

YORK COUNTY RULES OF ORPHANS' COURT PROCEDURE
Including Amendments Adopted Through September 1, 2016

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**CHAPTER I
PRELIMINARY RULES**

York O.C. Rule. 1.1 Short Title and Citation

These Rules shall be known as the "York County Orphans' Court Rules" and shall be cited as "York O.C. Rule. ___"

**CHAPTER XIV
GUARDIANSHIPS OF INCAPACITATED PERSONS**

York O.C. Rule 14.2.1 Notice and Service

(A) Notice in matters involving adjudication of incapacity or appointment or removal of a guardian for an incapacitated person is required on all persons who are sui juris and are heirs of the alleged or adjudicated incapacitated person, as defined by the intestacy laws of Pennsylvania. Such notice is required even if the person does not reside within the Commonwealth of Pennsylvania.

(B) Notice required in matters involving adjudication of incapacity or appointment or removal of a guardian for an incapacitated person, other than notice upon the alleged or adjudicated incapacitated person, shall be by personal service, by service in such manner as the court directs and/or as directed by statute in that particular case, or may be made by first-class mail, postage prepaid, to the known or last known address. In the latter case, a certificate of service shall be prepared and filed verifying that the address used is the proper known or last known address, and attaching a postal certificate of mailing.

(C) The petition shall include a notice and citation, substantially in the form prescribed by York O.C. Rule 14.5.1. Petitioner shall be responsible for obtaining a completed notice and citation from the clerk of the orphans' court, and petitioner shall be responsible for proper service of the petition, notice and citation. In all cases, service of the petition, notice and citation shall be made upon the alleged or adjudicated incapacitated person by personal service by the sheriff or by any other competent adult, and the person making such service shall read to the alleged or adjudicated incapacitated person the petition, notice and citation, and then for a second time the notice and citation. The person making service shall explain the contents to the extent possible. When the alleged incapacitated person is institutionalized, service of the citation shall also be made upon the superintendent or other officer of the institution having custody of said incapacitated person.

(D) Petitioner is responsible for filing a return of service conforming to Pa. R.C.P. 405, which also confirms that the contents of the notice and citation and of the petition were read and, to the extent possible, explained, to the respondent as set forth in paragraph (C) above.

York O.C. Rule. 14.2.2 Miscellaneous

(A) The petition shall comply with the requirements of PEF Code §5511(e), as well as with the Supreme Court Orphans' Court Rules.

(B) Language used in the petition should be easily understood. It is recommended that an affidavit of a physician or clinical psychologist be attached which contains a description of the physical and mental condition, any functional limitations and whether or not the respondent would be harmed by attendance at the proceeding to determine capacity.

York O.C. Rule. 14.2.3 Written Consent

(A) If the proposed guardian is an individual, the written consent of the proposed guardian shall include:

- (1) the place of residence of the proposed guardian;
- (2) the occupation of the proposed guardian;
- (3) a statement that the proposed guardian speaks, reads and writes the English language;
- (4) a statement that the proposed guardian does not have any interest adverse to the alleged incapacitated person; and
- (5) a statement that the proposed guardian is not a fiduciary, or an officer or employee of a corporate fiduciary, of an estate in which the alleged incapacitated person has an interest, and is not the surety, or an officer or employee of a corporate surety of such a fiduciary.

(B) If the proposed guardian is a corporate guardian, the written consent of the proposed guardian shall contain a statement that it is not the fiduciary of an estate in which the alleged incapacitated person has an interest, nor the surety of such a fiduciary, and that the proposed guardian does not have any adverse interests to the alleged incapacitated person.

York O.C. Rule. 14.2.4 Inventory

Every guardian shall be required to file an inventory in the office of the clerk in accordance with the provision of the PEF Code §5521 (relating to provisions concerning powers, duties and liabilities) and PEF Code §5142 (relating to inventory).

York O.C. Rule. 14.2.5 Special Petitions for Allowance

(A) A petition for an allowance from an incapacitated person's estate or for payment of counsel fees, shall set forth:

(1) the name of the guardian and date of appointment, or, if the petition is not the guardian, the petitioner's relationship to the incapacitated person or the nature of the petitioner's interest;

(2) a summary of the inventory, the date it was filed and the nature and present value of the estate and its income;

(3) the address and occupation, if any, of the incapacitated person;

(4) the names and addresses of the incapacitated person's dependents, if any;

(5) a statement of all claims of the incapacitated person's creditors known to petitioner;

(6) a statement of all previous distribution allowed by the Court; and

(7) a statement of the requested distribution and the reasons therefor.

(B) If any portion of the incapacitated person's estate is received from the United States Veterans' Administration, notice of the request for allowance shall be given that agency.

York O.C. Rule. 14.2.6 Status Reports of Guardian of Person

(A) Within one (1) year of the date of appointment and annually thereafter, or with such greater frequency as the court may direct, every guardian of the person of an incapacitated person shall file a periodic report of the guardian of the person in substantially the form available in the office of the clerk. Notice and service of the said report shall be in such manner as the court shall direct.

(B) Notice of filing shall be made to such person and in such manner as the court shall direct.

York O.C. Rule. 14.2.7 Status Reports of Guardian of Estate

(A) At least seven (7) days prior to the date established for hearing on the petition, petitioner shall file in duplicate a status report on legal representation in substantially the form available in the office of the clerk, each of which should have attached, under the proper caption, the appropriate order in substantially the form available in the office of the clerk.

(B) Within one (1) year of the date of appointment and annually thereafter, or with such great frequency as the court may direct, every guardian of the estate of an incapacitated person shall file a periodic report of the guardian of the estate in substantially the form available in the office of the clerk. Notice and service of the said report shall be in such manner as the court shall direct.

York O.C. Rule. 14.3.1 Notice

The petitioner shall give notice of the hearing to the guardian if he is not the petitioner and to the next of kin of the incapacitated person. At the hearing on the petition, proof of service of the notice and petition shall be submitted to the court.

York O.C. Rule. 14.3.2 Final Decree

In entering its decree, the court may direct the guardian to file an account. (See PEF Code § 5517.)

**CHAPTER XV
ADOPTIONS**

York O.C. Rule. 15.1.1 General Practice and Procedure

All reports and petitions relating to adoption shall be filed with the clerk and shall be in such form as is designated from time to time by the court. The court may publish special filing instructions and procedures on the county website maintained by the clerk. All filing fees shall be paid at the time of filing.

York O.C. Rule. 15.1.2 Additional Contents of Filings in Adoption Matters

(A) Telephone Number. Every petition for adoption shall include in the body of the petition or by separate attachment, personal telephone number(s) by which the court-appointed investigator may contact the petitioners to schedule the in-home investigation.

(B) Form of Certain Filings. Every report of intention to adopt and petition for adoption filed of record shall be typewritten and shall contain the caption of the case, the nature of the proceeding, the file number, and either the signature of the attorney, below which shall be the attorney's name, address, telephone number and attorney identification number, or the signature of the party, below which shall be the party's name, address, and telephone number.

(C) Background Reports and Clearances.

(1) Required Reports and Clearances. All petitioners seeking to adopt shall submit to the court prior to or at the time of filing a petition for adoption each of the following documents, which shall be executed within one (1) year of filing the petition for adoption:

(a) Report of criminal history record information from the Pennsylvania State Police;

(b) Pennsylvania child abuse clearance certificate from the Department of Public Welfare; and

(c) Report of federal criminal history record information if a petitioner is required to file a report of intention to adopt.

(2) Residence Outside of Commonwealth. The information required in paragraphs (C)(1)(a) and (C)(1)(b) is also required from each state where every petitioner seeking to adopt has resided in the five (5) years preceding the filing of the petition for adoption.

(3) Adult Household Residents. The information required in paragraphs (C)(1) and (C)(2) is also required of every individual over eighteen (18) years of age who resides within the household of petitioners.

(4) Exception. A parent of the adoptee, by birth or previous adoption, who has joined a petition for adoption or executed a consent to the proposed adoption pursuant to 23 Pa.C.S. §2711 shall not be required to comply with paragraphs (C)(1) and (C)(2) of this rule.

Note: the background reports and clearance required by this rule are referenced in 23 Pa.C.S. §6344.

York O.C. Rule. 15.4.1 Claims or Acknowledgments of Paternity

In every proceeding brought to terminate any parental rights as to an adoptee born in Pennsylvania, petitioners shall obtain and provide to the court at the time of the hearing thereon official documentation obtained from the Pennsylvania Department of Public or a Domestic Relations Office in Pennsylvania stating whether any paternity claims or acknowledgements have been filed with the Department in accordance with 23 Pa.C.S. §5103(b) as to each adoptee as to whom termination of parental rights is sought.

York O.C. Rule. 15.5.1 Notice in Adoption Proceedings

(A) General Rule. Notice of any hearing related to an adoption shall be given in strict conformity with the Adoption Act, 23 Pa.C.S. §§ 2301 et seq., and the Orphans' Court Rules of this Commonwealth and this county.

(B) Specific Circumstances and Exceptions.

(1) **Adult Adoptee.** If an adoptee is eighteen (18) years of age or older, a separate petition to waive notice of the hearing(s) to any parent of the adoptee may be filed by the prospective adoptive parent(s).

(2) **Notice by Publication.** If a person to be notified is not represented by legal counsel, cannot be personally served with notice, and cannot be served by mail because his or her residence is not known, a separate petition seeking authority to provide notice by publication may be filed by the prospective adoptive parent(s). Facts supporting the petition that cannot be verified by the petitioner(s) shall be stated in an affidavit accompanying the petition. If the petition is granted, notice by publication shall comply with York O.C. Rule 5.1.1 and be given at least once a week during three successive calendar weeks in a newspaper of general circulation published at or near the last known address of the person to be notified and also in the legal periodical, if any, in that county.

(3) **Identity of Person to be Notified Unknown.** If, after reasonable investigation, the identity of a person to be notified is unknown, a separate petition to waive notice to that person may be filed by the prospective adoptive parents(s). The petition shall set forth all information known relating to the identity or possible whereabouts of the person to be notified and what reasonable investigation was undertaken to identify that individual. Facts supporting the petition that cannot be verified by the petitioner(s) shall be stated in an affidavit accompanying the petition.

(4) **Verification and Proposed Order.** Each petition allowed by section (B) of this rule shall be accompanied by a verification and a proposed court order.

York O.C. Rule. 15.5.2 Adult Adoptee Name Change - Alternative Procedure

(A) **Application for Change of Name as Exhibit to Petition for Adoption.** In lieu of filing a separate petition for change of name with the prothonotary required by York R.C.P. 5730, petitioners seeking to adopt and requesting a change of an adult adoptee's name may instead initiate a change of name proceeding for an adult adoptee by attaching as an exhibit to their petition for adoption, an application for change of name in conformity with 54 Pa.C.S § 701(a.1)(2). Attached to the application for change of name shall be a fingerprint card completed by the adult adoptee and a verification form signed by the adult adoptee and petitioners. The application for change of name shall be filed with the clerk of the orphans' court and does not have to comply with the requirements in York R.C.P. 205.2 as stated in York R.C.P. 5703(a)(1).

(B) **Evidence of Notice.** Petitioners seeking to adopt and requesting a change of an adult adoptee's name pursuant to the alternative procedure in this rule shall comply with the requirements in York R.C.P. 5730(b) and (c)(1).

(C) Evidence of Official Searches. Petitioners seeking to adopt and requesting a change of an adult adoptee's name pursuant to the alternative procedure in this rule shall comply with the requirements in York R.C.P. 5730(c)(2).