

## Proposed New Pa.O.C. Rules 1.1 – 11.6 & Explanatory Notes

### PUBLICATION NOTICE

The Orphans' Court Procedural Rules Committee intends to recommend that the Supreme Court of Pennsylvania vacate Orphans' Court Rules 1.1 through 14.5 and adopt new Orphans' Court Rules governing the practice and procedures for the areas currently covered by these rules. The new rules are divided into sections addressing, *inter alia*, the filing and audit of Accounts, procedures for Orphans' Court matters raised by citation and petition, pre-hearing and post-hearing dispositions, and rules for practice before the Registers of Wills. In some cases, the current Orphans' Court rule has not been modified substantially, but is merely being relocated to a new section based upon the revised structure of the proposed new rules (e.g., Rules governing Specific Types of Petitions are moved from Rule 12 to Chapter IV and Rules governing Guardianships are moved from Rule 14 to Chapter V). The proposal also contains *Explanatory Comments*, which accompany certain rules to elucidate upon the addition or modification of certain provisions or to provide additional analysis of the relationship between the particular rule and another Orphans' Court rule and/or statutory provisions in the Probate, Estates and Fiduciaries Code.

This proposal has not been submitted to the Supreme Court of Pennsylvania for review in advance of this publication. The proposal, though, has been reviewed by an advisory group of Orphans' Court judges appointed by then-Chief Justice Ralph J. Cappy, and these judges have provided insights, comments, and suggestions incorporated into the proposal that is being published.

The Explanatory Report following this Publication Notice highlights the Committee's goals and considerations in revising the current version of Orphans' Court Rules and formulating this proposal. Please note that the Committee's Explanatory Report should not be confused with the official *Explanatory Comments* that accompany certain rules. Also be aware that the Supreme Court does not adopt the Committee's *Explanatory Comments* or the contents of the Explanatory Report.

Because the proposal vacates in its entirety the current Orphans' Court Rules 1.1 through 14.5 and replaces the vacated rules with proposed new and/or renumbered Orphans' Court Rules, this proposal does not contain bolded and underlined text to show additions; nor does it contain brackets to indicate deletions.

This proposal is a substantial overhaul of the current Orphans' Court Rules which have remained relatively intact for nearly four decades. As a result, the Committee encourages and welcomes input from attorneys and judges concerning this proposal, including comments that may address only a specific rule or series of rules. We request only that interested persons submit suggestions, comments, and/or objections **in writing** to the Committee through counsel, **no later than June 13, 2013**, at the following address:

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BY THE ORPHANS' COURT PROCEDURAL RULES COMMITTEE:

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## EXPLANATORY REPORT

### Proposed New Pa.O.C. Rules 1.1 – 11.6 & Explanatory Notes

#### Background

In 2006, the Orphans' Court Procedural Rules Committee ("Committee") began an extensive project to promote uniformity and to standardize the content of forms and pleadings being use across the Commonwealth. To that end, the Committee developed a series of statewide form petitions for adjudication/statements of proposed distribution for various fiduciaries stating Accounts as well as revising and developing Model Accounts for decedent's estates, trusts and charitable remainder unitrusts. The Committee also revised and developed statewide forms for use in guardianships of incapacitated persons and for use before the Registers of Wills. During the Committee's work in developing standardized, statewide forms, the Committee became aware of various and differing procedures among the counties for adjudicating and confirming an Account, for issuing citations, for ensuring notice to interested parties, and for resolving petitions and the issues raised therein. Moreover, the Committee noted that some counties lacked established written procedures for handling certain aspects of Orphans' Court litigation, resulting in unwritten customs or case-by-case determinations. In addition, the repeal of the equity rules in 2003 created a vacuum as Orphans' Court Rule 3.1 provides that in the absence of an applicable Orphans' Court Rule, pleading and practice in Orphans' Court should conform to the pleading and practice in equity.

Given these shortcomings, once the Committee completed its initial promulgation of statewide forms, the Committee began exploring the possibility of revising and amending the current Orphans' Court Rules. The Committee presented a proposal to then-Chief Justice Cappy in the fall of 2007. Justice Cappy not only embraced the proposal, but also appointed a working group of experienced Orphans' Court judges to provide assistance, overview and input. In announcing the Committee's project and the judicial appointments, Chief Justice Cappy explained that the "intent here is to simplify the current system and standardize governing procedures so everyone has a clearer idea of what is expected and better outcomes are realized for the citizens of Pennsylvania."

Again, quoting from the News Release issued by the Administrative Office of Pennsylvania Courts on October 17, 2007:

The proposed rule review is intended to:

- **Promote standardization of statewide practice and reduce variations caused by reliance on local practice.**

- **Provide better direction to practitioners and judges throughout the state, especially in counties without dedicated Orphans' Court divisions.**
- **Clarify certain procedures involving citation practice and pleadings.**
- **Harmonize Orphans' Court proceedings with general civil practice to the extent possible, given the unique subject matter within Orphans' Court jurisdiction.**

This project has continued in earnest for nearly five years. The Committee extends recognition and gratitude to prior Committee Chairs, Judge Calvin S. Drayer and Mary Jane Barrett, Esq., for their leadership and commitment to this project.

The Committee now publishes its proposal and solicits the input, comments and suggestions of practitioners and jurist throughout the Commonwealth, particularly those who practice routinely in the Orphans' Court divisions of various counties.

### **Proposed new Orphans' Court Rules 1.1 through 11.6**

This proposal reorganizes the placement of current Orphans' Court Rules. In brief summary, Chapter I contains introductory rules which consolidate and expand upon current Rule 1 and Rule 2; Chapter II contains rules and procedures specific to the filing and auditing of Accounts and the resolution of issues through the accounting process which encompasses and adds to the rules found in Rule 6, Rule 12 and Rule 13; Chapter III sets forth rules and procedures concerning the use and resolution of issues through citations and petitions which modifies and expands upon some of the rules currently found in Rule 3 and Rule 5; Chapter IV contains only rules relocated from Rule 12; Chapter V contains only rules relocated from Rule 14; Chapter VI provides rules relating to pre-hearing and hearing procedures which includes current Rule 3.6 and several new rules borrowed from civil practice; Chapter VII contains only current Rule 5.5; Chapter VIII contains only current Rule 3.7; Chapter IX provides new post-hearing procedures which dispense with current Rules 7.1 and 7.2, Chapter X contains the rules currently found as part of Rule 8; and Chapter XI sets forth rules relating to practice before the Register of Wills which relocates Rule 5.6 and Rule 6.12 and provides additional new rules.

As part of this proposal, all local rules will need to be revised, renumbered and reissued within one year from the adoption of the new Supreme Court Orphans' Court Rules. It is hoped that a period of one year will give each local Orphans' Court division sufficient time to review and reissue any local rules that it wishes to retain and draft any new local rules that it feels are necessary and appropriate.

The purpose of this proposal is two-fold: to provide uniformity in the Orphans' Court divisions across the Commonwealth; and where possible and reasonable, to conform Orphans' Court practice to civil practice. Following each rule in this proposal is a note indicating whether the proposed rule derives from a current Orphans' Court Rule, either in total or with modifications, or whether the rule derives from a rule of civil practice.

The Committee hopes by its proposal to provide a more uniform and efficient system for resolving disputes in Orphans' Court so that practitioners specializing in Orphans' Court matters can practice in multiple counties and so that other practitioners entering the division of the Orphans' Court either rarely or for the first time can still provide effective and competent representation to their clients. Improving the system for the good of the public and the efficient administration of justice is the ultimate goal.