

**SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.O.C.P. 10.7

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.O.C.P. 10.7 relating to a filing made with the Register of Wills to facilitate disclosure of the digital assets or a catalog of electronic communications of a decedent, other than the content of such electronic communications, for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **February 17, 2023**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Orphans' Court
Procedural Rules Committee,

Hon. Emil A. Giordano (Ret.)
Chair

–The following text is entirely new–

Rule 10.7 Disclosure of Certain Digital Assets or a Catalog of Electronic Communications of a Decedent.

- (a) **At Time of Filing Petition for Grant of Letters.** If a personal representative intends to access the digital assets or a catalog of electronic communications of a decedent, other than the content of the decedent's electronic communications, the personal representative may file with the petition an affidavit containing the recitals set forth in 20 Pa.C.S. § 3908(b). The affidavit shall be taken before and administered by the Register pursuant to 20 Pa.C.S. § 3908(c).

- (b) **After Filing Petition for Grant of Letters.** If a personal representative intends to access the digital assets or a catalog of electronic communications of a decedent, other than the content of the decedent's electronic communications, the personal representative may file an affidavit with the Register containing the recitals set forth in 20 Pa.C.S. § 3908(b). The affidavit shall be taken before and administered by the Register pursuant to 20 Pa.C.S. § 3908(c).

- (c) **Upon Request of a Custodian.** If a custodian requests a finding of the court with respect to a catalog of electronic communications of a decedent pursuant to 20 Pa.C.S. § 3908(a)(4)(iv) from a personal representative who has not already filed an affidavit as provided under subdivisions (a) or (b):
 - (1) the personal representative may file a verified statement with the Register pursuant to 20 Pa.C.S. § 3908(b)(1); and
 - (2) provide the custodian a copy of the verified statement bearing evidence of filing with the Register.

Comment: This rule is intended to implement § 3908 of the Revised Uniform Fiduciary Access to Digital Assets Act relating to the disclosure of certain digital assets or a catalog of electronic communications of a decedent, other than the content of such electronic communications, to a personal representative. See 20 Pa.C.S. § 3908. Relevant terms, such as “catalog of electronic communications,” “content of electronic communication,” “custodian,” and “digital asset” are defined by statute. See 20 Pa.C.S. § 3902. This rule does not apply to access to the contents of a decedent's electronic communications; such access is governed by 20 Pa.C.S. § 3907.

A filing made pursuant to subdivision (a) or (b) is independent of any filing made pursuant to subdivision (c).

An verified statement filed by the personal representative with the Register pursuant to subdivision (c) is not required to be taken before and administered by the Register. See 20 Pa.C.S. § 3908(b)(1).

While Registers are not subject to the *Case Records Public Access Policy of the Unified Judicial System*, they are encouraged to ensure the confidentiality of identifying information contained in affidavits filed pursuant to this rule. See *Case Records Public Access Policy of the Unified Judicial System*, § 1.0, Comment.

**SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE**

RE-PUBLICATION REPORT

Proposed Adoption of Pa.R.O.C.P. 10.7

The Orphans' Court Procedural Rules ("Committee") is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.O.C.P. 10.7 in response to legislation providing for, among other things, the filing of an affidavit or verified statement with the Register of Wills for the disclosure of certain digital assets or a catalog of electronic communications of a decedent, other than the content of such electronic communications.

On July 23, 2020, Act 72 of 2020, the Pennsylvania Revised Uniform Fiduciary Access to Digital Assets Act ("Act"), was enacted. See 20 Pa.C.S. §§ 3901–3917. The Act provides generally "for user direction and agreements, for disclosure of digital assets and electronic communications, for functions of fiduciaries and for compliance and immunity for custodians of digital assets and electronic communications; and making conforming amendments." 7 *West's Pa. Forms*, Estate Planning § 1.26.

Section 3908 of the Act provides for the disclosure of certain digital assets or a catalog of electronic communications of a decedent, other than the content of such electronic communications, by prescribing procedures to be followed by the personal representative of a decedent's estate. Requests for disclosure of or access to the "content of electronic communications" of a decedent are not included in § 3908 or proposed Rule 10.7, and are outside the scope of the proposed rule.

The Committee previously published for public comment a proposed new Rule 10.7 cross-referencing the procedures set forth at 20 Pa.C.S. § 3908. See 51 Pa.B. 1796 (April 3, 2021). The Committee had considered other approaches to incorporating the relevant provisions of § 3908 into the rules, such as drafting a detailed rule or developing amendments to the petition for grant of letters. Ultimately, the Committee believed the procedures established by statute were adequate and self-explanatory. The practice of incorporation by reference to statutory procedures in rulemaking exists elsewhere in the statewide rules. See, e.g., Pa.R.O.C.P. 14.6(a) (procedure for determining incapacity and appointment of a guardian set forth at 20 Pa.C.S. §§ 5511, 5512, and 5512.1).

However, post-publication feedback made evident the proposal would benefit from clarification in two ways. First, it was recommended that the proposal distinguish between requests for access made at the time of filing the petition for grant of letters from those made after filing of the petition. In response, the Committee modified the proposal to distinguish these scenarios. Subdivision (a) now provides for an affidavit to be filed at the

time of filing the petition for grant of letters to access certain digital assets or a catalog of electronic communications of the decedent, other than the content of electronic communications. Likewise, subdivision (b) provides for the affidavit to be filed after the filing of the petition for grant of letters.

It was further recommended that the proposal differentiate a filing made to satisfy the request of a custodian of a catalog of the decedent's electronic communications that the personal representative provide a finding of the court and no previous filings have been made. See 20 Pa.C.S. § 3908(b). In response, subdivision (c) now provides for a personal representative to file an affidavit with the Register of Wills, as set forth in § 3908, if the representative has been requested to provide a finding of the court with respect to a catalog of electronic communications of the decedent and no affidavit was previously filed pursuant to subdivision (a) or (b).

The Act prescribes differing methods of executing the affidavit for subdivisions (a) and (b) in contrast with subdivision (c). An affidavit filed by the personal representative pursuant to subdivision (a) or (b) is required to be sworn before the Register. See 20 Pa.C.S. § 3908(c)(2). In contrast, a verified statement filed pursuant to subdivision (c) does not require swearing before the Register. See 20 Pa.C.S. § 3908(b)(1); Pa.R.O.C.P. 1.3 (defining "verified").

Each subdivision of proposed Rule 10.7 requires the filing of an affidavit with the Register of Wills to satisfy the statutory requirements. However, § 3908 also permits the required averments to be made in the petition for grant of letters or a supplemental petition. Currently, there is a statewide form petition for grant of letters, Form RW-02. The Committee was not inclined to recommend the amendment of Form RW-02 for several reasons. First, the averments required by § 3908 are discrete and supplemental to the primary purpose of the petition for grant of letters. Additionally, access to certain digital assets or the catalog of electronic communications of the decedent, other than the content of the decedent's electronic communications, can be sought either concurrent with or subsequent to filing the petition. Revising Form RW-02 to incorporate the averments may suggest that the digital asset averments must be made at the time of filing the petition, even though the petitioner may not have identified the relevant accounts at the time of filing the petition. Finally, not all forms or notices permitted or required by statute are addressed in unique, statewide forms. See, e.g., 20 Pa.C.S. § 3102 (settlement of small estates by petition); Pa.R.O.C.P. 15.4(a) (contents of notice of hearing to relinquish or terminate parental rights set forth at 23 Pa.C.S. §§ 2503(b), 2504(b), and 2513(b)) (effective July 1, 2022).

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.