

Appellate Court Procedural Rules Committee

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rules of Appellate Procedure 311 and 342. The amendments are being submitted to the bench and bar for comments and suggestions prior to their submission to the Supreme Court. The proposed amendments are necessary to assure orderly administration of estates, trusts and guardianships.

The proposed Recommendation is endorsed by the Orphans' Court Procedural Rules Committee and was drafted by a joint subcommittee of the Appellate Court Procedural Rules Committee and Orphans' Court Procedural Rules Committee. Its primary purpose is to provide for immediate appeal of Orphans' Court orders, many of which were appealable prior to the 1992 amendment to Pa.R.A.P. 341 defining a final order as any order that disposes of all claims and all parties. Amendments to Rule 342 in 2000 and 2005 required the trial judge to determine that the order was final before the aggrieved party could take an immediate appeal. The Committee believes this Recommendation is necessary because this requirement has proven to be unworkable.

The proposed amendment to Rule 342 provides additional categories of orders that would be immediately appealable and deletes the requirement of a determination of finality by the Orphans' Court judge. For instance, an order interpreting a will or trust will now be immediately appealable as of right. See proposed amended Note to Pa.R.A.P. 342. See Pa.R.A.P. 342(a)(3). Orders confirming an account or determining an interest in real or personal property, previously appealable only upon a determination of finality, will be immediately appealable as of right without the requirement of determination of finality. Pa.R.A.P. 342(a)(1), (a)(5). Orders determining the validity of a will or trust, currently appealable as interlocutory orders as of right pursuant to Pa.R.A.P. 311(a)(8), shall be appealable as of right under the amendment to Rule 342. See Pa.R.A.P. 342(a)(2). Orders determining the status of a fiduciary, sometimes allowed to be appealed as collateral orders under Pa.R.A.P. 313, shall be appealable as of right under Pa.R.A.P. 342(a)(4).

Rule 342(a)(6) recognizes that other orders in Orphans' Court proceedings may be immediately appealable under the other rules of Chapter 3. For example, certain orders may be appealable as of right under Pa.R.A.P. 311(a)(4) (injunctions), under Pa.R.A.P. 313 (collateral orders) or under Pa.R.A.P. 341(b) (final orders) or they may be appealable by permission under Pa.R.A.P. 312 and 1311. None of the amendments proposed in this Recommendation would eliminate the right of an aggrieved party in an Orphans' Court proceeding to file an appeal pursuant to Pa.R.A.P. 311, 312 and 1311, 313 or 341, assuming the order meets the requirements of any of those rules.

As proposed in the Recommendation, failure to appeal an order that is immediately appealable under paragraphs (a)(1)-(5) of Rule 342 shall constitute a waiver of all objections to such order and may not be raised in any subsequent appeal. See Pa.R.A.P. 342(c). The consequences of failing to appeal an Orphans' Court order which falls within paragraph (a)(6) will depend on whether such order is immediately appealable under Rules 311, 313, or 341.

Proposed new material is underlined while deleted material is bracketed.

All communications in reference to the proposed amendment should be sent no later than August 2, 2010 to:

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By the Appellate Court Procedural Rules Committee

Honorable Maureen E. Lally-Green,
Chair

RULE 311. Interlocutory Appeals as of Right

(a) General Rule. An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

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[(8) *Estate and trust matters.* An order determining the validity of a will or trust.]

[(9)] (8) *Other cases.* An order which is made appealable by statute or general rule.

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Note:

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*The “**Explanatory Comment -2005**” is deleted.*

Explanatory Comment -2010

Following a 2005 amendment to Rule 311, orders determining the validity of a will or trust were formerly appealable as of right under subdivision (a)(8). Pursuant to 2010 amendments to Rule 342 (Appealable Orphans’ Court Orders), such orders are now immediately appealable under subdivision (a)(2) of Rule 342.

Rule 313. Collateral Orders

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Note:

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EXPLANATORY COMMENT – 2010

Following the 2010 amendments to Rule 342 (Appealable Orphans’ Court Orders) an order denying a petition for removal of a fiduciary, previously appealable as a collateral order, is now expressly appealable under subdivision (a)(4) of Rule 342.

RULE 342. Appealable Orphans' Court Orders. [Orders Determining Realty, Personalty and Status of Individuals or Entities. Orders Making Distribution.]

[An order of the Orphans' Court Division making a distribution, or determining an interest in realty or personalty or the status of individuals or entities, shall be immediately appealable:

- (1) upon a determination of finality by the Orphans' Court Division, or
- (2) as otherwise provided by Chapter 3 of these rules.]

(a) General rule. An appeal may be taken as of right from the following orders of the Orphans' Court Division:

- (1) An order confirming an account;
- (2) An order determining the validity of a will or trust;
- (3) An order interpreting a will, trust, or other document that forms the basis of a claim against an estate or trust;
- (4) An order determining the status of fiduciaries, beneficiaries or creditors in an estate, trust, or guardianship;
- (5) An order determining an interest in real or personal property; or
- (6) As otherwise provided by Chapter 3 of these rules.

(b) Definitions. As used in this rule,

- (1) "estate" includes decedent's, minor's and incapacitated person's estates, and the estate of a principal under Chapters 33, 35, 51, 55 and 56 of Title 20 ("the PEF Code);
- (2) "trust" includes inter vivos and testamentary trusts, and the "custodial property" under Chapters 53 and 77 of the PEF Code; and
- (3) "guardianship" includes guardians of the person for both minors and incapacitated persons under Chapters 51 and 55 of the PEF Code.

(c) Waiver of objections. Failure to appeal an order that is immediately appealable under paragraphs (a)(1)-(5) of this rule shall constitute a waiver of all objections to such order and may not be raised in any subsequent appeal.

(d) Nonprofit corporations. This rule shall not apply to orders involving nonprofit corporations within the jurisdiction of the Orphans' Court pursuant 20 Pa.C.S. § 711(21) and Pa.R.J.A. No. 2156(1).

The current "Note" to Rule 342 is deleted and replaced with the following:

Note:

In 1992, the Supreme Court amended Rule 341 to make clear that, as a general rule, a final order is an order that ends a case as to all claims and all parties. As a result, many Orphans' Court orders that may have been considered constructive final orders prior to 1992 became unappealable interlocutory orders. While some Orphans' Court orders were construed by case law to be appealable as collateral orders, see *Estate of Petro*, 694 A.2d 627 (Pa. Super. 1997), the collateral order doctrine was neither consistently applied nor was it applicable to other Orphans' Court orders that our appellate courts had previously deemed to be final under the "final aspect" doctrine. See, e.g. *Estate of Habazin*, 679 A.2d 1293 (Pa. Super. 1996).

In response, the Supreme Court adopted Rule 342 that initially permitted appeals from Orphans' Court orders concerning distribution even if the order was not considered final under Rule 341(b). In 2001, Rule 342 was amended to allow appeals from orders determining an interest in realty, personalty or the status of individuals or entities, in addition to orders of distribution, if the Orphans' Court judge made a determination that the particular order should be treated as final. In 2005, the Supreme Court amended Rule 342 again, adding subdivision (2) to clarify that Rule 342 was not the exclusive method of appealing Orphans' Court orders.

Also, in 2005, the Supreme Court amended Rule 311 to provide for an interlocutory appeal as of right from an order determining the validity of a will or trust. See former Rule 311(a)(8). Such an order needed to be immediately appealable and given finality so that the orderly administration of the estate or trust could appropriately proceed.

Since that time, it has become apparent that other adversarial disputes arise during the administration of an estate, trust and guardianship, and that orders adjudicating these disputes also must be resolved with finality so that the ordinary and routine administration of the estate, trust or guardianship can continue. Experience has proven that the determination of finality procedure in subdivision (1) of Rule 342 is not workable and has been applied inconsistently around the Commonwealth.

Experience has also proven that it is difficult to analogize civil litigation to estate, trust and guardianship administration because the civil proceeding defines the scope of the dispute, but the administration of a trust or estate does not define the scope of Orphans' Court litigation. Administration of a trust or an estate continues over a period of time, and litigation in Orphans' Court occurring at some point during the administration needs to be determined with finality so that the estate or trust administration can continue properly and orderly. Thus, the traditional notions of finality that are applicable in the context of ongoing civil adversary proceedings do not correspond to litigation in Orphans' Court.

Therefore, in order to facilitate orderly administration of estates, trusts and guardianships, the 2010 amendments list certain orders that will be immediately appealable without any requirement that the Orphans' Court make a determination of finality.

Subdivisions (a)(1)-(5) list orders unique to Orphans' Court practice that closely resemble final orders ending a case or controversy as to all outstanding claims and parties. Subdivision (a)(1) provides that the adjudication of any account, even an interim or partial account, is appealable. Previously, only the adjudication of the final account would have been appealable as a final order under Rule 341. This limitation has proven unworkable for estate administration taking years and trusts established for generations during which interim and partial accounts may be adjudicated and confirmed. Orders under new subdivision (a)(2)(orders determining validity of will or trust) were appealable following the 2005 Amendment to Rule 311 as interlocutory appeals as of right. See old Rule 311(a)(8). Subdivision (a)(3) is a new provision that allows an immediate appeal from an order interpreting a will, trust, or other relevant document that forms the basis of a claim asserted against an estate or trust. Such orders can include, among other things, an order determining that a particular individual is or is not a beneficiary under the will or trust, to what degree a particular standard gives the beneficiary rights to principal or income, to what degree the remainder interests in a trust are vested, and determining if an underlying agreement executed by the decedent during life creates rights against the estate. Subdivision (a)(4) is a restatement of prior Rule 342 intended to clarify, among other things, that the removal or refusal to remove a fiduciary is an appealable order, a determination of the status and claim of a creditor is an appealable order, and that such orders include orders pertaining to estates, trusts and guardianships. Subdivision (a)(5) retains the same language from prior Rule 342. Orders falling with subdivisions (a)(1)-(5) no longer require the lower court to make a determination of finality.

In keeping with the 2005 amendment that added subdivision (2) to prior Rule 342, subdivision (a)(6) provides that there may be other orders that are appealable under the other rules in Chapter 3 of the Rules of Appellate Procedure. Examples would include injunctions appealable under Rule 311(a)(4), Interlocutory Orders Appealable by Permission under Rule 312 and 1311, Collateral Orders appealable under 313, and an order approving a final accounting which is a true final order under Rule 341(b). Whether or not such orders require certification or a further determination of finality by the trial court depends on the applicable rule in Chapter 3. Compare Rules 311(a)(4), 313 and 341(c) with Rules 312 and 1311.

Failure to appeal an order that is immediately appealable under subdivisions (a)(1)-(5) of this rule shall constitute a waiver of all objections to such order and may not be raised in any subsequent appeal. See 342(c). The consequences of failure to

appeal an Orphans' Court order under (a)(6) will depend on whether such orders fall within Rules 311, 312, 1311 or 341.