

# THE COURTS

## Title 255—LOCAL COURT RULES

### CHESTER COUNTY

#### Amendment of Tax Assessment Rules

##### Order

*And Now*, July 8, 1997, the following Local Rules concerning appeals from real estate assessments is adopted by this Court, effective thirty (30) days after publication in the Pennsylvania Bulletin, in accordance with Pennsylvania Rule of Civil Procedure 239(d). It shall replace current Chester County Rules of Civil Procedure 5003.

THOMAS G. GAVIN,  
*President Judge*

#### AMENDMENT TO LOCAL RULES

##### Rule 5003. Appeals from Real Estate Assessment

The following rules shall apply to all appeals from a real estate assessment determined by the Board of Assessment Appeals (Board) of Chester County. These rules apply to all appeals taken following their effective date, and may be applied as appropriate to current appeals ninety (90) days after their effective date.

##### Definitions

*Board*—the Chester County Board of Assessment Appeals

*Taxing Authority*—municipalities, such as school districts, boroughs, townships, and the County of Chester.

*Party*—appellant, the Board, and any other person or entity entitled to notice who shall enter an appearance.

*Property Owner*—the taxpayer, whether singular or plural, that owns the property which is the subject of an appeal.

*Appraisal*—an opinion of a qualified expert as the value of property.

*Date of Notification*—date which is stamped on the decision of the Board.

*Commercial Property*—any property whose purpose is to generate income for its owner.

##### (a) Filing Instructions:

1. An appeal from the decision of the Board shall be filed within thirty (30) days from the date of notification by the Board.

2. Ten (10) days after filing the appeal the appellant shall serve a copy of the appeal on the Board and all affected taxing authorities or property owners by certified mail to the Board, to the property owner at his, her, its, or their registered address as shown on the tax records, and on the taxing districts at their business address.

3. Within twenty (20) days of service of the appeal, the appellant shall file an affidavit of service.

4. For purposes of service or notice, an appellant or party may use the address provided to the Board as part of its proceedings.

5. The Board shall automatically be a party to any appeal unless it specifically declines that status in writing. Any taxing authority or property owner entitled to be notified of an appeal may become a party to the proceeding by filing an entry of appearance within one hundred twenty (120) days of the filing of the appeal. The entry of appearance shall be considered to deny the allegations in the appellant's petition, except for the names of the parties and the location of the taxable property. However, any party may plead additional material by way of answer or new matter, as appropriate, within thirty (30) days of becoming a party.

##### (b) Contents of Appeal:

1. Names and addresses of the taxpayer and the taxing districts;

2. Identification of the property, including street address and tax parcel number;

3. Reason(s) for the appeal. For the purposes of this section, where a challenge is based on fair market value, it shall be sufficient to state that the assessment pursuant to the applicable State Tax Equalization Board, common level or predetermined ratio, is excessive. Where the challenge is based on uniformity, it shall be sufficient to state lack of uniformity as the basis for the appeal. Where a challenge is based on class certification for the purposes of a class action suit, the appellant shall state with specificity the alleged error of law or abuse of discretion committed by the Board of Assessment Appeals.

4. Photocopy of the decision of the Board, if any.

##### (c) Discovery Procedures:

1. The appellant shall provide the Board and the other parties entitled to notice of the appeal with a copy of his, her, its, or their appraisal within sixty (60) days of filing the appeal. The other parties shall then have ninety (90) days from the receipt of the appellant's appraisal to provide the appellant with a counter-appraisal. Any party may designate an appraisal submitted to the Board as its appraisal for the purposes of appeal. Appraisals must certify that the appraiser's fee is not contingent upon the results of the appeal.

2. Any party who fails to provide an appraisal within the time frame provided by this rule or by leave of court or within such time as may be agreed to by the parties will not be allowed to present evidence of valuation at trial. This rule shall not preclude the Board from presenting County records in support of its valuation. Such records shall be admissible in evidence as official records in accordance with the requirements of the Judicial Code, 42 Pa.C.S.A. § 6103. Further, this rule shall not preclude a homeowner from presenting his own opinion as to his property's value.

3. In cases involving commercial properties, the taxpayer shall provide the following to all other parties within thirty (30) days of the filing of the appeal:

(A) Income and expense statements for three (3) years prior to the appeal year;

(B) A current rent roll, including a list of tenants, rental amounts, lease periods and a sample lease with any special terms or renewal options;

(C) The right to inspect the property at a reasonable time with notice.

4. The names of all witnesses to be called at trial by any party, other than rebuttal witnesses later determined, shall be provided to all other parties within one hundred fifty (150) days of the appeal date.

5. Additional discovery shall be by leave of court only.

6. The matter shall be scheduled for trial before the assigned judge after the lapse of one hundred fifty (150) days from the appeal date. Any party may request an administrative conference at any time up to one hundred twenty (120) days after the appeal date.

7. Masters may be appointed in cases involving a voluminous record or particularly complex issues.

8. Time periods may be extended for cause shown.

(d) *Class Action Appeal:*

In all cases involving an appeal from class action certification, a full record shall be made before the Board of Assessment Appeals.

(e) *Discontinuance:*

The party filing the appeal may discontinue the appeal prior to the time set for the first exchange of appraisals. Thereafter, the appeal may be discontinued only with the agreement of all parties, or by leave of court.

(f) *Tax Exemption Cases:*

1. All appeals to court from a determination of the Board of Tax Assessment Appeals involving a claimed exemption from real estate tax shall be accompanied by the full and complete transcript of the hearing before the Board, together with all documentary evidence entered as part of that record and the Board's Findings of Fact and Conclusions of Law in support of its decision.

2. In any appeal to the Board or to court involving a claimed exemption from real estate taxation, the property owner claiming tax exemption shall be subject to such relevant discovery by written interrogatories, deposition and production of documentary evidence as reasonably bears on the property owner's claim of tax exemption. Discovery shall be requested and completed within one hundred twenty (120) days from the requesting party's receipt of notice of the initial application to the Board. Except in cases where such discovery request has not been complied with prior to the Board's hearing, no additional discovery shall be permitted on appeal to court from the Board's decision, except by leave of court.

*Comment*

This rule specifically does not require simultaneous exchange of information; instead the entity filing an appeal should bear the initial expense and burden of producing an appraisal. This rule should then conserve resources by giving the respondent the opportunity to accept the appellant's appraisal as satisfactory before ordering his or its own appraisal.

[Pa.B. Doc. No. 97-1178. Filed for public inspection July 25, 1997, 9:00 a.m.]

**DELAWARE COUNTY**  
**Orphans' Court Rule 14, No. 406-1997**

**Decree**

*And Now*, to wit, this 8th day of July, 1997, it is hereby *Ordered* and *Decreed* that this Court's Decree dated June 20, 1997 is hereby *Vacated*;

*Further*, it is hereby *Ordered* and *Decreed* that:

(1) Delaware County Orphans' Court Rules 14-2-1 and 14-2-2 are hereby *Repealed* effective July 1, 1997;

(2) Rules 14-2-1, 14-2-2, 14-2-3 and 14-2-4, as follows hereto, are approved and adopted, effective July 1, 1997; and

(3) The forms, set forth at the conclusion of these new Rules, designated "Deposition By Individual Qualified in Evaluation of Incapacitated Persons" shall be made available to practitioners by the Clerk of Orphans' Court.

*By the Court*

A. LEO SERENI,  
*President Judge*

**RULE 14-2-1. 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).

**RULE 14-2-2. Allowances from Incapacitated Person's Estates.**

(a) *Petitions.* Petitions for allowances from an incapacitated person's estate or for the payment of counsel fees shall be governed by the appropriate provisions of Rule 12-5-4 and shall set forth:

(1) 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.

(2) A summary of the inventory, the date it was filed, and the nature and present value of the estate.

(3) The address and the occupation, if any, of the incapacitated person.

(4) The names and addresses of the incapacitated person's dependents, if any.

(5) A statement of all claims of the incapacitated person's creditors known to petitioner.

(6) A statement of the requested distribution and the reasons therefor; a statement of all previous distributions allowed by the court.

(b) *Notice to Veterans' Administration.* If any portion of the incapacitated person's estate is received from the United States Veterans' Administration or its successor, notice of the request for allowance shall be given to this agency.

**Note:** The following Delaware County Orphans' Court Rule 14 with proposed changes appears with the applicable Supreme Court Orphans' Court Rules as they would appear in the printed version of the rules. The Supreme Court rules are denoted with decimals (14.1; 14.2) and the local rules with hyphen (14-2-1; 14-2-2). The proposed changes are "highlighted" in gray for identification purposes. Of course, the Delaware County Common Pleas Court has no authority to change the Supreme Court Rules and no changes are proposed. Please note that the local rule changes utilize the term "incapacitated person" as that term is utilized in the statute. The Supreme Court Rules continue to use the term "incompetent".

**RULE 14-2-3. Certification.**

In any petition filed pursuant to 20 Pa.C.S. § 5511, Counsel for petitioner shall file with the Clerk of Orphans' Court at least seven (7) days prior to the Hearing a Certification substantially in compliance with the form set forth in Rule 14-2-4 that provides the following information to the best of counsel's knowledge, information and belief:

1. Whether counsel has been retained by or on behalf of the alleged incapacitated person.
2. Whether the issue of capacity is or is not contested.
3. Whether the testimony on the issue of capacity shall be presented in one or more of the following manners:
  - a. Deposition by written interrogatory;
  - b. By videotape deposition;
  - c. Live testimony in court.
4. Whether the issue relating to the choice of guardian is contested.
5. 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.

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

**Committee Comment:** In uncontested matters the medical or psychological testimony may be provided via verified deposition by written interrogatories. Forms of such written interrogatories approved by the court are available at the Office of the Clerk of Orphans' Court.

**RULES 14-2-4. Compliance.**

14-2-4 The requirements of Rule 14-2-3 shall be met by the filing of a Certification substantially in compliance with the following:

CAPTION  
CERTIFICATION

The undersigned, \_\_\_\_\_, Counsel for the Petitioner in the above captioned matter, hereby certifies that:

1. Counsel has/has not been retained by or on behalf of the alleged incapacitated person.
2. The issue of capacity is/is not contested.
3. The testimony on the issue of capacity shall be presented in one or more of the following manners; as checked below:
  - a. (\_\_\_) Deposition by written interrogatory;
  - b. (\_\_\_) Videotape deposition;
  - c. (\_\_\_) Live testimony in court.
4. The issue of the choice of guardian is/is not contested.
5. It is expected that the alleged incapacitated person will/will not be present at the Hearing in compliance with 20 Pa.C.S. § 5511(a)1 and 2.

I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information and belief.

\_\_\_\_\_  
Attorney for Petitioner

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

IN RE: \_\_\_\_\_ :  
AN ALLEGED INCAPAITATED PERSON : NO.

*DEPOSITION BY INDIVIDUAL QUALIFIED IN EVALUATION OF INCAPACITATED PERSON*

The deposition of \_\_\_\_\_, a witness in this matter, made on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, Pennsylvania.

1. What is your name and your professional address?

A. My name is \_\_\_\_\_, my professional address is \_\_\_\_\_.

2. Please describe your education, training and background with particular emphasis on your expertise in evaluating individuals with incapacities. If you prefer to do so, please attach a curriculum vitae to those interrogatories that details this information.

A. (Cross out that answer that does not apply.)

(a) My curriculum vitae detailing this information is attached or

(b) I received my college degree at \_\_\_\_\_ and my post graduate training at \_\_\_\_\_, and I have practiced \_\_\_\_\_ (e.g. medicine, psychiatry, psychology, gerontological social work, etc.) since 19\_\_\_\_. My special qualifications and training with respect to evaluating persons with incapacities consists of \_\_\_\_\_

3. In what states are you licensed to practice medicine?

A. I am licensed to practice medicine in the following states: \_\_\_\_\_

4. In your capacity as (e.g. physician, psychologist, social worker, etc.) have you had the opportunity to meet with, examine, speak with and otherwise become acquainted with \_\_\_\_\_ (Name) and if so, upon what occasions and in what fashion have you been able to do so?

A. I first became acquainted with \_\_\_\_\_ (Name) the month of \_\_\_\_\_, 19\_\_\_\_, when she/he was brought to my attention by means of \_\_\_\_\_. I have since that time (visited/spoken with/examined/treated) her/him on \_\_\_\_\_ other occasions with an average frequency of \_\_\_\_\_ times per \_\_\_\_\_ (day/week/month/year)

5. To a reasonable degree of medical certainty, do you have an opinion as to whether the ability of \_\_\_\_\_ (name) to receive and evaluate information effectively and to communicate decisions is in any way impaired to such significant extent that she/he is:

- (a) partially unable to manage her/his financial resources, or
- (b) totally unable to manage her/his financial resources.

A. \_\_\_\_\_

6. To a reasonable degree of medical certainty, do you have an opinion as to whether the ability of \_\_\_\_\_ (name) to receive and evaluate information effectively and to communicate decisions is in any way impaired to such significant extent that she/he is:

- (a) partially unable to meet essential requirements for her/his physical health and safety, or
- (b) totally unable to meet essential requirements for her/his physical health and safety?

A. \_\_\_\_\_

7. Please describe the type and severity of any impairments of \_\_\_\_\_ (name)

A. The impairments of \_\_\_\_\_ (name) are as follows:

—Check one—

Impairment	None	Mild	Moderate	Severe
a)	[ ]	[ ]	[ ]	[ ]
b)	[ ]	[ ]	[ ]	[ ]
c)	[ ]	[ ]	[ ]	[ ]
d)	[ ]	[ ]	[ ]	[ ]
e)	[ ]	[ ]	[ ]	[ ]
f)	[ ]	[ ]	[ ]	[ ]
g)	[ ]	[ ]	[ ]	[ ]
h)	[ ]	[ ]	[ ]	[ ]

8. To a reasonable degree of medical certainty, can you express an opinion as to whether \_\_\_\_\_ (name) is partially or totally unable to manage her/his financial resources?

A. The ability of \_\_\_\_\_ (name) to manage her/his financial resources is impaired (not at all, partially, totally) as follows:

9. To a reasonable degree of medical certainty, can you express an opinion as to whether \_\_\_\_\_ (name) is able to meet essential requirements for her/his physical health and safety?

A. The ability of \_\_\_\_\_ (name) to meet essential requirements for her/his physical health and safety is impaired (not at all, partially, totally) as follows:

10. Can you please evaluate the present condition of \_\_\_\_\_ (name) with respect to incapacities of the type alleged in the Petition. In particular, could you please comment on the nature and extent of the alleged incapacities and disabilities and also, insofar as you are able, the mental, emotional and physical condition of \_\_\_\_\_ (name) , her/his adaptive behavior, and her/his social skills?

A. Based upon my education, training and experience, as well as my acquaintance with \_\_\_\_\_ (name) as stated above, it is my opinion that her/his incapacities and disabilities are \_\_\_\_\_

Her/His mental condition is \_\_\_\_\_

Her/His emotional and physical condition are \_\_\_\_\_

11. Is the condition of \_\_\_\_\_ (name) such as would make her/him susceptible to be taken advantage of by unscrupulous or designing persons?

A. Her/His adaptive behavior is \_\_\_\_\_

Her/His social skills are \_\_\_\_\_

12. What recommendations would you make concerning services necessary to meet the essential requirements for the physical health and safety of \_\_\_\_\_ (name) .

A. I would recommend that her/his physical health and safety be protected by \_\_\_\_\_

13. What recommendations would you make concerning management of the financial resources of \_\_\_\_\_ (name)?

A. I would recommend \_\_\_\_\_

14. What recommendations would you make concerning the development or regaining of physical or mental abilities of \_\_\_\_\_ (name) ?

A. I would recommend the following: \_\_\_\_\_

15. What types of assistance do you think are required by \_\_\_\_\_ (name) ?

A. I believe she/he needs assistance with \_\_\_\_\_

16. Why is it that no less restrictive alternatives would be appropriate?

A. Less restrictive alternatives would not be appropriate because \_\_\_\_\_

17. What is the probability that the extent of incapacities of \_\_\_\_\_ (name) may significantly lessen or change?

A. In my judgment, and based upon my training, experience and acquaintance with \_\_\_\_\_ (name) I believe the probability that her/his incapacities may significantly lessen or change is: \_\_\_\_\_

18. Would the physical or mental condition of \_\_\_\_\_ (name) be harmed by her/his persence in open Court?

A. I believe that the presence of \_\_\_\_\_ (name) in open Court would (not) be harmful to her/him because \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

NOTE: Pennsylvania law (20 Pa.C.S. § 5511(a)(1) requires that the alleged incapacitated person must be present at the hearing unless a physician or licensed psychologist provides by testimony or statement, an opinion that her/his physical or mental condition would be harmed by her/his presence.

*VERIFICATION*

I, \_\_\_\_\_, verify that the statements made in the foregoing Deposition are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Deponent

[Pa.B. Doc. No. 97-1179. Filed for public inspection July 25, 1997, 9:00 a.m.]

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