

# THE COURTS

## Title 255—LOCAL COURT RULES

### BUCKS COUNTY

#### Order Amending Local Rule 227.3\*(a) and \*(c) Payment for Transcript

##### Order

*And Now*, this 19th day of July 2019, it is *Ordered* that Bucks County Local Rules of Civil Procedure 227.3\*(a) and \*(c), governing Payment for Transcript are hereby amended as follows:

##### Rule 227.3\*(a).

The party requesting a transcript of the records or any portion thereof in a motion for post-trial relief shall pay the cost thereof. Where any other party files an objection requesting that an additional portion of the record be transcribed, the trial judge, in the absence of agreement by the parties, shall in his/her discretion and to the extent this matter is not covered in the Pennsylvania Rules of Judicial Administration 4001 et seq., assign the cost of such additional transcribing to any or all parties or to the County.

##### Rule 227.3\*(c).

The party requesting the transcribing of the record or any part thereof shall pay a deposit in accordance with Bucks County Rule of Judicial Administration 4007(C), and certify that the same has been paid upon the designation notice aforesaid. Failure to pay the transcript deposit and to so certify on the designation notice may be a basis for refusal of the motions or dismissal of the exceptions for lack of a transcript.

This Order shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

*By the Court*

WALLACE H. BATEMAN, Jr.,  
*President Judge*

[Pa.B. Doc. No. 19-1202. Filed for public inspection August 9, 2019, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### DELAWARE COUNTY

#### Local Orphans' Court Rules Nos. 2.5A (Related to Cemetery Companies) and 5.16A (Settlement of Small Estates); Orphans' Court No. 497-19; Judicial Support Civil No. 17-5120

##### Administrative Order

*And Now*, this 21st day of June, 2019, it is hereby *Ordered and Decreed* that Delaware County Orphans' Court Local Rules Nos. 2.5A (related to cemetery companies) and 5.16A (settlement of small estates) having been reviewed and allowed by the Supreme Court of Pennsylvania's Orphans' Court Procedural Rules Committee are *Adopted*.

These local Orphans' Court Rules (Nos. 2.5A and 5.16A) *Shall* be effective thirty (30) days subsequent to publication in the *Pennsylvania Bulletin*.

*By the Court*

KEVIN F. KELLY,  
*President Judge*

##### PREFACE

In an effort to assist in the timely and efficient adjudication of matters before the Orphans' Court of Delaware County, suggested forms including but not limited to sample decrees and sample petitions are available on the Delaware County Orphans' Court website by clicking the link for suggested forms. Please note that these forms are not mandatory but simply contain language that is consistent with the law outlined in these rules and are meant to assist those pursuing a matter before the Orphans' Court of Delaware County. It is also important to remember to regularly visit the Delaware County Orphans' Court website and review the forms as they are subject to change.

##### Del.Co.O.C. Rule 2.5A. Cemetery Companies.

When an institutional trustee or cemetery company as trustee files an Account in the form prescribed by Rule 2.1, or verified financial statements for the three most recent fiscal years in lieu of an Account, pursuant to 9 Pa.C.S.A. § 308(a) and (b), with the Clerk of the Orphans' Court of Delaware County, Pennsylvania, notice shall be provided to the following:

1. The State Real Estate Commission,
2. The municipality(ies) in which the cemetery is located, and
3. The Solicitor for the County of Delaware.

*Committee Comment:* This Rule is substantially similar to former Orphans' Court Rule 12.15, a counterpart for which was not in the new Pennsylvania Orphans' Court Rules which became effective September 1, 2016.

##### Del.Co.O.C. Rule 5.16A. Settlement of Small Estates Under 20 Pa.C.S. § 3102 or § 3531.

1. *Contents of Petition for Settlement of Small Estate Under 20 Pa.C.S. § 3102.* A Petition for the settlement of a small estate pursuant to 20 Pa.C.S. § 3102 (not exceeding the value limit as calculated in accordance with the requirements set forth in 20 Pa.C.S. § 3102) shall state all of the following:

- a. the name and address of the petitioner, the petitioner's relationship to the decedent, and the petitioner's interest in the estate;
- b. the name, date of death, and domicile of the decedent;
- c. whether the decedent died testate or intestate (i.e., with or without a Will); and, if there was a Will, whether or not it was offered to the Register of Wills for probate and whether or not the Register of Wills issued Letters Testamentary or Letters of Administration, and to whom and when; and whether a bond was required and obtained and in what amount;
- d. if the petitioner is the surviving spouse, the date and place of the marriage (and, in the case of a valid common law marriage, all facts necessary to establish the validity of such a marriage);

e. the names, addresses and relationships of all beneficiaries entitled to any part of the decedent's estate, under the Will or under the intestate law; a brief description of their respective interests; whether any of them has received or retained property of the decedent pursuant to 20 Pa.C.S. § 3101, or otherwise; and whether any of them is a minor, or an adjudicated incapacitated person, or deceased, and if so, the names and addresses of their guardians or personal representatives or other fiduciaries;

f. the person(s) entitled to the Family Exemption and, if a claim for the Family Exemption is made in the Petition, any additional facts necessary to establish the right to the Family Exemption as required by Pa.O.C. Rule 5.2 and Del.Co.O.C. Rules 5.2A through 5.2F;

g. an itemized list of all the decedent's assets including but not limited to real estate, with values assigned to each item, either incorporated in the petition or attached as an exhibit;

h. an itemized list, either incorporated in the petition or attached as an exhibit, setting forth under separate headings:

i. all payments from decedent's assets prior to the filing of the petition, including the amounts and dates paid, the names of the payees, and a description of the purposes of the payments; and

ii. all unpaid claims against the decedent's estate, including the amount of each claim, the name of each claimant, the basis for each claim, and indicating which claims are admitted; and

iii. in the case of an insolvent estate, a list of all payments and unpaid claims in accordance with the priority of payment set forth in 20 Pa.C.S. § 3392 providing for the classification and order of payment in an insolvent estate.

i. an averment as to the status of the Pennsylvania Inheritance Tax Return and the payment of tax, with proof thereof (such as the official Notice of Appraisal or the official Inheritance Tax receipt) attached as an exhibit;

j. an averment that written notice of the filing of the petition, in accordance with Pa.O.C. Rule 3.5, has been or will be given to every unpaid beneficiary, heir, claimant, and known creditor who has not joined in or consented to the petition, and, if the decedent's heirs are unknown, to the appropriate Commonwealth department; and

k. a request for distribution of the personal property to those entitled.

2. *Exhibits.* The following exhibits shall be attached to the Petition:

a. true and correct copies of the decedent's Will and any codicils, if probated, any Letters issued by the Register of Wills, and any bond obtained; or, if the Will was not probated, the Petitioner shall lodge the original Will and codicils (if any) with the Register of Wills and obtain a receipt therefor, and copies of the Will and any codicils and the Register of Wills receipt shall be attached as exhibits to the Petition;

b. any proof of payment of Pennsylvania Inheritance Tax or the filing of a Return;

c. joinders or consents of unpaid beneficiaries, heirs, claimants and creditors;

d. proof of notice, in accordance with Pa.O.C. Rule 3.5(b), to unpaid beneficiaries, heirs, claimants and creditors who have not consented or joined in the Petition;

e. a legible copy of the Decedent's death certificate clearing showing that Decedent was a resident of Delaware County at the time of death.

3. *Proposed Decree of Distribution of Small Estate Pursuant to 20 Pa.C.S. § 3102.* A proposed Decree, entitled DECREE OF DISTRIBUTION OF SMALL ESTATE PURSUANT TO 20 Pa.C.S. § 3102, shall be attached to the front of the Petition. The Decree shall set forth specifically each proposed award, payment and distribution of the personal assets of the Decedent to each proposed distributee, including the Family Exemption if applicable, and shall provide that any funds payable to a minor shall be deposited into a custodial or minor's bank account and held until the minor reaches the age of majority, at which time all funds on account shall be paid to him or her.

4. *Appraisements.* No appraisal shall be required unless ordered by the Court.

5. *Additional Requirements for Petition for Distribution of Estate Under 20 Pa.C.S. § 3531.* In addition to the contents required by this Rule for a Petition for Settlement of Small Estate Under 20 Pa.C.S. § 3102, as set forth above, a Petition for Distribution of a small estate containing real estate after the expiration of one year from the date of first complete advertisement of the grant of letters, pursuant to 20 Pa.C.S. § 3531, shall state:

a. the name and address of the personal representative, the date of the grant of letters, and the dates and places of advertisement of the grant of letters;

b. a request for approval of any distribution theretofore made and for an order distributing the assets not theretofore distributed;

c. a description of any real estate owned by the decedent and an opinion or evidence as to its value; and

d. a request, if appropriate, for an order discharging the personal representative and the personal representative's sureties from future liability; or a request for an order discharging only the surety from future liability and allowing the personal representative to continue without surety upon condition that no further assets shall come into the possession of the personal representative until the personal representative files another bond, with sufficient surety, as required by the Register of Wills.

6. *Additional Exhibits for Petition for Distribution of Estate Under 20 Pa.C.S. § 3531.* In addition to the exhibits required by this Rule for a Petition for Settlement of Small Estate Under 20 Pa.C.S. § 3102, as set forth above, a Petition for Distribution of a small estate containing real estate after the expiration of one year from the date of first complete advertisement of the grant of letters, pursuant to 20 Pa.C.S. § 3531 shall have attached thereto the following additional exhibits:

a. Proofs of the advertisements of the grant of letters;

b. A copy of the last known Deed for any real estate owned by the decedent, and any opinion or evidence of the value thereof;

c. Account showing the administration of the estate, the distribution theretofore made, and the proposed distribution of the estate not theretofore distributed; and

d. Proof of notice to all known parties in interest of the filing of the Petition and any hearing date.

7. *Proposed Decree of Distribution of Small Estate Pursuant to 20 Pa.C.S. § 3531.* A proposed Decree, entitled DECREE OF DISTRIBUTION OF SMALL ESTATE PURSUANT TO 20 Pa.C.S. § 3531, shall be attached to

the front of the Petition. The Decree shall set forth specifically each proposed award, payment and distribution of the real and personal assets of the Decedent to each proposed distributee, including the Family Exemption if applicable, and shall provide that any funds payable to a minor shall be deposited into a custodial or minor's bank account and held until the minor reaches the age of majority, at which time all funds on account shall be paid to him or her.

*Committee Comment:* A sample Petition for Settlement of a Small Estate, a sample Decree, a copy of this local rule, a copy of 20 Pa.C.S. § 3101 and a copy of 20 Pa.C.S. § 3102 will be available in the office of the Clerk of Orphans' Court. The sample Petition and sample Decree will also be available on the Delaware County Orphans' Court website at: <http://www.co.delaware.pa.us/registerofwills/orphancourtforms.html>

[Pa.B. Doc. No. 19-1203. Filed for public inspection August 9, 2019, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### DELAWARE COUNTY

**Local Orphans' Court Rules Nos. 14.2—14.13; Guardianships; Orphans' Court No. 497-19; Judicial Support Civil No. 17-5120**

#### Administrative Order

*And Now*, this 21st day of June, 2019, it is hereby *Ordered* and *Decreed* that Delaware County Local Orphans' Court Rules Nos. 14.2 through and including 14.13 (related to guardianships) having been reviewed and allowed by the Supreme Court of Pennsylvania's Orphans' Court Procedural Rules Committee are *Adopted*.

These local Orphans' Court Rules (Nos. 14.2—14.13 related to guardianships) *Shall* be effective thirty (30) days subsequent to publication in the *Pennsylvania Bulletin*.

*By the Court*

KEVIN F. KELLY,  
*President Judge*

#### PREFACE

In an effort to assist in the timely and efficient adjudication of matters before the Orphans' Court of Delaware County, suggested forms including but not limited to sample decrees and sample petitions are available on the Delaware County Orphans' Court website by clicking the link for suggested forms. Please note that these forms are not mandatory but simply contain language that is consistent with the law outlined in these rules and are meant to assist those pursuing a matter before the Orphans' Court of Delaware County. It is also important to remember to regularly visit the Delaware County Orphans' Court website and review the forms as they are subject to change.

#### **Del.Co.O.C. Rule 14.2A. Prior Incapacity Hearings.**

If the petition for adjudication of incapacity and appointment of a guardian includes an averment that there was a prior incapacity hearing concerning the alleged incapacitated person pursuant to Pa.O.C. Rule 14.2(a)(12), the petitioner shall include a copy of the decree and/or order that was entered as a result of the prior hearing.

#### **Del.Co.O.C. Rule 14.2B. Veteran Benefits.**

In addition to the requirements of Pa.O.C. Rule 14.2(a)(15) and, pursuant to 20 Pa.C.S. § 8411, the petition shall state whether the alleged incapacitated person is receiving benefits from the Department of Veterans Affairs, or its successor, due to his or her status as an incapacitated adult dependent of a veteran.

#### **Del.Co.O.C. Rule 14.3A. Use of Expert Report.**

1. When the issue of capacity is known to be contested, testimony in person or by deposition is required. An expert report for the determination of capacity in lieu of testimony, in person or by deposition, as described in Pa.O.C. Rule 14.3, may not be used in this situation.

2. In an emergency guardianship proceeding, when the petitioner does not know whether the issue of capacity is contested, permission to use an expert report as described in Pa.O.C. Rule 14.3, may be requested in the petition for emergency guardianship.

*Committee Note:* The term "deposition" as used in Del.Co.O.C. Rule 14.3A is the taking of sworn, out-of-court oral testimony of a witness that may be reduced to a written transcript for later use in court, made upon notice to the adverse party for the purpose of enabling the adverse party to attend and cross-examine.

#### **Del.Co.O.C. Rule 14.3B. Certificate of Service.**

Petitioner shall file the certificate of service required by Pa.O.C. Rule 14.3(b)(3) no later than five (5) days prior to the hearing on the petition for adjudication of incapacity and appointment of guardian. This may be incorporated into the Certification provided to the court no later than seven (7) days prior to the hearing, as described in Del.Co.O.C. Rule 14.4A.

#### **Del.Co.O.C. Rule 14.4A. Certification.**

Counsel for petitioner shall file with the Clerk of the Orphans' Court at least seven (7) days prior to the hearing a Certification that provides the following information to the best of counsel's knowledge, information and belief:

1. Whether counsel has or has not been retained by or on behalf of the alleged incapacitated person;
2. Whether the alleged incapacitated person has requested counsel;
3. Whether a guardian ad litem, attorney ad litem, or additional evaluation has been requested;
4. Whether the incapacity of the alleged incapacitated person is or is not contested;
5. Whether petitioner intends to establish incapacity by way of:
  - a. Expert Report,
  - b. Deposition, and/or
  - c. Live testimony in court;
6. Whether the choice of guardian as proposed by the petitioner is contested; and
7. 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.

#### **Del.Co.O.C. Rule 14.4B. Guardian Ad Litem.**

The petitioner or any interested party entitled to notice of the petition for adjudication of incapacity and appointment of a guardian may notify the Court in writing at any time prior to the hearing, or on the record at the

hearing on said petition, of their belief that a guardian ad litem is necessary to adequately represent the alleged incapacitated person's interest.

**Del.Co.O.C. Rule 14.7A. Proof of Service.**

The order adjudicating incapacity shall be served, including reading and explaining the contents, upon the incapacitated person, with proof of service filed with the court within ten (10) days after the hearing in the matter.

**Del.Co.O.C. Rule 14.8A. Testamentary Writings.**

All testamentary writings of the incapacitated person located by the guardian shall, at the time of the filing of the Inventory or within 10 days of locating the testamentary writings, whichever is later, be submitted by the guardian to the court for its inspection.

**Del.Co.O.C. Rule 14.8B. Allowances from an Incapacitated Person's Estate.**

1. *Petition.* A petition for allowance from an incapacitated person's estate shall set forth:

i. The name of the guardian and the date of the guardian's appointment; if the petitioner is not the guardian, the petitioner's relationship to the incapacitated person and, if not related, the nature of the petitioner's interest;

ii. A summary of the assets comprising the estate of the incapacitated person;

iii. The income of the incapacitated person;

iv. The address and facility, if any, of the incapacitated person;

v. The names and addresses of the incapacitated person's dependents, if any, and all other interested parties;

vi. A statement of all the claims of the incapacitated person's creditors known to petitioner; and

vii. A statement of the requested distribution, the reasons therefor, a statement of all previous distributions allowed by the court and an explanation of the reasonableness of the amount of the current distribution in relation to the present value of the estate, the income of the incapacitated person, and the incapacitated person's future needs, taking into account age, health and any other relevant factors.

2. *Notice to Veterans Affairs.* If any portion of the incapacitated person's estate is received from the United States Department of Veterans Affairs or its successor,

notice of the request for allowance shall be given to this agency, in accordance with 20 Pa.C.S. § 8411.

**Del.Co.O.C. Rule 14.8C. Notification of Mental Health Commitment Form.**

Within seven (7) days of adjudication of incapacity, petitioner or counsel therefor shall submit to the Orphans' Court the completed mandatory state form required to be filed under the Pennsylvania Uniform Firearms Act (18 Pa.C.S. § 6105(c)(4)) and the Pennsylvania Mental Health Procedures Act (50 P.S. § 7109(d)).

*Committee Note:* See Del.Co.O.C. Rules 5.10A, 5.10B, 5.10C, 5.10D, 5.11A, 5.11B, 5.11C, and 5.12A.

**Del.Co.O.C. Rule 14.13A. Proposed Decree.**

If the petitioner requesting acceptance of a guardianship from another state reasonably believes that the order entered in the transferring state does not conform to Pennsylvania law, the petitioner may submit a Proposed Decree modifying the transferring state's guardianship order so that it conforms with Pennsylvania law.

**Del.Co.O.C. Rule 14.13B. Denial of Transfer.**

If a petition to transfer a guardianship from another state is denied, a petitioner may still seek appointment as guardian under the general provisions of 20 Pa.C.S. § 5501, et seq.

[Pa.B. Doc. No. 19-1204. Filed for public inspection August 9, 2019, 9:00 a.m.]

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## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated July 25, 2019, Mario Sausville-Macias (# 27356) who resides in Utica, NY, is Suspended from the Bar of this Commonwealth for a period of two years. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

MARCEE D. SLOAN,  
*Board Prothonotary*

[Pa.B. Doc. No. 19-1205. Filed for public inspection August 9, 2019, 9:00 a.m.]

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