BERKS COUNTY ORPHANS' COURT RULES

CHAPTER I. PRELIMINARY RULES

Rule 1.1A	Short Title and Citation
Rule 1.4A	Holidays
Rule 1.6.A	Mediation
Rule 1.7A	Counsel Information on Legal Papers
Rule 1.7B	Entry and Withdrawal of Counsel
Rule 1.9	Local Miscellaneous Rules
Rule 1.9A	Sureties
Rule 1.9B	Corporate Fiduciaries
Rule 1.9C	Depository of the Court
Rule 1.9D	Publication
Rule 1.9E	Language
Rule 1.9F	Interpreters

CHAPTER II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

Rule 2.5A	Audit Date
Rule 2.7A	Objections to Accounts or Petitions for Adjudication/Statements of Proposed Distribution – Order
Rule 2.9A	Adjudication and Decree
Rule 2.10A	Foreign Heirs and Unknown Distributees– Report
Rule 2.12	Small Estate Petitions
Rule 2.12A	Settlement of Small Estates

CHAPTER III. PETITION PRACTICE AND PLEADING

Rule 3.4A	Preliminary Decree
Rule 3.5A	Mode of Proceeding on Petition – Publication
Rule 3.5B	Emergency Petition
Rule 3.6A	Pleadings Allowed After Petition – Order
Rule 3.9A	Preliminary Objections – Order

CHAPTER V. RULES GOVERNING SPECIFIC TYPES OF PETITIONS

Rule 5.2A	Family Exemption – Valuation
Rule 5.2B	Notice
Rule 5.3A	Intestate Share to Surviving Spouse from Personal Property
Rule 5.3B	Notice
Rule 5.4A	Extension of Time for Filing of Surviving Spouse's Election
Rule 5.6A	Allowances from a Minor's Estate
Rule 5.10A	Contents of Petition
Rule 5.10B	Exhibits
Rule 5.10C	Notice. Return
Rule 5.10D	Security

Rule 5.10E Confirmation
Rule 5.11A Contents of Petition
Rule 5.11B Exhibits
Rule 5.11C Security
Rule 5.12A Contents of Petition
Rule 5.16A Assisted Conception Birth Registration

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

Rule 7.1A Discovery
Rule 7.1B Subpoenas
Rule 7.2A Briefs and Argument
Rule 7.3A Briefs, Argument, and Disposition
Rule 7.5 Motions
Rule 7.5A Motions Practice

CHAPTER IX. AUDITORS AND MASTERS

Rule 9.1A Manner of Notice
Rule 9.6A Manner of Notice
Rule 9.7A Objections
Rule 9.7B Confirmation

CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS

Rule 14.2A Representation of Alleged Incapacitated Person
Rule 14.2B Evaluation
Rule 14.2C Expert Testimony – Interrogatories
Rule 14.2D Mental Health Commitment Form
Rule 14.2E Guardian Acknowledgment
Rule 14.2F Incapacitated Person's Estate. Allowances

CHAPTER XV. ADOPTIONS

Rule 15.4A Separate Petitions
Rule 15.4B Affidavit of Paternity
Rule 15.4C Decree
Rule 15.5A Investigation
Rule 15.5B Attorney
Rule 15.5C Financial Responsibility
Rule 15.6A Waiver of Notice
Rule 15.10A Agreements for Post-Adoption Contact

CHAPTER I. PRELIMINARY RULES

Rule 1.1A Short Title and Citation

These rules shall be known as the Berks County Orphans' Court Rules and shall be cited as "B.C.O.C.R."

Rule 1.4A Holidays

Whenever a session of the court, a return day, or any time fixed for performing any judicial or clerical duty, falls on a holiday, a Saturday or a Sunday, the next following day not a holiday, a Saturday or a Sunday shall be the day for the session of court, the return day, or the time for performance of the judicial or clerical act, unless otherwise provided by these rules or order of court.

Rule 1.6A. Mediation

Mediation shall not delay the required filing of any pleading or ordered return dates, or the scheduling of court hearings, unless a stay is specifically requested by all interested parties, and so ordered by the court.

Rule 1.7A Counsel Information on Legal Papers

All legal papers that are filed with the Register of Wills or the Clerk of Orphans' Court shall include counsel's name, address, and telephone number.

Rule 1.7B Entry and Withdrawal of Counsel

(a) The practice regarding withdrawal of appearance as set forth in Pa. O.C. Rule 1.7(b) shall apply to withdrawal of appearance before the Register of Wills and the Clerk of the Orphans' Court.

(b) A petition to withdraw shall be served on the client and all interested parties and their counsel.

Rule 1.9 Local Miscellaneous Rules

Rule 1.9A Sureties

(a) Individual Sureties. Except in the case of corporations, applications for the approval of sureties, preferably on forms provided by the Clerk, shall be accompanied by the affidavit of the proposed surety setting forth, (a) his or her name, age, residence and occupation, and whether or not he or she is married; (b) the location of the real estate owned by the proposed surety, or so much as may be sufficient, with a reference to the record of the deed therefor, the nature and amount of the encumbrances, if any, the assessed value thereof and whether title is held by the proposed surety in fee; and (c) that the proposed surety believes that after the payment of his or her debts, engagements and liabilities, his or her worth is not less than an amount to be stated.

(b) Corporate Sureties. Every surety company duly authorized to do business in Pennsylvania may become surety on any bond or obligation required to be filed in this court; provided that a currently effective certificate issued to it by the Insurance Department of the Commonwealth of Pennsylvania, evidencing such right, shall be on file with the Clerk, and that no bond shall be executed by any surety company after May 1 of any year until such a certificate issued after March 31 of the same year shall have been filed with the Clerk.

(c) No attorney of this or any other court shall become surety on any bond given in any proceeding in this court except by special leave of this court.

Rule 1.9B Corporate Fiduciaries

(a) Corporations having fiduciary powers and authorized to do business in the Commonwealth of Pennsylvania may act as fiduciaries in matters pending in this court; provided, however, that initially there shall be filed with the Clerk a copy of the certificate issued by the State Banking Department, the Comptroller of Currency, or the Federal Reserve Board, as the case may be, evidencing its right to exercise fiduciary powers, certified to be a true and correct copy by an executive officer of the corporation. Thereafter, on or before the first day of May of each year such corporation shall file a statement, verified by the oath or affirmation of an executive officer thereof, that it continues to be qualified to act in such capacity.

(b) Except where required by statute or for special cause shown, a bond will not be required of an approved corporate fiduciary.

Rule 1.9C Depository of the Court

(a) All moneys and securities which shall be paid or delivered into court, shall, upon the receipt thereof by the Clerk, be immediately deposited by him with the depository of the court, to the credit of the court in the particular estate or proceeding to which the same may belong; and said depository shall keep a separate account of each of said payments and deliveries, designating the same by the name of the particular estate or proceeding.

(b) No money shall be paid out of court by said depository, or securities delivered except on the checks or orders of the Clerk, countersigned by the Administrative Judge of this Division, and accompanied by a certificate, endorsed on said checks, or orders, under the hand of the Clerk and the seal of the court, that the money was ordered to be paid or the securities delivered.

Rule 1.9D Publication

The Berks County Law Journal shall be the legal periodical for the publication of notices whenever publication in a legal periodical is required by Act of Assembly, or by rule or order of court.

Rule 1.9E Language

All writings not in English, submitted for filing, shall not be filed, unless there is attached to it and filed with it a translation into English, certified to be true and correct.

Rule 1.9F Interpreters

Official or certified court interpreters shall be used for all proceedings before the court wherein a language interpreter is needed. Any person filing a pleading, motion, notice or other document relating to a proceeding pending before the court where it is known that a participant in the proceeding will need the assistance of an interpreter shall note in the caption of such document that "An interpreter is needed: English to (language); (language) to English." Counsel shall make the necessary arrangements for an official court interpreter to be present for any court proceedings.

Comment: A form to request interpreter services is available from Court Administration.

CHAPTER II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

Rule 2.5A Audit Date

Accounts for audit shall be called on the first Wednesday of each month at 9:00 a.m. in the courtroom as posted. Special days for audit may be appointed at the call or order of the court. Accounts shall be scheduled for audit on the audit date next following the expiration of 30 days after filing the account.

Rule 2.7A Objections to Accounts or Petitions for Adjudication/Statements of Proposed Distribution – Order

A proposed order for the scheduling of a status conference shall be attached to all objections to accounts or Petitions for Adjudication/Statements of Proposed Distribution. The proposed order shall be in the following form:

(CAPTION)
O R D E R

AND NOW, (month)_____, 20___, the above-captioned matter is scheduled for a status conference on _____, 20___ at _____ a.m./p.m. in the chambers of the undersigned.

Counsel are directed to meet prior to this conference to reduce fact questions and legal issues to a minimum; and, further shall be authorized to settle at said meeting and later conference.

BY THE COURT:

_____
J.

Distribution: Clerk of Orphans' Court; (all interested parties or their counsel)

Rule 2.9A Adjudication and Decree

A proposed Adjudication and Decree for confirmation of the account by the court shall be filed and served with the Petition for Adjudication/Statement of Proposed Distribution.

Rule 2.10A Foreign Heirs and Unknown Distributees – Report

(a) The report required by Pa. O.C. Rule 2.10(b) shall be incorporated in the Petition for Adjudication/Statement of Proposed Distribution. If the circumstance necessitating such a report arises after the filing of the Petition for Adjudication/Statement of Proposed Distribution, the report shall be filed and served on all parties whose rights might be affected by the circumstance, including the distributee's heirs, with notice in accordance with Pa. O.C. Rule 2.5(a) – (g).

(b) The report shall propose a resolution of the circumstance necessitating the report.

Rule 2.12 SMALL ESTATE PETITIONS

Rule 2.12A Settlement of Small Estates

(a) Form of Petitions, Contents. Petitions under Section 3102 of the Code for distribution of small estates shall set forth:

(1) the name and address of the petitioner and petitioner's relationship to the decedent;
(2) the name, date of death and domicile of decedent, whether 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 in what amount;
(3) the names and relationships 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 Code, or otherwise, and whether any of them are unascertainable, minors, incapacitated or deceased with the names of their fiduciaries or virtual representatives, if any;
(4) the person or persons, if any, entitled to the family exemption and, if a claim therefor 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) a list showing the nature, amount and preference of all unpaid claims against the estate and indicating which are admitted;
(7) an itemized list of disbursements made prior to the filing of the petition, indicating the payor and whether the disbursements were in payment of administration expenses, preferred or ordinary debts, item of distribution or the family exemption
(8) if any unpaid beneficiary, heir, or claimant has not joined in the petition, a statement that notice in accordance with Pa. O.C. Rule 3.5(b) has been or will be given; and
(9) a prayer for distribution of the personal property to those entitled, and in appropriate cases for the discharge of the personal representative.

(b) Exhibits. There shall be attached to the petition the following exhibits:

(1) an original death certificate; and
(2) the original of the decedent's will if it has not been probated, or a copy of the will if it has been probated; and
(3) joinders or consents of unpaid beneficiaries, heirs and claimants insofar as they are obtainable.

(c) Appraisements. No appraisements shall be required unless ordered by the court.

(d) Order. A proposed order shall be attached to the petition authorizing the petitioner to marshal the assets and to make appropriate disbursements.

CHAPTER III. PETITION PRACTICE AND PLEADING

Rule 3.4A Preliminary Decree

The proposed form of a preliminary decree for the issuance of a citation shall include a space for a return date and a separate space for a hearing date should the court choose to schedule a hearing pending receipt of an answer. Unless the matter is specifically scheduled for a hearing on the return date, no interested party need appear on the return day except as desired to ensure the filing or lack of filing of a responsive pleading or objection.

Rule 3.5A Mode of Proceeding on Petition – Publication

If the subject matter of the action is real estate, the published notice shall contain a sufficient description of the real estate involved to identify it, but need not set forth a full and detailed description, if reference is made in said advertisement to the volume and page in the Recorder of Deeds office of this county where a recorded description of said property appears.

Rule 3.5B Emergency Petition

(a) Notwithstanding the procedure set forth in Pa. O.C. Rule 3.5, a petition for emergency relief may be filed whenever it would be advisable for the court to grant relief on an emergency basis so as to prevent irreversible harm. A proposed order for relief and a rule to show cause in substantially the following form shall be attached to the petition.

(CAPTION)
RULE TO SHOW CAUSE

AND NOW, _____, 20___, upon consideration of the foregoing petition, it is ordered that:
(1) a Rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested;
( )(2) the respondent shall file an answer to the petition within _____ days of this date;
( )(3) an evidentiary hearing on disputed issues of material fact shall be held on _____ at _____ a.m./p.m. before the undersigned Judge in Courtroom ____ of the Berks County Courthouse/Berks County Services Center.

BY THE COURT:

_____
J.

Distribution: Clerk of the Orphans' Court (1); petitioner (1); respondent(s) by name (1 each)

(b) All petitions, motions, or applications necessitating personal presentation to the court shall be first presented to the Clerk for filing then made in the courtroom of the judge assigned to the case at a time prearranged with the judge and failing such prearrangement at either 9:30 A.M. or 1:30 P.M. on a day he or she is scheduled to sit. If the petition, motion, or application is of such a nature that interested parties have a right to be heard, the moving party shall give each interested party at least forty-eight (48) hours' notice of the time when the moving party will appear and present such petition, motion, or application, unless the emergency nature of the matter prevents such notice. In the latter situation, the moving party shall give as much notice as is reasonably possible.

(c) All petitions, motions, or applications in cases which have not yet been assigned to a judge shall be filed with the Clerk, who shall promptly assign a judge to the case.

(d) All petitions, motions, or applications which require immediate action to prevent irreversible harm in cases where the assigned judge is unavailable or in cases where no judge has been assigned to the case and the Clerk fails to assign a judge to the case in sufficient time to allow presentation to such judge shall be presented to the emergency motions judge in his or her courtroom at 9:30 A.M. or at 1:30 P.M. or at a time prearranged with that judge.

Rule 3.6A Pleadings Allowed After Petition – Order

(a) No counterclaims shall be permitted. Cross-petitions and motions are permitted.

(b) A proposed order for the scheduling of a status conference or hearing shall be attached to all responsive pleadings and shall be in the following form:

(CAPTION)
ORDER

AND NOW, (month)_____, 20___, the above-captioned matter is scheduled for a:

( ) status conference on _____, 20___ at _____ a.m./p.m. in the chambers of the undersigned.

( ) hearing on _____, 20___ at _____ a.m./p.m. in the courtroom of the Berks County Courthouse/Services Center assigned to the undersigned.

Counsel are directed to meet prior to the conference/hearing to reduce fact questions and legal issues to a minimum; and, further shall be authorized to settle at said meeting and status conference.

BY THE COURT:

_____
J.

Distribution: Clerk of Orphans' Court; (all interested parties or their counsel)

Rule 3.9A Preliminary Objections – Order

(a) A proposed order for the scheduling of a status conference or argument shall be attached to all preliminary objections and shall be in substantially the following form:

(CAPTION)
ORDER

AND NOW, (month)_____, 20___, the above-captioned matter is scheduled for:

( ) a status conference on _____, 20___ at _____ a.m./p.m. in the chambers of the undersigned.

( ) an oral argument on _____, 20___ at _____ a.m./p.m. in the courtroom of the Berks County Courthouse/Services Center assigned to the undersigned. A brief in support of the preliminary objections shall be filed on or before _____, 20____. A response brief shall be filed on or before _____, 20____.

If an amended petition is filed within 20 days of service of the preliminary objections, this Order shall be rendered moot and the status conference or oral argument shall be deemed cancelled.

Counsel are directed to meet prior to the conference/argument to reduce fact questions and legal issues to a minimum; and, further shall be authorized to settle at said meeting and status conference.

BY THE COURT:

_____
J.

Distribution: Clerk of Orphans' Court; (all interested parties or their counsel)

(b) The court may grant or deny preliminary objections at any time if it finds such relief is appropriate upon the face of the pleadings.

CHAPTER V. RULES GOVERNING SPECIFIC TYPES OF PETITIONS

Rule 5.2A Family Exemption – Valuation

If the exemption is claimed from personal property, valuation shall be established as the interested parties agree. Failing agreement, valuation shall be as set forth on a filed inventory, or if no inventory has been filed, valuation shall be established in accordance with the procedure set forth in Pa. O.C. Rule 5.2(a) and (b) or in such other manner as the court shall direct.

Rule 5.2B Notice

A copy of the petition for a family exemption and any required notices shall be served on the Department of Revenue.

Rule 5.3A Intestate Share to Surviving Spouse from Personal Property

If the spousal share is claimed from personal property, valuation shall be established as the interested parties agree. Failing agreement, valuation shall be as set forth on a filed inventory, or if no inventory has been filed, valuation shall be established in accordance with the procedure set forth in Pa. O.C. Rule 5.3(a) and (b) or in such other manner as the court shall direct.

Rule 5.3B Notice

A copy of the petition claiming a spousal share and any required notices shall be served on the Department of Revenue.

Rule 5.4A Extension of Time for Filing of Surviving Spouse's Election

A petition for the extension of time in which the surviving spouse may file an election to take against the will and other conveyances shall include to the extent possible the same contents required by Pa. O.C. Rule 5.4(a).

Rule 5.6A Allowances from a Minor's Estate

When a petition is necessary for an allowance from a minor's estate, the petition shall set forth:

(a) the manner of the guardian's appointment and qualification, and the dates thereof;

(b) the age and residence of the minor, whether the minor's parents are living, the name of the person with whom the minor resides, the name and age of the minor's spouse and children, if any;

(c) the value of the minor's estate, real and personal and the net annual income;

(d) the circumstances of the minor, whether employed or attending school; if the minor's parents, or other person or persons charged with the duty of supporting the minor, is living, the financial condition and income of such person and why such person is not discharging such person's duty

to support the minor; and whether there is adequate provision for the support and education of the minor, the minor's spouse and children;

(e) the date and amount of any previous allowance by the court; and

(f) the financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary.

Rule 5.10A Contents of Petition

(a) All Petitions. All petitions to sell real property at public sale shall set forth the name, address, and proposed compensation of the proposed auctioneer or other selling agent.

(b) Personal Representative. When it is required that a personal representative petition the court to sell real property at public sale, the petition (in addition to requirements of Pa. O.C. Rule 5.10) shall also set forth in separate paragraphs:

(1) the name, residence and date of death of the decedent; whether the decedent died testate or intestate; and the date of the grant of letters;
(2) that the personal representative is not otherwise authorized to sell by statute; or is not authorized or is denied the power to do so by the will, or that it is desirable that the sale have the effect of a judicial sale, stating the reason;
(3) whether an inventory and appraisement has been filed; the total value of the property shown therein; and the value at which the real property to be sold was included therein;
(4) if the personal representative entered bond with the Register, the name of the surety and the amount of such bond;
(5) the names and relationships of all interested parties; a brief description of their respective interests; whether any of them are unascertainable, minors, incapacitated or deceased, and if so, the names of their fiduciaries or virtual representatives, if any;
(6) the improvements on the property, by whom it is occupied, its rental value, rents due and payable, and current tax assessment; and
(7) sufficient facts to enable the court to determine that the sale is desirable for the proper administration and distribution of the estate.

(c) Trustee. When it is required that a trustee petition the court to sell real property at public sale, the petition (in addition to requirements of Pa. O.C. Rule 5.10) shall also set forth in separate paragraphs:

(1) how title was acquired, stating the date and place of recording of the deed or other instrument of conveyance;
(2) a recital of the relevant provisions of the deed, trust, will, or other instrument of conveyance pertaining to the real property to be sold, and of the relevant history of the trust;
(3) the names and relationships of all interested parties; a brief description of their respective interests; whether any of them are unascertainable, minors, incapacitated or deceased, and if so, the names of their fiduciaries or virtual representatives, if any;
(4) the improvements on the property, by whom it is occupied, its rental value, rents due and payable, and current tax assessment;

(5) that the trustee is not otherwise authorized to sell by statute, or is denied the power by the trust instrument; or that it is advisable that the sale have the effect of a judicial sale, stating the reason; and
(6) sufficient facts to enable the court to determine that the proposed sale is for the best interest of the trust or its beneficiaries.

(d) Guardian. When it is required that a guardian of a minor or incapacitated person petition the court to sell real property at public sale, the petition (in addition to requirements of Pa. O.C. Rule 5.10) shall also set forth in separate paragraphs:

(1) the age of the ward;
(2) the names and addresses of the ward's next of kin and intestate heirs and the notice given them of the filing of the petition;
(3) how title was acquired, stating the date and place of recording of the deed or other instrument of conveyance;
(4) a recital of the relevant provisions of the deed, will, trust, or other instrument of conveyance relating to the real property to be sold;
(5) the nature and extent of the interest of the ward, and of other persons in the real property;
(6) the improvements on the property, by whom it is occupied, its rental value, rents due and payable, and current tax assessment; and
(7) sufficient facts to enable the court to determine that the proposed sale will be for the best interest of the ward.

(e) Others. A petition for the sale of real property, other than by partition, filed by a person other than a personal representative of a decedent's estate, trustee, or guardian shall comply with such of the above provisions as nearly resembles the circumstances necessitating the petition.

Rule 5.10B Exhibits

The following exhibits shall be attached to a petition to sell real property at public sale:

(a) a copy of the will, deed, decree or other instrument by which the fiduciary was appointed;

(b) any consents or joinders of interested parties, including any lienholder whose lien would otherwise not be discharged by the sale;

(c) the proposed terms and conditions of sale;

(d) affidavits of two disinterested and competent persons familiar with said real estate as to the value of the tract or tracts desired to be sold; and

(e) any appraisal reports that have been prepared within the preceding five years.

Rule 5.10C Notice. Return

(a) Notice. In addition to the notice requirements of any applicable statute or other rule or order of court, notice of the sale shall be conspicuously posted on the property to be sold and at a

minimum of three other locations within the immediate vicinity of the property at least 20 days prior to the scheduled sale and be published in the legal periodical and newspaper of general circulation serving the property's locale a minimum of once per week for three successive weeks.

(b) Return. Within five days after the sale, or such other time as the order approving a public sale provides, the seller shall file a return in the form of an affidavit, which shall set forth:

(1) the public notice given;
(2) the price obtained; and
(3) the name and address of the purchaser and that such purchaser was highest bidder.

(c) Proof of publication shall be attached as an exhibit. A proposed order approving the sale to the highest bidder at the bid price shall be filed with the return.

Rule 5.10D Security

On the return day of the sale, the court, in the decree approving or confirming the sale, will fix the amount of bond or additional security which the personal representative, trustee, guardian, or other seller shall be required to enter, or will excuse the fiduciary from entering additional security.

Rule 5.10E Confirmation

Court approval or confirmation must be obtained before delivery of a deed.

Rule 5.11A Contents of Petition

A petition for the private sale or exchange of real property or for the grant of an option for any such sale or exchange shall conform as closely as practicable to the requirements of these Rules with regard to a petition to sell real property at public sale.

Rule 5.11B. Exhibits

In addition to the exhibits required by Rule 5.10B, a copy of the agreement of sale shall be attached to the petition.

Rule 5.11C Security

The court, in the decree approving or confirming the sale, will fix the amount of bond or additional security which the personal representative, trustee, guardian, or other seller shall be required to enter, or will excuse the fiduciary from entering bond or additional security.

Rule 5.12A Contents of Petition

A petition to mortgage or lease real property shall conform as closely as practicable to the requirements of these Rules with regard to a petition to sell real property at public sale.

Rule 5.16 ASSISTED CONCEPTION BIRTH REGISTRATION

Rule 5.16A Assisted Conception Birth Registration

(a) Form of Petitions, Contents. A petition to establish the parentage of a child to be born by gestational carrier shall set forth:

(1) the name and address of each petitioner;

(2) the source of the oocyte/ova and sperm used for in vitro fertilization;

(3) the name and address of the physician(s) performing or supervising the oocyte/ova retrieval, sperm collection, in vitro fertilization, and transfer of viable embryo(s) into the uterus of the gestational carrier;

(4) the number of embryos transferred and the number of children expected to be born;

(5) the expected date and location of birth;

(6) the method by which it can be established that the pregnancy is the result of only the embryo transfer and not the result of fertilization of the carrier's own ova;

(7) that the petitioners intending to be named as the legal parents of the child(ren) expected to be born by the gestational carrier, the carrier, and, if married, the carrier's spouse have expressed their intentions that the intended legal parents shall have exclusive custody and all parental rights and duties with respect to the child(ren) and that they join in and consent to the petition; and

(8) that the Department of Health does not object to the relief requested.

(b) Exhibits. There shall be attached to the petition the following exhibits:

(1) an affidavit by the physician attesting to his or her being licensed to practice medicine and the facts relating to the the oocyte/ova retrieval, sperm collection, in vitro fertilization, transfer of viable embryo(s) into the uterus of the gestational carrier, the number of children expected to be born, and that the children expected to be born are not the genetic children of the gestational carrier;

(2) acknowledgments from the gestational carrier and, if married, her spouse, stating that the carrier and her spouse are not the biological parents of the child(ren), stating awareness that signing the acknowledgment will grant all the rights and duties of parenthood to the petitioners intending to be named as the legal parents and that the carrier and her spouse will have no such rights or duties, and authorizing the submission of the appropriate forms to the Division of Vital Records identifying the petitioners intending to be named as the legal parents as the parents. Each acknowledgment shall also state that the carrier and her spouse have the right to refuse to sign the acknowledgment and that such refusal would result in being named as the parent of the child(ren); and

(3) a stipulation by the petitioners and counsel for the Department of Health that the proposed decree is acceptable to them.

(c) Decree. A proposed decree shall be attached to the petition that shall deem the intended parents as the legal parents of the child(ren) and order that certified copies of the birth records of the child(ren) shall reflect the intended parentage. The proposed decree shall also direct that all court records be permanently maintained and withheld from inspection except as provided by 23 Pa.C.S.A. § 2915 (relating to records and access to information).

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

Rule 7.1A Discovery

B.R.C.P. Rule 4001 shall not apply to Orphans' Court discovery practice. Failure to comply with discovery requests shall be addressed by the court directly upon the filing of a motion to compel, motion for protective order, or other appropriate motion.

Rule 7.1B Subpoenas

Subpoenas shall be obtained from the Clerk of Orphans' Court, not the Prothonotary or Clerk of Court.

Rule 7.2A Briefs and Argument

(a) A party filing a motion for judgment on the pleadings shall file simultaneously with the Clerk an argument brief, an argument scheduling order, and a proof of service.

(b) the non-moving party shall file an answer, argument brief and a proof of service within 30 days. If the non-moving party does not file an argument brief, the court shall decide the motion based on the record. In doing so, the court may in its discretion hear oral argument from the party that filed the motion for judgment on the pleadings, but not from the non-moving party.

Rule 7.3A Briefs, Argument, and Disposition

(a) A party filing a motion for summary judgment shall file the original motion and a proof of service with the Clerk.

(b) The non-moving party shall file a response to the motion for summary judgment and proof of service no later than thirty (30) days after the date of service of the motion in accordance with Pa.R.C.P. 1035.3(a). If no response is filed within that thirty (30) day period, upon written notice to the court by the moving party, pursuant to Pa.R.C.P. 1035.3(d), the court may in its discretion grant the motion for summary judgment. If a response is filed, any party may file a request, accompanied by a scheduling order and a proof of service, to list the motion for summary judgment for oral argument.

(c) If the moving party files the request for argument, an argument brief shall be filed therewith and the non-moving party shall file a responsive brief within 20 days of service of the moving party's brief.

(d) If the non-moving party files the request for argument, accompanied by a proof of service, the moving party shall file and serve a brief of argument within 20 days of service of the request. The non-moving party shall thereafter file and serve an argument brief within 20 days of filing and service of the moving party's brief.

Rule 7.5 Motions

Rule 7.5A Motions practice

Unless another procedure is prescribed by a specific rule, a proposed order granting the relief requested and a rule to show cause why the requested relief should not be granted shall be attached to all motions. Upon consideration of the motion, the court may grant relief immediately or issue a rule to show cause. The rule to show cause shall be in substantially the following form:

(CAPTION)
RULE TO SHOW CAUSE

AND NOW, _____, _____, upon consideration of the foregoing motion, it is ordered that:

(1) a Rule is issued upon the respondent to show cause why the movant is not entitled to the relief requested;

(2) the respondent shall file an answer to the motion within _____ days of this date;

( ) (3) the movant shall file a brief in support of the motion within _____ days after service of the answer;

( ) (4) the respondent shall file a brief in opposition to the motion within _____ days after service of the movant's brief;

( ) (5) an evidentiary hearing on disputed issues of material fact shall be held on _____ at ____ a.m./p.m. before the undersigned Judge in the Berks County Courthouse/Services Center.

( ) (6) oral argument shall be held on _____ at _____ a.m./p.m. in the courtroom of the Berks County Courthouse/Services Center assigned to the undersigned.

BY THE COURT:

_____
J.

Distribution: Clerk of the Orphans' Court (1); movant or counsel (1); respondent(s) by name (1 each) or counsel

CHAPTER VIII. RECONSIDERATION

Rule 9.1A Manner of Notice

An auditor or master shall give notice of scheduled hearings to all interested parties, or to their attorneys of record, in the manner provided in Pa. O.C. Rule 4.3 at least twenty days in advance.

Rule 9.6A Manner of Notice

A copy of the auditor's or master's report and notice of its filing shall be served on all interested parties, or their attorneys of record, in the manner provided in Pa. O.C. Rule 4.3.

Rule 9.7A Objections

(a) Consistent with the procedure set forth in Pa. O.C. Rule 2.7, any interested party shall have the right to file objections to an auditor's or master's report within twenty days of the notice of its filing. A proposed order for the scheduling of a status conference or oral argument shall be attached to all objections and shall be in substantially the following form:

(CAPTION)
ORDER

AND NOW, (month)_____, 20___, the above-captioned matter is scheduled for:

( ) a status conference on _____, 20___ at _____ a.m./p.m. in the chambers of the undersigned.

( ) an oral argument on _____, 20___ at _____ a.m./p.m. in the courtroom of the Berks County Courthouse/Services Center assigned to the undersigned. A brief in support of the objections shall be filed on or before _____, 20____. A response brief shall be filed on or before _____, 20____.

Counsel are directed to meet prior to the conference/argument to reduce fact questions and legal issues to a minimum; and, further shall be authorized to settle at said meeting and status conference.

BY THE COURT:

_____
J.

Distribution: Clerk of Orphans' Court; (all interested parties or their counsel)

(b) The court may grant or deny objections at any time if it finds such relief is appropriate upon the face of the objections.

Rule 9.7B. Confirmation

If no objections are filed within twenty days of the notice of the report's filing, the court may enter a decree confirming the auditor's report or adopting the master's report or schedule additional proceedings as it deems appropriate.

CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS

Rule 14.2A Representation of alleged incapacitated person

No petitioner or person alleged to have been acting against the best interests of the alleged incapacitated person shall attempt to obtain counsel for an alleged incapacitated person, except that a petitioner may contact an attorney who is known to the petitioner to have a previous professional relationship with the alleged incapacitated person. The Area Agency on Aging is exempt from the restriction of seeking counsel for the alleged incapacitated person to the extent such practice is required by statute or regulation. If the alleged incapacitated person or non-petitioning next of kin do not obtain counsel for the alleged incapacitated person, the court shall appoint counsel in its discretion upon receipt of the notification required by 20 Pa. C.S.A. § 5511(a).

Rule 14.2B Evaluation

If a petition to adjudicate an individual as an incapacitated person is filed with a request that the alleged incapacitated person be directed to submit to an evaluation of his or her capacity, the petitioner shall propose a specific expert to conduct the evaluation. No evaluator shall be proposed without first obtaining the proposed evaluator's consent to serve.

Rule 14.2C Expert testimony – Interrogatories

Whenever the issue of incapacity is not contested, the use of verified answers to written interrogatories in lieu of live expert testimony shall be permitted.

Rule 14.2D Mental Health Commitment Form

Promptly upon appointment, a court-appointed guardian shall submit a completed Commonwealth of Pennsylvania Notification of Mental Health Commitment (Form SP 4-131) to the court.

Rule 14.2E Guardian Acknowledgment

Promptly upon appointment, a court-appointed guardian shall initial, sign and file a Guardian Acknowledgment of Duties and Liabilities form, as follows:

IN RE:	:	IN THE COURT OF COMMON PLEAS
an incapacitated person	:	OF BERKS COUNTY, PENNSYLVANIA
	:	ORPHANS' COURT DIVISION
	:	No.

GUARDIAN ACKNOWLEDGMENT OF DUTIES AND LIABILITIES

I, the undersigned court-appointed guardian, acknowledge that as guardian I have broad, but not unlimited, powers, duties, and liabilities as set forth generally in 20 Pa.C.S.A. §5501 et

seq. and more specifically acknowledge my duties and liabilities under 20 Pa.C.S.A. §5521 and as follows:

As Guardian of the Person, I shall:

- Assert the rights and best interests of my ward. _____

- Respect to the greatest possible extent my ward's expressed wishes and preferences._____

- Where appropriate, develop a plan of supportive services to meet my ward's needs._____

- Encourage my ward to participate in all decisions which affect my ward, to act on his or her own behalf whenever he or she is able to do so, and to develop or regain, to the maximum extent possible, capacity to manage his or her personal affairs. _____

As Guardian of the Estate, I shall:

- Take possession of, maintain, and administer each asset of my ward, and make all reasonable expenditures and efforts to preserve the estate. _____

- Within three months, file an inventory of my ward's real and personal property and a statement of any property that I expect to acquire thereafter. _____

In addition to the above duties, as Guardian (either of the person or the estate), I shall:

- Exercise my powers for the benefit of my ward. _____

- Keep the ward's assets separate from my assets _____

- Exercise reasonable caution and prudence. _____

- Keep a full and accurate record of all actions, receipts, and disbursements on behalf of the ward. _____

- File an annual report on forms available in the Register of Wills/Clerk of the Orphans' Court attesting to the information required by 20 Pa.C.S.A. §5521(c). I shall file a final report within 60 days of my ward's death or adjudication of capacity. _____

- Report any change of my address to the court within ten (10) days. _____

As Guardian of the person and/or the estate, I understand and acknowledge that any breach of my duty to my ward, such as but not limited to asset misappropriation, may result in civil and even criminal liability. _____

Date:_____ Guardian's Signature:_____

Rule 14.2F Allowances From an Incapacitated Person's Estate.

(a) In General. Petitions for allowances from an incapacitated person's estate, when necessary, shall be governed by the appropriate provisions of B.C.O.C.R. 5.6A, and as hereinafter provided.

(b) Contents of Petition. The petition shall set forth the following:
(1) the name of the guardian, the date of the guardian's appointment, if the petitioner is not the guardian, petitioner's relationship to the incapacitated person, and, if not related, 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;
(3) the address and the 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 the petitioner;
(6) a statement of the requested distribution and the reasons therefor; and
(7) a statement of all previous distributions allowed by the court.

(c) Restrictions Governing Allowance. If any portion of the incapacitated person's estate is received from the United States Veterans Administration or its successor, notice of the request for allowance shall be given to this agency.

CHAPTER XV. ADOPTIONS

Rule 15.4A Separate Petitions

A separate petition shall be filed for each parent whose rights the petitioner seeks to terminate.

Rule 15.4B Affidavit of Paternity

Except as filed by a county agency or excused by the court, a petition to involuntarily terminate the parental rights of any father to a child shall have appended thereto an affidavit of paternity signed by the child's birth mother that contains the following:

(a) A statement that a specific man, identified by as much of his full name as is known, is the child's biological father. The affidavit shall set forth sufficient facts to support the identification of this man as the father; or

(b) A statement that the identity of the father is unknown to the mother. The affidavit shall set forth the circumstances of conception, the reasons why the father's identity is not known, and what efforts, if any, have been made to identify the father.

Comment: Facts supporting identification of the father could include, but not be limited to, the mother's not having had sexual relations with any other man at or around the time of conception (including one month before or after conception) or that a DNA test has established paternity. The reasons why the father's identity might be unknown include, but are not limited to, mother's having had sexual relations with multiple known or unknown partners, a one night stand, rape, and prostitution.

Rule 15.4C Decree

The termination of parental rights shall be by decree separate from a decree of adoption.

Comment: The name of a parent whose rights have been terminated should not appear in an adoption decree for confidentiality reasons.

Rule 15.5A Investigation

All non-agency adoptions shall be subject to investigation by Berks County Children's Services unless otherwise directed by the court. The fee for such investigation shall be paid to the Clerk upon the filing of the petition for adoption.

Rule 15.5B Attorney

The intermediary, if an attorney, whether or not acting as attorney for the petitioners in adoption, shall file a written statement under the penalties of perjury with the court listing therein all fees, costs and reimbursed expenses received by the intermediary.

Rule 15.5C Financial Responsibility

An Affidavit of Financial Responsibility, in the following form, shall be attached to all petitions for adoption:

IN RE:	: IN THE COURT OF COMMON PLEAS
ADOPTION OF	: OF BERKS COUNTY, PENNSYLVANIA
	: ORPHANS' COURT DIVISION
	:
	: No.

AFFIDAVIT OF FINANCIAL RESPONSIBILITY

I, _____, the person petitioning to adopt the above-named child, acknowledge that if the adoption is approved by the court I will have the duty, just as any other parent, to support the child financially. I acknowledge that this duty of support is absolute and may extend beyond the child's eighteenth (18th) birthday in accordance with 23 Pa. C.S.A. § 4321. I acknowledge that I will owe this duty of support even if my relationship with the child's other parent ends, regardless of which parent has physical custody of the child, and I may need to make sacrifices to meet this burden. I further acknowledge the possible responsibility to contribute to the college education of my child, provided that the child has the ability and desire to successfully complete the course of studies, and in accordance with 23 Pa. C.S.A. § 4327.

As evidenced by my signature below, I accept my acknowledged parental duty of financial support for the above-named child.

Date:_____

_____
Adoptive Parent

Rule 15.6A Waiver of Notice

Any person entitled to notice of a hearing under Pa. O.C. Rule 15.6 may execute a waiver of such notice. The waiver shall not be irrevocable and shall state that it can be revoked at any time prior to the hearing by filing a revocation with the Clerk.

Rule 15.10A Agreements for Post-Adoption Contact

Whenever a request for court approval of a voluntary agreement for continuing contact, or modification or termination thereof, under Subchapter D of the Adoption Act is filed and the child(ren) subject to the agreement is or was represented by a guardian ad litem in a dependency or termination of parental rights proceeding, the party filing the request for approval shall immediately serve notice of the filing on the guardian ad litem. If a voluntary agreement for continuing contact is proposed for the first time at the time of an adoption hearing and a previously appointed guardian ad litem is not present for the hearing, the matter shall be continued to allow notice to the guardian.