

ORPHANS' COURT PROCEDURAL RULES COMMITTEE ADOPTION REPORT

Adoption of Pa.R.O.C.P. 10.7 and Amendment of Pa.R.O.C.P. 15.10

On September 30, 2024, the Supreme Court of Pennsylvania adopted Pennsylvania Orphans' Court Rule of Procedure 10.7 and amended Rule 15.10. Pa.R.O.C.P. 10.7 provides for, among other things, the filing of an affidavit 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. The amendment to Pa.R.O.C.P. 15.10 corrects a citation. The Orphans' Court Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

On July 23, 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 Pa.R.O.C.P. 10.7 and are outside the scope of the proposed rule.

The Committee first published for public comment a proposed new Pa.R.O.C.P. 10.7 that cross-referenced 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 that 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) 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.

Pa.R.O.C.P. 10.7 further differentiates 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). Subdivision (c) provides for a personal representative to file an affidavit with the Register, 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, an affidavit 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 Pa.R.O.C.P. 10.7 requires the filing of an affidavit with the Register 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 did not 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 could 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)).

The revised proposal was republished for comment. See 52 Pa.B. 7362 (December 3, 2022). The Committee received no comments pertaining to the republished proposal.

In addition to the adoption of Pa.R.O.C.P. 10.7, the Court also amended Pa.R.O.C.P. 15.10(c)(2) to correct a citation. No substantive changes were made to Pa.R.O.C.P. 15.10.

These rule changes become effective on January 1, 2025.