

**SUPREME COURT OF PENNSYLVANIA
Orphans' Court Procedural Rules Committee**

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Rule 10.7 of the Pennsylvania Orphans' Court Rules

The Orphans' Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Rule 10.7 of the Pennsylvania Orphans' Court Rules cross-referencing 20 Pa.C.S. § 3908 related to procedures to obtain disclosure of a decedent's digital assets for the reasons set forth in the accompanying Publication 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.

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

**Pamela S. Walker, Counsel
Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
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Harrisburg, PA 17106-2635
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All communications in reference to the proposal should be received by **May 10, 2021**. 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,

Kenneth G. Potter, Esq.
Chair

[This is an entirely new Rule.]

Rule 10.7 Affidavit for Disclosure of Digital Assets

The procedure for a personal representative to file an affidavit to obtain disclosure of the digital assets of a decedent is set forth at 20 Pa.C.S. § 3908.

Explanatory Comment: This rule was adopted in 20__ to cross-reference provisions of the Revised Uniform Fiduciary Access to Digital Assets Act relating to the disclosure of the digital assets of a decedent to a personal representative. See 20 Pa.C.S. §§ 3901–3917. The term “digital asset,” as used in this rule, means an electronic record in which a decedent had a right or interest, but not an underlying asset or liability unless the asset or liability is itself an electronic record. 20 Pa.C.S. § 3902.

While registers of wills are not subject to the *Case Records Public Access Policy of the Unified Judicial System*, they are encouraged to ensure the confidentiality of identifying information related to the decedent’s digital assets.

SUPREME COURT OF PENNSYLVANIA
Orphans' Court Procedural Rules Committee

PUBLICATION REPORT

Proposed Adoption of Rule 10.7 of the Pennsylvania Orphans' Court Rules

The Orphans' Court Procedural Rules Committee ("Committee") is considering proposing to the Supreme Court of Pennsylvania the adoption of Rule 10.7 of the Pennsylvania Orphans' Court Rules ("Rules"). Proposed Rule 10.7 would provide a cross-reference to 20 Pa.C.S. § 3908 and relates to the filing of an affidavit with the register of wills for the purpose of obtaining access to a decedent's digital assets.

On July 23, 2020, the Governor signed into law Act 72 of 2020, the Revised Uniform Fiduciary Access to Digital Assets Act ("Act"). See 20 Pa.C.S. §§ 3901–3917. A digital asset is defined as "an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record." See *id.* § 3902. The Act sets forth methods for individuals to plan for the management and disposition of their digital assets upon death. If a decedent did not plan for the distribution of their digital assets, e.g., through the custodian of the digital assets or in a will, the decedent's court-appointed fiduciary can gain access to the digital assets as provided in 20 Pa.C.S. § 3908.

Unless the decedent prohibited the disclosure of the digital assets or a court directs otherwise, the Act establishes the requirements for a personal representative to obtain disclosure of a decedent's digital assets from the custodian. See *id.* The Act provides for the filing of an affidavit with the register of wills to obtain disclosure of the digital assets in lieu of a court finding pursuant to § 3908(a)(4)(iv). See *id.* § 3908(b). To utilize the affidavit procedure, the personal representative must file an affidavit with the register setting forth information related to the decedent's digital assets, such account numbers, usernames, address, or other unique subscriber information assigned by the custodian, evidence linking the account to the user, and an averment that disclosure of the decedent's digital assets is reasonably necessary for administration of the estate. See *id.* § 3908(b)(1). The personal representative must file the affidavit with or supplemental to a petition for grant of letters. See *id.* § 3908(c)(2). The personal representative may then utilize a copy of the executed affidavit as set forth in the Act. See *id.* § 3908(b).

The Committee considered other approaches to incorporating the relevant provisions of § 3908 into the Rules, either by a detailed rule or changes to the petition for grant of letters. However, upon review of § 3908, the Committee believed the procedures contained in the statute were adequate. The practice of incorporation by reference of statutory procedures through rulemaking exists in rules governing the determination of incapacity. See Pa. O.C. Rule 14.6(a).

The Committee did not favor changes to the form petition for grant of letters because an averment in the petition or an affidavit for access to the decedent's digital assets can be filed either at the time of filing the petition or as a supplement to the petition. Such a revised form may suggest that the digital assets affidavit must be filed concurrently with the petition, even though the petitioner may not have identified the digital assets at the time of filing the petition. Additionally, access by filing an affidavit is only one method by which the personal representative can obtain disclosure of the decedent's digital assets – such assets can also be accessed when the decedent has provided for access in a will, has made prior arrangements with the custodian of the assets, or upon a court finding as set forth in the Act.

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