

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa. O.C. Rules 2.1, 4.6, and 7.1

The Orphans' Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa. O.C. Rules 2.1, 4.6, and 7.1 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. 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 **April 6, 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 2.1. Form of Account

(a) Except where otherwise provided by an order of the court in a particular matter, Accounts shall be prepared and filed with the clerk in conformity with the form of the Model Accounts set forth in the Appendix or in conformity with any other form adopted by the Supreme Court subsequent to the date of adoption of these Rules.

(b) As illustrated in the Model Accounts, Accounts shall conform to the following rules:

(1) The dates of all receipts, disbursements and distributions, the sources of the receipts, and the persons to whom disbursements and distributions are made and the purpose thereof shall be stated. When a number of payments have been received from the same source or disbursed or distributed to the same recipient for the same purpose over a period of time, such receipts, disbursements or distributions need not be itemized, but may be stated in total amounts only, with beginning and ending dates within the period covered.

(2) Except where otherwise provided by an order of the court in a particular matter, principal and income shall be accounted for separately within the Account.

(3) Assets held by the accountant on the closing date of the Account shall be separately itemized.

(4) Every Account shall contain:

(i) a cover page;

(ii) a summary page with page references;

(iii) separate schedules, as needed, which set forth receipts, gains or losses on sales or other dispositions, disbursements, distributions, investments made, changes in holdings, and other schedules as appropriate; and

(iv) signature **[and verification]** pages signed by all the accountants stating the Account and verified by at least one of the accountants. The verification of a personal representative's Account shall contain a statement that the Grant of Letters and the first complete advertisement thereof occurred more than four months before the filing of the Account, unless the personal representative has been directed by the court to file an Account prior to that time.

(c) The Uniform Fiduciary Accounting Principles with accompanying commentaries and illustrations, recommended by the Committee on National Fiduciary Accounting Standards in collaboration with the National Center for State Courts, shall serve as an elaboration of the requirements of this Rule.

(d) When a non-profit corporation incorporated for charitable purposes or a cemetery company is required to file an Account, such corporation or company may file its financial statements for its three most recent fiscal years in lieu of filing an Account in the form required by this Rule. Financial statements shall be verified to be true and correct by a representative of the non-profit corporation or cemetery company.

(1) The court may require the corporation or company to submit its financial information in some other form or for some longer period.

(2) The court may require more or less financial information as it deems appropriate, including some or all of the following:

(i) the statute or other authority under which the corporation or company was incorporated and the date of its incorporation;

(ii) the names and addresses of the trustees or directors of the corporation or company;

(iii) a concise statement of the general purpose of the corporation or company; and

(iv) a copy of the corporation's or company's charter or articles of incorporation and bylaws.

Note: Rule 2.1 is substantively similar to former Rule 6.1 and Rule 12.15, except that certain subparagraphs have been reordered and Rule 12.15 and its Official Note have become subparagraph (d).

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. See Rule 1.99.

Explanatory Comment: Piggy-backed Accounts and limited Accounts are permitted pursuant to 20 Pa.C.S. §§ 762, 3501.2, and 7799.1.

Rule 4.6. Notice of the Date of Entry of an Adjudication or Court Order on the Docket

(a) The clerk shall immediately give written notice of the entry of an adjudication or court order in a particular matter to each **interested** party's counsel of record or, if unrepresented, to each **interested** party. The notice shall include a copy of the adjudication or court order.

(b) The clerk shall note in the docket the date when notice was given to the **interested** party or to his or her counsel under subparagraph (a) of this Rule.

Note: Rule 4.6 has no counterpart in former Orphans' Court Rule, but is derived from Pa.R.C.P. No. 236.

Rule 7.1. Depositions, Discovery, Production of Documents, [and] Perpetuation of Testimony, and Subpoenas to Attend and Testify

The court, by local rule or order in a particular matter, may prescribe the practice relating to depositions, discovery, production of documents, **[and]** perpetuation of testimony, **and subpoenas to attend and testify**. To the extent not provided for by local rule or an order governing a particular matter, the practice relating to depositions, discovery, production of documents, **[and]** perpetuation of testimony, **and subpoenas to attend and testify** shall conform to the practice in the Trial or Civil Division of the local Court of Common Pleas.

Note: Rule 7.1 is **[identical to] derived from** former Rule 3.6.

**SUPREME COURT OF PENNSYLVANIA
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PUBLICATION REPORT

Proposed Amendment of Pa. O.C. Rules 2.1, 4.6, and 7.1

The Orphans' Court Procedural Rules Committee ("Committee") is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa. O.C. Rules 2.1, 4.6, and 7.1. 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 2.1 provides the requirements for the form of Accounts. Rule 2.1(b)(4)(iv) sets forth the requirements for signature and verification pages, and currently requires the "signature and verification pages signed by all the accountants stating the Account and verified by at least one of the accountants." The Committee proposes to delete "and verification" from that phrase so it is not inconsistent with the remainder of the sentence, which only requires verification "by at least one of the accountants."

With regard to Rule 4.6, the Committee received inquiries about the necessity of sending notices to beneficiaries not participating in the present proceeding or matter. The Committee deliberated about whether "party" in Rule 4.6 was sufficient in scope to include those having an interest in the subject of the proceeding. Ultimately, the Committee concluded that "person" should be modified to "interested party," as defined in Rule 1.3.

Rule 7.1 addresses discovery practices in the Orphans' Courts. The Committee discussed that the Orphans' Court Rules did not address the use of subpoenas to attend and testify. *Compare* Pa.R.C.P. No. 234.1. The Committee agreed to add subpoenas to attend and testify to the list of permitted discovery practices set forth in Rule 7.1.

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