

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.O.C.P. 5.8

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 5.8 of the Pennsylvania Rules of Orphans' Court Procedure 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 officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

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

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Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
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All communications in reference to the proposal should be received by **October 17, 2025**. 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,

Kendra D. McGuire, Esq.
Chair

Rule 5.8. Discharge of Fiduciary and Surety

- (a) **Account Previously Filed.** A petition for the discharge of a fiduciary and his or her surety, or of the surety alone, subsequent to an Account having been filed and confirmed, shall conform to the requirements provided by the **[Rules] rules** in Chapter III and set forth the following:
- (1) the nature of the fiduciary capacity;
 - (2) the date and a reference to the record of the fiduciary's appointment;
 - (3) the date of filing the fiduciary's Account and the date of the court's adjudication or order confirming the Account; and
 - (4) that the entire estate has been distributed to the creditors and parties entitled thereto and that no other property belonging to the estate has been received or remains to be accounted for by the fiduciary.
- (b) **Account Annexed.** In lieu of filing and advertising an Account, a personal representative who is distributing an estate under the provisions of 20 Pa.C.S. § 3531, or the guardian of the estate of a minor who has attained majority and whose gross estate does not exceed the statutory limitation of an administration without appointment of a guardian, may annex an Account to the petition for discharge with the information required above, modified to indicate any previous distribution, and suggesting the proper distribution of any balance on hand.
- (c) **Exception. This rule does not apply to the discharge of a trustee under a nonjudicial settlement agreement or a nonjudicial account settlement pursuant to 20 Pa.C.S. §§ 7710.1 or 7785.1, respectively.**

[Note: Rule 5.8 is based upon former Rule 12.7.] **Comment: This rule** is based upon former **[Rule 12.7] Pa.R.O.C.P. 12.7.**

A trustee is a type of fiduciary. See Pa.R.O.C.P. 1.3 (definition of “fiduciary”); see also 20 Pa.C.S. § 102.

Pursuant to Pa.R.O.C.P. 2.9(b), an adjudication of an Account discharges the fiduciary as to the transactions set forth in the adjudicated Account. There are, however, nonjudicial methods to discharge a trustee. See 20 Pa.C.S. §§ 7710.1, 7785.1.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment: Pursuant to Rule 2.9(b), an adjudication of an Account discharges the fiduciaries as to the transactions set forth in the adjudicated Account.

**SUPREME COURT OF PENNSYLVANIA
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PUBLICATION REPORT

Proposed Amendment of Pa.R.O.C.P. 5.8

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 5.8 of the Pennsylvania Rules of Orphans' Court Procedure. This proposal would identify nonjudicial methods for discharging a trustee, such as a nonjudicial settlement agreement or a nonjudicial account settlement as authorized by statute.

The Act of July 15, 2024, P.L. 786, No. 64, includes provisions relating to a "nonjudicial account settlement." See 20 Pa.C.S. § 7785.1. Section 7785.1 permits a trustee to settle a trust account by, among other things, providing beneficiaries and certain other persons with 30 months of account statements with notice that, absent any objection, the accounting will be deemed approved and future claims will be barred. See *id.* § 7785.1(b), (d). This option is available to the trustee when: (1) the trust terminates in full; (2) the trustee ceases or intends to cease to serve for any reason; or (3) the trustee seeks discharge for an interim accounting period when the trust is continuing. See *id.* § 7785.1(a). Anyone objecting to the nonjudicial settlement must give written notice to the trustee within 60 days and either: (1) submit the written objection to the court and "commence a proceeding for its resolution"; or (2) resolve the objection by a nonjudicial settlement agreement under § 7710.1. See *id.* § 7785.1(g).

In contrast to § 7785.1, Pa.R.O.C.P. 5.8(a) addresses a petition for the discharge of a fiduciary, the fiduciary's surety, or both "subsequent to an Account having been filed and confirmed." Rule 5.8(a)(4) requires that the petition set forth "that the entire estate has been distributed to the creditors and parties entitled thereto and that no other property belonging to the estate has been received or remains to be accounted for by the fiduciary." See Pa.R.O.C.P. 5.8(a)(4). The Committee was asked to review Rule 5.8 following the adoption of 20 Pa.C.S. § 7785.1 because the rule may suggest and is reportedly being interpreted as the only mechanism to obtain the discharge of a trustee, which is a type of fiduciary.

In addition to 20 Pa.C.S. § 7785.1, the Committee determined that § 7710.1 reflects that a nonjudicial settlement agreement can be used to, among other things, resolve: (1) the approval of a trustee's report or accounting or waiver of the preparation of a trustee's report or accounting; or (2) the resignation of a trustee. See 20 Pa.C.S. § 7710.1(d)(2), (d)(4). In contrast, § 7785.1 permits a trustee to obtain a nonjudicial settlement of account when: (1) the trust terminates in whole or in part; (2) the trustee ceases or intends to cease to serve for any reason; or (3) the trustee seeks discharge for

an interim accounting period when the trust is continuing. See 20 Pa.C.S. § 7785.1(a). The Committee believes it would be beneficial to cite §§ 7710.1 and 7785.1 in Rule 5.8 as exceptions to the general rule that the discharge of a fiduciary requires a confirmed or an annexed Account.

The Committee proposes adding new subdivision (c) to provide that Rule 5.8 “does not apply to the discharge of a trustee under a nonjudicial settlement agreement or a nonjudicial account settlement pursuant to 20 Pa.C.S. §§ 7710.1 or 7785.1, respectively.” The Committee believes that explicitly adding the exceptions to the rule will make clear the statutory alternatives to proceeding by an Accounting when a trustee seeks discharge.

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