

THE COURTS

DELAWARE COUNTY

Orphans' Court Local Rules; Doc. No. 12-5040

[46 Pa.B. 4148]

[Saturday, July 30, 2016]

Order

And Now, this 20th day of July, 2016, it is Hereby Ordered and Decreed that all current Delaware County Orphans' Court Rules and Forms are rescinded effective September 1, 2016 and the following Delaware County Orphans' Court Rules are adopted and shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

CHAD F. KENNEY,
President Judge

CHAPTER I

Del.Co.O.C. Rule 1.1A. Short Title and Citation.

The Delaware County Orphans' Court Rules shall be known as such, shall be referred to individually as "Local Rule" and shall be cited as "Del.Co.O.C. Rule ____."

Del.Co.O.C. Rule 1.2A. Legal Publication.

The *Delaware County Legal Journal* is designated by the court as the legal publication for the advertising and publication of legal notices, in accordance with Pa.R.C.P. 430.

Del.Co.O.C. Rule 1.7A. Entry and Withdrawal of Counsel.

(1) In addition to the methods set forth in Rule 1.7, written appearance of any attorney may be entered by entering counsel's information on a legal paper filed of record.

(2) Written entry of appearance, however made, shall contain the attorney's name, Supreme Court Identification number, address and telephone number, and may contain a fax number and/or an email address.

(3) Inclusion of a fax number and/or email address in the written entry of appearance constitutes counsel's agreement to accept service of Legal Paper other than Citations or Notices by fax and/or email in accordance with Rule 4.3(c) and (d), and to accept service of notices, orders and opinions from the court by fax and/or email in accordance with Rules 4.3 and 4.5.

CHAPTER II

Del.Co.O.C. Rule 2.6A. Date of Filing.

An account shall be filed not later than the fifth Tuesday preceding the day on which it is called for audit, except when that Tuesday falls on a Court holiday, in which event such account must be filed not later than the day preceding the Court holiday.

Del.Co.O.C. Rule 2.7A. Audits and Claims.

(1) An appearance slip shall be filed on behalf of each party represented at audit. Counsel for the accountant, for any objector, or for any challenged claim shall be present at the call of the Audit List unless excused by the Court.

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(2) Testimony or argument will not be heard at the call of the Audit List. A later time for hearing or argument will be fixed by the Court if deemed necessary by the Court when a claim against an estate is not admitted by accountant or is contested by any interested party, or if a question of law is submitted for adjudication.

(3) Objections may be made orally at the call of the Audit List, in which case the objections shall thereafter be filed in writing within 10 days with notice as provided in Pa.O.C. Rule 2.7(a).

Del.Co.O.C. Rule 2.9A. Schedules of Distribution.

(1) *Filing.* The Court, when it appears advisable or when requested, will direct the attorney for accountant to prepare and file a schedule of distribution. Schedules shall be certified by the attorney for accountant to be correct and in conformity with the adjudication, and shall be filed with the Clerk. When a schedule is approved in writing by interested parties, the attorney for accountant shall also certify whether or not such parties constitute all of those affected thereby.

(2) *Confirmation.* If no objections are filed by the 20th day after the schedule was filed, it will be confirmed, as of course. Schedules approved in writing by all interested parties affected thereby will be confirmed, as of course, on the day filed. Thereupon the accountant shall have authority to make necessary assignments and transfers of any assets awarded in kind.

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(3) *Objections.* Objections to schedules of distribution shall be filed with the Clerk, and may not be filed later than the twentieth day after the schedule was filed, unless said period of twenty (20) days is extended by the Court. Such objections may raise questions relating only to the schedule itself, and shall in no event raise questions which were or could have been raised previously, by claims, or by objections to the account or petition for adjudication/statement of proposed distribution. Objections to schedules shall be in writing, numbered consecutively, signed by the objector or the objector's attorney and each objection shall:

(a) be specific as to description and amount;

(b) raise but one issue of law or fact, but if there are several objections to items included in or omitted from the schedule relating to the same issue, all such objections shall be included in the objection; and

(c) set forth briefly the reason(s) in support thereof.

(4) *Partial Confirmation.* Where the matters which are the subject of a schedule of distribution are so separate and distinct that an objection to any of them, whether sustained or dismissed, cannot affect the others, the confirmation of such schedule shall not be suspended except to the extent of

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the objection. Distribution may proceed as to all other matters and the usual process to enforce it may issue.

(5) *Additional Receipts and Disbursements.* Receipts and disbursements since the date to which the account was stated shall be set forth in the schedule of distribution.

Del.Co.O.C. Rule 2.9B. Schedules of Distribution—Notice of Filing.

(1) *When Notice Given.* Notice of filing the schedule of distribution shall be given to all interested parties affected thereby who do not submit with it their written approval, but only when the schedule contains:

(a) items of additional receipts or disbursements not included in the adjudication; or

(b) distribution of assets which were awarded in kind in the adjudication, but which were neither specifically bequeathed to the distributee nor elected by him to be taken in kind or which were revalued.

(2) *Time and Method of Notice.* Such notice shall be given no later than the day of the filing of the schedule, by notice to all the interested parties or their attorneys.

(3) *Return of Notice.* The attorney for accountant shall certify on the schedule that due notice of the filing thereof was given as required by this rule and he shall attach a copy of the notice and a list of those to whom notice was given.

Del.Co.O.C. Rule 2.9C. Objections to Schedule of Distribution—Notice of Filing, Time and Method, and Return.

(1) *To Whom Given.* Notice of filing of objections to the schedule of distribution shall be given to the accountant and to all interested parties affected thereby or their attorneys.

(2) *Time and Method of Notice.* Notice shall be given no later than the day of the filing of the objections to the schedule to the accountant and all other interested parties affected thereby or their attorneys. A copy of the objections shall be included with the notice to the accountant or the accountant's attorney.

(3) *Return of Notice.* At the time of the filing of the objections, the attorney for the objector shall file a certification that due notice of the filing thereof was given as required by these rules, to which certification there shall be attached a copy of said notice as well as the names and details of the notice given to the parties notified or their attorneys.

Del.Co.O.C. Rule 2.9D. Distribution of Real Estate.

(1) *When no partition or allotment required, or when distributees agree to schedule.* Schedules of distribution shall include separate awards of real estate to the parties entitled thereto, whether individually or, where the circumstances require, in undivided interests. The real estate so awarded shall be described in the same detail and with the same particularity as is commonly required to be included in deeds and should recite how the title was acquired by decedent. Approval of schedules of distribution shall be in the nature of confirmation of title in the respective distributees, and the Clerk is authorized to certify to integral excerpts or extracts from such schedules, so approved, for purposes of recording such devolutions of real estate in the Office of the Recorder of Deeds.

(2) *Partition or Allotment of Real Estate Requested by Accountant or by a Party in Interest.* Whenever partition or allotment of real estate is requested by the accountant or a party in interest,

the request shall be made at the audit and the Court shall make such order, including a direction to submit an information certificate, issued by an attorney or a responsible title insurance company, showing the current state of the title, the preparation of a schedule of distribution if required, notice to the parties, and fixing the dates of further hearings, as may be necessary under the circumstances to protect all parties in interest.

CHAPTER III

Del.Co.O.C. Rule 3.4A. Proposed Form of Decree.

(1) All petitions (excluding Petitions for Adjudication/Statements of Proposed Distribution and excluding petitions for citation which are specifically addressed in Pa.O.C. Rule 3.5(a)) shall have a proposed preliminary decree which provides wording for a hearing to be scheduled, should the Court deem it necessary, affixed to the Petition.

(2) The proposed form of decree should be entitled: Decree.

Del.Co.O.C. Rule 3.5A. Citation Practice.

(1) Unless otherwise stated in both the Court's decree and in the citation, the return date set forth in the citation shall represent a return date only, for filing return of service and/or notice, and for the filing of any response to the pleading pursuant to which the citation has been issued. Upon request of counsel or by order of court a hearing may be scheduled after the return date.

(2) A copy of the preliminary decree signed by the Court shall be served upon each cited party along with the citation and a copy of the petition as set forth in Pa.O.C. Rule 3.5(a)(2).

Del.Co.O.C. Rule 3.5B. Notice Practice.

(1) If a petition is filed and a preliminary decree setting a hearing date and/or a return date is issued without citation by the Court, service of the preliminary decree and the petition shall be made on all interested parties in accordance with Pa.O.C. Rule 4.3(a).

Del.Co.O.C. Rule 3.5C. Uncontested Petitions.

(1) If a petitioner believes there will be no objections, by creditors and/or parties in interest, to a petition being filed, a petitioner may state this in the petition and send notice pursuant to Pa.O.C. Rule 4.2 to all such creditors and/or parties at least twenty (20) days prior to filing said petition advising said creditors and/or parties in interest of the projected date of filing said potentially unopposed petition. In the notice, petitioner should advise said creditors and/or parties in interest that petitioner intends to state to the Court in the petition that said petition is unopposed and any creditor or party in interest who disagrees with petitioner's position that the petition is unopposed must notify petitioner or petitioner's counsel on or before the projected date of filing of the petition. If no creditor or party in interest notifies petitioner or petitioner's counsel by the projected filing date that the petition is opposed, the Court may rule on the petition without scheduling a hearing thereon, or may schedule a hearing if the Court believes a hearing is necessary for any reason.

(2) The date of the notice shall be the date of mailing, or service of the notice. A certification by counsel listing the persons notified and stating the date and manner of service, together with a copy of the notice given, shall be attached to the petition.

(3) If all potential creditors and/or parties in interest are in agreement and have signed consents to the proposed petition, the petitioner may attach consents to the petition and advise the Court that

all parties in interest have consented to the petition. Under these circumstances, the petitioner does not need to give twenty (20) days notice of the filing of the proposed petition. Upon receipt of the petition, wherein petitioner has advised the Court that all creditors and/or parties in interest have signed consents, and said consents are attached to the petition, the Court may rule on said petition without scheduling a hearing thereon, or may schedule a hearing if the Court believes a hearing is necessary for any reason.

(4) The above manner of proceeding (without a hearing) is not available in matters wherein the relevant statutes require a hearing.

Del.Co.O.C. Rule 3.12A. Necessary Identification Information of Attorney.

The telephone number and Pennsylvania Supreme Court Identification Number of each signing attorney must be included on all pleadings and responsive pleadings that the attorney is filing in addition to the attorney's address.

CHAPTER V

Del.Co.O.C. Rule 5.2A. Whether Petition Required.

The application for the family exemption may be made by petition to the Court in any case and must be by petition in all cases not within Del.Co.O.C. Rules 5.2B and 5.2C.

Del.Co.O.C. Rule 5.2B. Voluntary Distribution.

When the personal representative at his own risk delivers or permits to be retained assets of the estate in satisfaction or partial satisfaction of the exemption he shall set forth the same as a credit in the account.

Del.Co.O.C. Rule 5.2C. Award in Adjudication.

When the spouse or an adult child claims the exemption, but payment or delivery thereof is not to be made until distribution of the estate is awarded by the court upon the personal representative's account, the award thereof will be included in the adjudication upon written request submitted at the audit. Such request may be made by the personal representative or the claimant and may be made by including it in the petition for adjudication.

Del.Co.O.C. Rule 5.2D. Procedure When Appraisal of Personal Property Necessary.

When personal property is claimed and an appraisal is necessary, the court will direct the appraisal to be made by special order in each case.

Del.Co.O.C. Rule 5.2E. Notice.

When the procedure is without petition, no notice other than that to the personal representative need be given of the claim for exemption.

Del.Co.O.C. Rule 5.2F. Procedure When Challenge to Family Exemption.

(1) *When Petition Filed.* When the procedure is by petition, challenges to the appraisalment or allowance, or both, may be raised pursuant to the procedure outlined in Pa.O.C. Rules 3.6 and 3.7.

(2) *Challenges to Appraisalment.* Challenges which relate only to the amount of the appraisalment will be dismissed unless a definite and bona fide bid for the property is made, or facts warranting consideration by the court appear.

Del.Co.O.C. Rule 5.4A. Extension of Time.

A petition for an extension of time in which the surviving spouse may file an election to take against the will shall include the items required for a petition under Pa.O.C. Rule 5.4(a) to the extent applicable.

Del.Co.O.C. Rule 5.5A. Filing of Report.

A guardian ad litem or trustee ad litem shall file a report if so ordered by the court.

Del.Co.O.C. Rule 5.6A. Appearance at Presentation of Petition.

If the minor is under fourteen (14) years of age, the court may require the appearance of the minor in court to make the selection of a guardian of the estate or of the person.

Del.Co.O.C. Rule 5.6B. Certificate of Health.

At a hearing on a petition to appoint a guardian of the person of a minor, the petitioner shall offer into evidence a certificate of health signed by a licensed physician, attesting to the present condition of health of the following persons:

- (1) the minor;
- (2) the proposed guardian(s).

Del.Co.O.C. Rule 5.6C. Certification of Household Residents.

At a hearing on a petition to appoint a guardian of the person of a minor, the petitioner shall offer into evidence a certification attesting to the name, age, and relationship to the minor of each individual residing in the household with the proposed guardian(s) and the minor.

Del.Co.O.C. Rule 5.6D. Child Abuse and Police Clearances.

At a hearing on a petition to appoint a guardian of the person of a minor, the petitioner shall offer into evidence current (within one (1) year of the hearing) child abuse and police clearances on forms provided by the Department of Human Services and the State Police for the following persons:

- (1) the proposed guardian(s);
- (2) each individual aged eighteen (18) years or older who is residing in the household with the proposed guardian(s) and the minor.

Del.Co.O.C. Rule 5.6E. Federal Bureau of Investigation Clearance.

(1) Prior to a hearing on a petition to appoint a guardian of the person of a minor, the proposed guardian(s) and each individual aged eighteen (18) years or older who is residing in the household with the proposed guardian(s) and the minor shall submit a full set of fingerprints to the Pennsylvania State Police for the purpose of a record check, and the Pennsylvania State Police or its authorized agent shall submit the fingerprints to the Federal Bureau of Investigation for the purpose of verifying the identity of the proposed guardian(s) and each individual aged eighteen (18) years or older who is residing in the household with the proposed guardian(s) and the minor and obtaining a current record of any criminal arrests and convictions. (This Rule is designed to match the requirements to be met by Volunteers Having Contact with Children as outlined in 23 Pa.C.S. 6344.2).

(2) The verification(s) of identity and record(s) obtained from the Federal Bureau of Investigation for the person(s) stated above shall be offered into evidence at the hearing on the petition to appoint a guardian of the person of the minor.

Del.Co.O.C. Rule 5.6F. Allowances.

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

- (1) the manner of the guardian's appointment and qualifications and the dates thereof;
- (2) 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 address of the minor's spouse and children, if any;
- (3) the value of the minor's estate, real and personal, and the net annual income;
- (4) the circumstances of the minor, whether employed or attending school; if the minor's father, mother or other person 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 their duty to support the minor; and whether there is adequate provision for the support and education of the minor, and/or the minor's spouse and children;
- (5) the date and amount of any previous allowance by the court;
- (6) the financial requirements of the minor and his family unit, in detail, and the circumstances making such allowance necessary.

Del.Co.O.C. Rule 5.10A. Public Sale, Contents of Petition, Additional Requirements.

(1) *Personal Representative*—A petition by a personal representative to sell real property at public sale, under Section 3353 of the Probate, Estates and Fiduciaries Code shall also set forth in separate paragraphs:

- (a) 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;
- (b) that the personal representative is not otherwise authorized to sell by the Code; 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 reasons;
- (c) whether an inventory and appraisal 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;

(d) if the personal representative entered bond with the Register, the name of the surety and the amount of such bond;

(e) the names and relationships of all interested parties, a brief description of their respective interests, whether any of them are deceased, minors, or incapacitated persons, and if so, the names and a reference to the record of the appointment of their fiduciaries;

(f) a full description of the real property to be sold, the improvements thereon, by whom and in what capacity it is occupied, its rental value and current tax assessment; and

(g) sufficient facts to enable the court to determine that the sale is desirable for the proper administration and distribution of the estate.

(2) *Trustee*—A petition by a trustee to sell real property at public sale, under Section 7792 of the Probate, Estates and Fiduciaries Code shall also set forth in separate paragraphs:

(a) how title was acquired to the property which is the subject of the petition, including the date and place of probate of the will, or recording of the deed;

(b) that the trustee is not otherwise authorized to sell by the Probate, Estates and Fiduciaries Code, 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;

(c) a recital of the relevant provisions of the will or deed pertaining to the real property to be sold, and of the relevant history of the trust;

(d) the names and relationships of all interested parties, a brief description of their respective interests, and whether any of them are deceased, minors, or incapacitated persons, and if so, the names and a reference to the record of the appointment of their fiduciaries;

(e) a full description of the real property to be sold, the improvements thereon, by whom and in what capacity it is occupied, its rental value and current tax assessment; and

(f) sufficient facts to enable the Court to determine that the proposed sale is for the best interests of the trust.

(3) *Guardian*—A petition by a guardian of a minor's estate to sell real property at public sale, under Section 5155(1) of the Probate, Estates and Fiduciaries Code shall also set forth in separate paragraphs:

(a) the age of the ward;

(b) the names of the ward's next-of-kin and the notice given them of the presentation of the petition. When there are no known next-of-kin who are sui juris to whom notice may be given, public notice in accordance with Del.Co.O.C. Rule 5.10C, must be given and proofs thereof must be attached to the petition as an exhibit;

(c) how title was acquired, stating the date and place of probate of the will or recording of the deed;

(d) a recital of the provisions of the will or deed relating to the real property to be sold;

(e) the nature and extent of the interest of the ward, and of other persons with an interest, if any, in the real property;

(f) a full description of the real property to be sold, the improvements thereon, by whom and in what capacity it is occupied, its rental value and current tax assessment; and

(g) sufficient facts to enable the court to determine that the proposed sale will be in the best interest of the ward.

Del.Co.O.C. Rule 5.10B. Public Sale, Exhibits.

The following exhibits shall be attached to a petition by a personal representative, trustee or guardian, to sell real property at public sale:

- (1) a copy of the will, deed, or decree by which the fiduciary was appointed;
- (2) any consents or joinders of interested parties, and the names and a copy of the notice which has been given to those parties who do not consent or join;
- (3) consent by any mortgagee whose lien would otherwise not be discharged by the sale; and
- (4) an affidavit as to value by one real estate appraiser.

Del.Co.O.C. Rule 5.10C. Notice.

After the allowance of a petition for public sale of real property, notice of the public sale shall be given:

- (1) by advertisement once a week for three (3) consecutive weeks in the *Delaware County Legal Journal* and in one other newspaper of general circulation in Delaware County in the vicinity of the subject property; and by posting notice on the premises and three (3) additional notices in the immediate vicinity of the premises to be sold; and
- (2) by personal notice or certified mail to all interested parties of the time and place of the proposed sale at least twenty (20) days prior thereto; or
- (3) by such other notice as the Court may by special order direct.

Del.Co.O.C. Rule 5.10D. Security.

On the return day of the sale, the Court in the decree approving or confirming the public sale, will fix the amount of bond or additional security which the personal representative, trustee, or guardian shall be required to enter, or will be excused from entering additional security.

Del.Co.O.C. Rule 5.11A. Exhibits.

The following exhibits shall be attached to a petition by a fiduciary to sell real estate at private sale:

- (1) a copy of the will, deed, or decree by which the fiduciary was appointed;
- (2) any consents or joinders of interested parties, and the names and a copy of the notice which has been given to those parties who do not consent or join;
- (3) consent by any mortgagee whose lien would otherwise not be discharged by the sale, or if not attached, the reason therefore;

- (4) a copy of the agreement of sale.

Del.Co.O.C. Rule 5.11B. Procedure on Day Fixed for Approval.

(1) *Private Sale.* Whenever prior to or on the day fixed for approval of a private sale an additional bona fide offer(s) is received by the petitioner, the additional bona fide offer(s) and the petitioner's recommendation as to which offer for sale should be approved shall be submitted to the Court for consideration.

(2) *Private Exchange.* The procedure in the event another person appears on the day fixed for approval of an exchange, for the purpose of offering different consideration, shall be as the Court directs by special order.

Del.Co.O.C. Rule 5.11C. Security.

The Court, in the decree approving or confirming the private sale, will fix the amount of bond or additional security which the fiduciary shall be required to enter, or will excuse the fiduciary from entering bond or additional security.

Del.Co.O.C. Rule 5.12A. Additional Requirements.

(1) *Exhibits.* There shall be attached to a petition to mortgage or lease property, where applicable:

- (a) a copy of the will, deed or decree by which the fiduciary was appointed;
- (b) consents to the mortgage or lease signed by those interested parties who do not join in the petition, and the names and a copy of the notice which has been given to those parties who do not consent;
- (c) a written statement by the proposed mortgagee indicating a commitment to grant the mortgage loan; and
- (d) an appraisal by a real estate appraiser of the real property on which the proposed mortgage is to be secured.

(2) *Security.* The amount of the bond or initial security required to be entered, or the waiver thereof, will be determined by the Court in its decree approving the proposed mortgage.

CHAPTER VII

Del.Co.O.C. Rule 7.1A. Pretrial Conference.

(1) In any action, the Court, of its own motion or on motion of any party, may direct the attorneys for the parties to appear for a conference to consider:

- (a) the simplification of issues;
- (b) the necessity or desirability of pleadings and/or amendments thereto;
- (c) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

- (d) limitations on the number of expert witnesses;
- (e) the advisability of a preliminary referral of issues to a master for findings to be used as evidence when the trial is to be by jury; and
- (f) such other matters as may aid in the disposition of the action.

(2) The Court may make an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and limiting the issues for trial to those not disposed of by admissions or agreements of the attorneys. Such order, when entered, shall control the subsequent course of the action unless modified at the trial to prevent manifest injustice.

Del.Co.O.C. Rule 7.1B. Practice as to Depositions, Discovery, Production of Documents and Perpetuation of Testimony.

(1) Leave to take depositions, or to perpetuate testimony, or to obtain discovery or the production of documents, may be granted only on petition upon cause shown, except upon agreement of parties and counsel, or except when such depositions, perpetuation of testimony or other discovery tools are required by statute or rule (e.g., in a guardianship proceeding).

(2) Petitions filed pursuant to this Del.Co.O.C. Rule 7.1B shall include a description of all efforts made to resolve discovery issues informally. Petitions shall also state the identity of the persons who are to be deposed, the testimony that is to be perpetuated, the documents that are to be produced, and a description of any other discovery requested. The petition shall also state the reasons why the aforementioned discovery is necessary and relevant to the litigation.

Del.Co.O.C. Rule 7.2A. Procedure for Motions for Judgment on the Pleadings.

(1) Motion for Judgment on the Pleadings may be accompanied by a memorandum of law in support thereof.

(2) Service shall be made in conformity with Pa.O.C. Rule 4.3.

(3) All such motions shall be accompanied by a notice, plainly appearing on the face thereof, of the date the motion was filed with the Clerk and advising that a reply memorandum of law may be filed within twenty (20) days from that date. The moving party shall also file with this motion a certification of service in conformity with Pa.R.C.P. 405(b). This certification shall state that the notice required by this Del.Co.O.C. Rule 7.2A has been given.

(4) Upon receiving the record papers, the Clerk shall then refer the matter to the appropriate judge. All requests for an extension of the prescribed time in which to answer such motions must be approved by the Court. Such approval shall be sought by a letter addressed to the Clerk. No agreement entered into solely by the parties will be honored by the Court.

(5) If no memoranda are filed with regard to this motion, the Court may dispose of the matter without such memoranda.

(6) If any matter is settled or withdrawn prior to disposition, the Clerk shall be promptly advised, and the moving party shall file an appropriate praecipe with the Clerk.

(7) The Court, in its discretion, may grant additional time in which to file a reply memorandum, request additional memoranda, or call for oral argument, or advance the time for filing.

Del.Co.O.C. Rule 7.3A. Procedure for Motions for Summary Judgment.

(1) Motion for Summary Judgment may be accompanied by a memorandum of law in support thereof.

(2) Service shall be made in conformity with Pa.O.C. Rule 4.3.

(3) All such motions shall be accompanied by a notice, plainly appearing on the face thereof, of the date the motion was filed with the Clerk and advising that a reply memorandum of law may be filed within thirty (30) days from that date. The moving party shall also file with this motion a certification of service in conformity with Pa.R.C.P. 405(b). This certification shall state that the notice required by this Del.Co.O.C. Rule 7.3A has been given.

(4) Upon receiving the record papers, the Clerk shall then refer the matter to the appropriate Judge. All requests for an extension of the prescribed time in which to answer such motions must be approved by the Court. Such approval shall be sought by a letter addressed to the Clerk. No agreement entered into solely by the parties will be honored by the Court.

(5) If no memoranda are filed with regard to this motion, the Court may dispose of the matter without such memoranda.

(6) If any matter is settled or withdrawn prior to disposition, the Clerk shall be promptly advised, and the moving party shall file an appropriate praecipe with the Clerk.

(7) The Court in its discretion may grant additional time in which to file a reply memorandum, request additional memoranda, or call for oral argument, or advance the time for filing.

CHAPTER IX

Del.Co.O.C. Rule 9.1A. Local Rule as to Notice.

Auditors and masters shall give reasonable notice of hearings to be held by them to all interested parties or to their attorneys of record in the manner provided in Pa.O.C. Rule 4.3.

Del.Co.O.C. Rule 9.6A. Notice and Objections.

An auditor or master shall give notice of the filing of the auditor's or master's report to all parties of record. Any interested party shall have the right to file objections to such report within ten (10) days of the date of such report or within such other time period directed by the auditor or master. If any objection is filed, the matter shall be set for argument at the time and place directed by the auditor or master, and with such notice to parties in interest or their counsel of record as the auditor or master directs.

Del.Co.O.C. Rule 9.7A. Decree.

If no objection is filed within the period expressed in Del.Co.O.C. Rule 9.6A, the Court may enter a decree confirming the auditor's report or adopting the master's report.

CHAPTER X

Del.Co.O.C. Rule 10.2A. Petition Practice.

(1) All Pleadings, Petitions, Citations, and Responsive Pleadings, as well as Preliminary and Final Decrees, shall be captioned: "In the Office of the Register of Wills of Delaware County, PA."

(2) Delaware County Local Rules established for PA Orphans' Court Rule 3.4 shall apply for practice before the Register of Wills.

(3) All Preliminary/Final Decrees and Citations that are filed with a pleading shall contain the wording, "By the Register" at the bottom of the Decree/Citation for the Register of Wills' signature.

(4) The procedure for rules to show cause shall be as provided in Pa.R.C.P. 206.4, et seq., as well as Del.Co.O.C. Rules 10.2A(1) and 10.2A(3).

(5) Del.Co.O.C. Rules 3.5A, 3.5B, and 3.12A shall apply to practice before the Register of Wills.

(6) Counsel who has entered an appearance before the Register of Wills as provided in Pa.O.C. Rule 1.7(a) shall not be permitted to withdraw without filing a petition to withdraw and obtaining the Register's permission, 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 proceedings.

CHAPTER XIV

Del.Co.O.C. Rule 14.2A. Format and Rules for Guardianship Filings.

(1) The practice and procedure for guardianship matters follows that set forth in the Pa.O.C. Rules, with additional elements to reflect the purpose and practice of 20 Pa.C.S. Chapter 55, as generally described in these Local Rules for Chapter XIV of the Pa.O.C. Rules.

(2) The general format for petition practice and pleading for guardianship matters shall be as outlined in Chapter III of the Pa.O.C. Rules and related Del.Co.O.C. Rules, with modifications necessary to fulfill the statutory purposes of 20 Pa.C.S. Chapter 55, including, without limitation thereto:

(a) Pa.O.C. Rule 3.3 shall be followed as applicable;

(b) the applicable petition content described in Pa.O.C. Rule 3.4(a) shall be supplemented by the required petition content described in 20 Pa.C.S. § 5511;

(c) consent of the proposed guardian, if any, shall be attached to the petition;

(d) service of the citation is by personal service as set forth in 20 Pa.C.S.A. § 5511; the requirement for additional service of a citation by first class mail, Del.Co.O.C. Rule 3.5A(2), does not apply to this type of service;

(e) the time period for rescheduled proceedings in Pa.O.C. Rules 3.5(a)(5) may be modified by the court as appropriate to the circumstances;

(f) the notice to plead described in Pa.O.C. Rule 3.5(b) shall be modified to reflect the guardianship proceeding and the notice shall include copies of the Citation with Notice and the Preliminary Decree with hearing date, and a description of the proceedings; and

(g) objections and responsive pleadings may be presented within twenty (20) days from the date of notice and prior to the scheduled hearing.

(3) Notice to U.S. Department of Veterans Affairs. Consult 20 Pa.C.S. § 8411 regarding notice to the United States Department of Veterans Affairs, or its successor, upon filing of a petition for

guardianship where benefits of compensation or insurance or other gratuity is payable to or for the alleged incapacitated person by that agency.

Del.Co.O.C. Rule 14.2B. Testamentary Writings.

All testamentary writings of the incapacitated person found by the guardian or in the possession of any other person shall at the time of the filing of the inventory be submitted by the guardian or such other person to the Court for its inspection, together with a photographic type copy to be retained by the Judge for his private file.

Committee Comment: Neither the will nor a copy thereof nor any description of its provisions should be permitted to become part of a file available for public inspection. See *Widener Estate*, 437 Pa. 294 (1970).

Del.Co.O.C. Rule 14.2C. Allowances from Incapacitated Persons' Estates.

(1) *Petitions.* Petitions for allowances from an incapacitated person's estate or for the payment of counsel fees shall set forth:

(a) the name of the guardian, the date of his appointment; if the petitioner is not the guardian, his relationship to the incapacitated person, and, if not related, the nature of his interest;

(b) a summary of the inventory, the date it was filed, and the nature and present value of the estate;

(c) the address and the occupation, if any, of the incapacitated person;

(d) the names and addresses of the incapacitated person's dependents, if any;

(e) a statement of all claims of the incapacitated person's creditors known to petitioner; and

(f) a statement of the requested distribution and the reasons therefor, and a statement of all previous distributions allowed by the court.

(2) *Notice to U.S. Department of Veterans Affairs.* If any portion of the incapacitated person's estate is received from the United States Department of Veterans Affairs or its successor, notice of the request for allowance shall be given to that agency.

Del.Co.O.C. Rule 14.2D. Certification.

(1) In any petition filed pursuant to 20 Pa.C.S. § 5511, counsel for petitioner shall file with the Clerk at least seven (7) days prior to the hearing a Certification that provides the following information to the best of counsel's knowledge, information and belief:

(a) whether counsel has been retained by or on behalf of the alleged incapacitated person;

(b) whether the issue of capacity is or is not contested;

(c) whether the testimony on the issue of capacity shall be presented in one or more of the following manners:

(i) written interrogatory;

(ii) videotape deposition;

(iii) live testimony in court;

(d) whether the issue relating to the choice of guardian is contested; and

(e) whether the alleged incapacitated person will or will not be present at the hearing pursuant to 20 Pa.C.S. § 5511(a)(1) and (2).

(2) Information regarding the advisability of appointment of a guardian or attorney ad litem for the alleged incapacitated person may be provided to the Court for action by the Court with this filing or at another time as appropriate under the circumstances.

(3) Forms for this Certification are available online as described in Del.Co.O.C. Rule 14.5A(1).

Note: Counsel is advised to carefully review the requirements of 20 Pa.C.S. § 5511 in completing the Certification required.

Del.Co.O.C. Rule 14.2E. Testimony.

(1) Testimony of a person qualified to evaluate relevant incapacities of the alleged incapacitated person is required for the hearing on incapacity (20 Pa.C.S. § 5518).

(a) In contested matters, medical or psychological testimony may be provided by written interrogatory, videotape deposition, or live testimony in court, as agreed to by the parties, with adequate notice provided. No petition to the Court is required with agreement of the parties.

(b) In uncontested matters, the medical or psychological testimony may be provided via verified written interrogatories. No petition to the Court is required. Forms of such written interrogatories approved by the court are available at the Office of the Clerk of the Orphans' Court or online as described in Del.Co.O.C. Rule 14.5A(1).

Del.Co.O.C. Rule 14.3A. Accounts and Distribution.

The practice and procedure with respect to the filing and audit of accounts, as well as the distribution of the assets comprising the estate, shall conform with the practice and procedure governing accounts in Chapter II of the Pa.O.C. Rules and related Del.Co.O.C. Rules.

Del.Co.O.C. Rule 14.5A. Forms.

(1) Please refer to forms on the website for the Delaware County Government (<http://www.co.delaware.pa.us/documentcenter.html>), Orphans' Court forms. Mandatory state-prescribed Orphans' Court forms listed in Pa.O.C. Rule 14.5 must be used verbatim. When using other local forms, filings may be made in substantial compliance with these forms.

(2) The mandatory state form required to be filed under the Pennsylvania Uniform Firearms Act (18 Pa.C.S. § 6105(c)(4)) and the Pennsylvania Mental Health Procedures Act (50 P.S. § 7109(d)) within seven (7) days of adjudication of incapacity, is available from the Clerk of the Orphans' Court or online as described in (1) immediately above.

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