and recommended health care.

(vi) Individual's assets and ability to spend them reasonably.

(4) Recommend the type of guardian, limited or plenary, and, if it were limited, the limitation and the likely effectiveness of such limit in practice.

(5) The duration of guardianship.

(d) The Notice of Filing Report shall:

(1) State that all Objections to the Report shall be filed with the Clerk of the Orphans' Court within ten (10) days of the entry of the Report upon the docket and

(2) State that, if there were no Objection, then the Court may deem that the parties agreed with the Hearing Officer's or Auditor's Findings of Fact, Conclusions of Law, and Recommendations to the Court.

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Rule 9.7.1 Confirmation of Report:

If Objection were not filed within ten (10) days of the entry of the Report, or if Objection were filed and overruled, then, the Court shall enter an Order and may confirm and adopt the Hearing Officer's or Auditor's Report as a Final Order and Decree.

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