

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa. O.C. Rules 1.7, 2.5, 2.7, 3.7, 5.1, and 10.5

The Orphans' Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa. O.C. Rules 1.7, 2.5, 2.7, 3.7, 5.1, and 10.5 for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 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 reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will 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:

**Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
orphanscourtproceduralrules@pacourts.us**

All communications in reference to the proposal should be received by **July 16, 2018**. 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,

Wayne M. Pecht, Esq.
Chair

Rule 1.7. Entry and Withdrawal of Counsel

(a) **Appearance.** Any counsel appearing before the court or the Register shall enter a written appearance by any one of the following means:

(1) filing an entry of appearance with the clerk or the Register;

(2) signing a legal paper that is filed with the clerk or the Register; or

(3) as prescribed by local rule, which may include submitting an appearance slip to the court, entering counsel's information when a legal paper is filed, or signing a cover sheet.

(b) **Withdrawal.** Counsel who has entered an appearance before the court as provided in subparagraph (a) shall not be permitted to withdraw without filing a petition to withdraw and obtaining the court's leave, unless co-counsel, if any, will continue representing the party or there is a simultaneous entry of appearance by other counsel that will not delay the litigation.

Note: Rule 1.7 has no counterpart in former Orphans' Court Rules, but is based upon many local rules of similar import.

Explanatory Comment: Admission *pro hac vice* in accordance with Pennsylvania Bar Admission Rule 301 shall proceed by request, the disposition and content of which shall conform to the requirements of Pennsylvania Rule of Civil Procedure No. 1012.1.

This rule does not address the procedure for withdrawal of counsel who has entered an appearance before the Register. Withdrawal of counsel before the Register shall be in accordance with local rule or at the discretion of the Register.

Rule 2.5. Notice of Account Filing

(a) No Account shall be confirmed or statement of proposed distribution approved unless the accountant has given written notice of the filing of the Account as provided in subparagraph (d) of this Rule to the following, as applicable:

(1) every unpaid claimant who has given written notice of his or her claim to the accountant or who has performed any action that is the equivalent of giving written notice as provided in 20 Pa.C.S. §§ 3384 or 7755;

(2) any other individual or entity with an asserted claim known to the accountant that is not shown in either the Account or the petition for adjudication/statement of proposed distribution as being either paid in full or to be paid in full;

(3) any other individual or entity known to the accountant to have or claim an interest in the estate or trust as a beneficiary, heir, or next of kin, except for those legatees or claimants whose legacies or claims have been satisfied in full as reflected in the Account or will be satisfied in full as proposed in the petition for adjudication/statement of proposed distribution; **[and]**

(4) **[F]**for an Account where a charitable interest is involved, refer to Rule 4.4[.]; **and**

(5) to each co-fiduciary who does not join in the statement of Account.

(b) Notice to an individual or entity shall be given in accordance with Rule 4.2; provided, however, that if the individual or entity is represented by counsel who has entered his or her appearance in accordance with Rule 1.7(a), notice shall be given to counsel and the individual or entity.

(c) If the proposed distribution is to an estate **having a charitable interest** or **to a trust**, and a charity is a “qualified beneficiary,” as defined in 20 Pa.C.S. § 7703, of that **[recipient estate or]** trust, then notice shall be given to the Attorney General on behalf of the charitable beneficiary. If the proposed distribution is to an estate or trust and any one of the accountants stating the Account is a personal representative or a trustee of the recipient estate or trust, then notice shall also be given to the beneficiaries of the estate or trust, to the extent known.

(d) Written notice, as provided in subparagraph (a) of this Rule, shall be mailed at least 20 days prior to the audit in those counties having a separate Orphans’ Court Division or 20 days prior to the date by which objections must be filed in all other counties, and the written notice shall state the date of the audit or the date by which objections must be filed, and the time and place of the audit, if one is to be held, to the extent then known. **A party residing outside of the United States shall have 60 days, rather than**

20 days, within which to file an objection. If an audit is to be held and the **date**, time, and place of the audit is not known at the time the notice is mailed, the notice shall state that the **date**, time, and place of the audit will be provided upon request. A copy of the Account, petition for adjudication/statement of proposed distribution, and any legal paper filed therewith shall be sent with the notice, unless the recipient of the notice is a trust beneficiary who is not a “qualified beneficiary” as defined in 20 Pa.C.S. § 7703, or unless the court orders otherwise in a particular matter.

Note: Although substantially modified, Rule 2.5 is derived from former Rule 6.3.

Explanatory Comment: Pursuant to the cross-references to 20 Pa.C.S. §§ 3384 and 7755, notice of the claim given to accountant’s counsel of record is notice to the accountant. See 20 Pa.C.S. § 3384(b)(4). If the court is inclined not to agree with accountant’s position, interpretation or proposed disbursements and distribution, best practice would be for the court to direct the accountant to notify the interested parties of the court’s position and what additional action must be taken by any interested party who objects to the court’s position.

It is permissible for a party to waive the written notice required by this Rule.

Rule 2.7. Objections to Accounts or Petitions for Adjudication/Statements of Proposed Distribution

(a) Objections to an Account and/or a petition for adjudication/statement of proposed distribution shall be filed with the clerk on or before the time and date of the audit in those counties holding an audit, and by a specified date in all other counties, with a copy **[sent by first-class United States mail, postage prepaid, to the accountant or the accountant's counsel, if represented, and to each interested party and claimant who received the notice pursuant to Rule 2.5, to the extent known] served pursuant to Rule 4.3.**

Rule 3.7. Time for Filing and Service of Responsive Pleadings

(b) A copy of the responsive pleading shall be **[sent to the petitioner or his or her counsel, if represented, and all interested parties identified in the petition or counsel representing an interested party if so identified in the petition or in a subsequent pleading. A certificate of service, listing the names and addresses of those individuals and entities receiving a copy of the responsive pleading shall be appended to, or filed contemporaneously with, the responsive pleading] served pursuant to Rule 4.3.**

Rule 5.1. Declaratory Judgment

(a) **Commencement of Action.** An action for declaratory judgment shall be commenced by petition **[and citation] pursuant to Rule 3.5** directed to the interested parties.

Note: Rule 5.1 has no counterpart in former Orphans' Court Rules, but is based upon Philadelphia Local Rule 1.2.P.

Explanatory Comment: See Rule 3.5(a) for the necessity of using a citation.

Rule 10.5. Notice to Beneficiaries and Intestate Heirs

(a) Within three (3) months after the grant of letters, the personal representative to whom original letters have been granted or the personal representative's counsel shall send a written notice of estate administration in the form approved by the Supreme Court to:

(1) every person, corporation, association, entity or other party named in decedent's will as a **[n outright]** beneficiary whether individually or as a class member;

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PUBLICATION REPORT

Proposed Amendment of Pa. O.C. Rules 1.7, 2.5, 2.7, 3.7, 5.1, and 10.5

The Orphans' Court Procedural Rules Committee ("Committee") is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa. O.C. Rules 1.7, 2.5, 2.7, 3.7, 5.1 and 10.5. These amendments will provide minor refinements to the Orphans' Court Rules that were adopted by the Court on December 1, 2015 and took effect on September 1, 2016.

Rule 1.7 provides for the entry of appearance and withdrawal of counsel. It was observed that Rule 1.7(a) addresses entry of appearance before the court and the Register, while Rule 1.7(b) only addresses withdrawal of counsel before the court and is silent on the requirements for withdrawal of counsel before the Register. The Committee recommends adding an Explanatory Comment to Rule 1.7 to clarify that the Rule does not address procedures for withdrawal of counsel before the Register, and that withdrawal of counsel before the Register shall be in accordance with local rule or at the discretion of the Register.

Rule 2.5 addresses notice of the filing of the Account. First, the Committee recommends adding a provision to Rule 2.5(a) to establish that notice of the filing of the Account should also be provided to each co-fiduciary who does not join in the statement of Account. The Committee also recommends amending Rule 2.5(c) to clarify that the reference to a "qualified beneficiary" in that Rule only applies to a distribution made to a trust. The phrase "having a charitable interest" is also added to Rule 2.5(c) to more accurately describe an estate under this Rule. The Committee recommends amending Rule 2.5(d) to provide that a party residing outside the United States has 60 days, rather than 20 days, in which to file an objection. The Committee also recommends clarifying the "time and place" of the audit in Rule 2.5(d) by adding the word "date" to that phrase. Finally, the Committee recommends amending the Explanatory Comment to Rule 2.5 to explain that it is permissible for a party to waive the written notice required by the Rule.

Rules 2.7 and 3.7 address the filing of objections, petitions and responsive pleadings. The Committee recommends amending Rules 2.7(a) and 3.7(b) to cross-reference the service requirements set forth in Rule 4.3.

Rule 5.1 addresses declaratory judgment actions. The Committee recommends amending Rule 5.1(a) and the Explanatory Comment to cross-reference Rule 3.5 regarding the use of citations when commencing a declaratory judgment action.

Finally, the Committee recommends amending Rule 10.5(a)(1) to eliminate the term “outright beneficiary.” “Outright beneficiary” is neither a defined term nor a term of art, and the Committee agrees that the reference in Rule 10.5(a)(1) should simply be to a “beneficiary.”

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