

# THE COURTS

## Title 231—RULE OF CIVIL PROCEDURE

### PART II. ORPHAN'S COURT RULES

#### [231 PA. CODE PART II]

#### Amendment to Orphans' Court Rule 5.6 and Adoption of Rule 5.7; No. 213 Supreme Court Rules Doc. No. 1

#### Order

*Per Curiam:*

Now, this 23rd day of December, 1998, upon the recommendation of the Orphans' Court Procedural Rules Committee; the proposal having been published for adoption at 25 Pa. Bulletin 2802-2804 (July 16, 1995) and 26 Pa. Bulletin 4079 (August 24, 1996):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Orphans' Court Rule 5.6 is amended and new Rule 5.7 is adopted, all in the following form, and shall apply to decedents dying on or after January 1, 1999. Rule 5.6 as adopted on April 30, 1992 shall continue to apply to decedents dying on or after July 1, 1992 and before the date of adoption of these amendments.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 1999.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART II. ORPHAN'S COURT RULES

#### RULE 5. NOTICE

#### Rule 5.6. Notice to Beneficiaries and Intestate Heirs.

(a) *Requirement of notice.* Within three (3) months after the grant of letters, the personal representative to whom original letters have been granted or **[ his ] the personal representative's** counsel shall send a written notice of estate administration in **[ substantially ]** the form **[ prescribed to ]** set forth in Rule 5.7.

(1) every person, corporation, association, entity or other party named in decedent's will as an outright beneficiary whether individually or as a class member;

**(2) the decedent's spouse and children, whether or not they are named in, or have an interest under, the will;**

**(3) where there is an intestacy in whole or in part, to every person entitled to inherit as an intestate heir under Chapter 21 of the Probate, Estate and Fiduciaries Code;**

**[ (2) ] (4)** the appointed guardian of the estate, parent or legal custodian of any beneficiary who is a minor child under the age of **eighteen** (18) years;

**[ (3) ] (5)** the appointed guardian of the estate or, in the absence of such appointment, the institution or person with custody of any beneficiary who is an adjudicated **[ mental incompetent ]** incapacitated person;

**[ (4) ] (6)** the Attorney General on behalf of any charitable beneficiary whose interest exceeds \$25,000 or which will not be paid in full;

**[ (5) ] (7)** the Attorney General on behalf of any governmental beneficiary; **[ or in default of the other heirs of the estate;**

**(6) ] (8)** the trustee of any trust which is a beneficiary; and

**[ (7) the spouse, children or other intestate heirs of the decedent as determined under Chapter 21 of the Probate Estates and Fiduciaries Code. ]**

**(9) such other persons and in such manner as may be required by any local rule of court.**

**[ (b) Contents of notice.** The notice shall contain the following information:

**(1) the date and place of decedent's death;**

**(2) whether decedent died testate or intestate;**

**(3) the county in which original letters were granted;**

**(4) the names, addresses and telephone numbers of all appointed personal representatives and their counsel; and**

**(5) a copy of the will or a description of the beneficiary's interest in the estate. ]**

**(b) Definition of Beneficiary.** "Beneficiary" shall be deemed to include any person who may have an interest by virtue of the Pennsylvania anti-lapse statute, 20 Pa.C.S. § 2514.

(c) *Manner of notice.* Notice shall be given by personal service or by first-class, prepaid mail to each **[ party ]** person and entity entitled to notice under subdivision (a)(1)—(9) whose address is known or reasonably available to the personal representative.

(d) *Certification of notice.* Within ten (10) days after giving the notice required by subdivision (a) of this Rule, the personal representative or **[ his ] the personal representative's** counsel shall file with the Register or Clerk **[ his, her or its ]** a certification in **[ substantially ]** the **[ attached ]** from set forth in Rule 5.7(b) that notice has been given as required by this Rule. No fee shall be charged by the Register or Clerk for filing the certification required by **[ paragraph (d) ]** this subdivision.

(e) *Failure to file certification.* Upon the failure by the personal representative or **[ his ] the personal representative's** counsel to file the certification on a timely basis, the Register shall, after ten (10) days prior written notice to the delinquent **[ fiduciary ]** personal representative and his counsel, notify the Court of such delinquency **[ along with a request that the Court conduct a hearing to determine whether sanctions shall be imposed upon the delinquent personal representative or his counsel ].**

**Official Note: The 1998 amendment to subdivision (e) is not intended to limit the inherent power of the Court to impose sanctions upon a delinquent personal representative or counsel.**

(f) *Effect of notice.* This Rule shall not alter, diminish or confer [ **additional substantive rights upon any beneficiary** ] existing rights.

(g) *Copies of rule.* The Register shall deliver a copy of [ **this Rule** ] **Rules 5.6 and 5.7** to each personal representative and counsel at the time letters are granted.

**Official Note: It is not the intention of the Rule to require notice beyond the degree of consanguinity entitling a person to inherit under Chapter 21 of**

**the Probate, Estates and Fiduciaries Code.**

*(Editor's Note: The form of Notice and Certification following Rule 5.6 is rescinded and new Rule 5.7 is adopted to replace the form of Notice and Certification. Rule 5.7 is printed in regular type to enhance readability.)*

**Rule 5.7 Form of notice and certification of notice to beneficiaries and intestate heirs.**

(a) *Form of Notice to Beneficiaries and Intestate Heirs.*

**IMPORTANT NOTICE**

**NOTICE OF ESTATE ADMINISTRATION**

**THIS NOTICE DOES NOT MEAN THAT YOU WILL RECEIVE ANY MONEY OR PROPERTY FROM THIS ESTATE OR OTHERWISE.**

Whether you will receive any money or property will be determined wholly or partly by the decedent's will. If the decedent died without a will, whether you will receive any money or property will be determined by the intestacy laws of Pennsylvania.

BEFORE THE REGISTER OF WILLS, COUNTY OF PENNSYLVANIA

In re Estate of \_\_\_\_\_, deceased,  
 No. \_\_\_\_\_ of \_\_\_\_\_  
 TO:

(Name and Address)

Please take notice of the death of decedent and the grant of letters to the personal representative(s) named below.

The Decedent \_\_\_\_\_, died on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ County, Pennsylvania.

The Decedent died testate (with a Will); or

The Decedent died intestate (without a Will).

The personal representative of the Decedent is \_\_\_\_\_ (name, address and telephone number).

If the Decedent died testate, the will has been filed with the Office of the Register of Wills of \_\_\_\_\_ County (address and telephone number).

If the Decedent died intestate, a Petition for the Grant of Letters of Administration was filed with the Office of the Register of Wills of \_\_\_\_\_ County (address and telephone number).

A copy of the Will or Petition may be obtained by contacting the Register of Wills and paying the charges for duplication.

Date:

Signature:  
 Name  
 Address

Telephone ( )

Capacity: Personal Representative  
 Counsel for personal  
 representative

(b) *Form of Certification of Notice.***CERTIFICATION OF NOTICE UNDER RULE 5.6(a)**

Name of Decedent:

Date of Death:

Will No.

Adm. No.

To the Register:

I certify that notice of **[beneficial interest] estate administration** required by Rule 5.6(a) of the Orphans' Court Rules was served on or mailed to the following beneficiaries of the above-captioned estate on

NameAddress

Notice has now been given to all persons entitled thereto under Rule 5.6 (a) except \_\_\_\_\_

Date: \_\_\_\_\_

Signature

Name

Address

Telephone ( )

Capacity: Personal Representative

Counsel for Personal Representative

[Pa.B. Doc. No. 99-76. Filed for public inspection January 15, 1999, 9:00 a.m.]

**PART II. ORPHANS' COURT RULES****[231 PA. CODE PART II]****Amendment to Orphans' Court Rules 14.1—14.4;  
No. 214 Supreme Court Rules Doc. No. 1****Order***Per Curiam:*

Now, this 23rd day of December, 1998, upon the recommendation of the Orphans' Court Procedural Rules Committee; the proposal having been published for adoption at 25 Pa. Bulletin 5505 (December 2, 1995):

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 14.1—14.4 are amended, all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 1999.

**Annex A****TITLE 231. RULES OF CIVIL PROCEDURE****PART II. ORPHANS' COURT RULES****Amendments to Orphans' Court Rules 14.1—14.4****Rule 14. [INCOMPETENTS' ESTATES]****GUARDIANSHIP OF INCAPACITATED PERSONS****Rule 14.1. Local rules.**

The practice and procedure with respect to **[ incompetents' estates ] incapacitated persons'** shall be as

prescribed by local rules, which shall not be inconsistent with **[ Rules 14.2 and 14.3 hereof ] Rules 14.2—14.5.**

**Rule 14.2 is repealed and replaced with the following.**

**Rule 14.2. Adjudication of incapacity and appointment of a guardian of the person and/or estate of an incapacitated person.**

**A petition to adjudicate incapacity shall meet all requirements set forth at 20 Pa.C.S. § 5511. A citation and notice in the form set forth in Rule 14.5 shall be attached to and served with a petition. The procedure for determination of incapacity and for appointment of a guardian shall meet all requirements set forth at 20 Pa.C.S. §§ 5512 and 5512.1.**

**Rule 14.3. [Adjudication of competency] Review hearing.**

**A petition [ to adjudicate that a person previously adjudged incompetent has become competent ] for a review hearing shall set forth:**

(1) the date of the adjudication of **[ incompetency ] incapacity;**

(2) the name and address of the guardian;

(3) if the **[ incompetent ] incapacitated person** has been a patient in a mental hospital, the name of such institution, the date of **[ his ]** admission, and the date of discharge;

(4) the present address of the [ **incompetent,** ] **incapacitated person** and the name of the person with whom [ **he** ] **the incapacitated person** is living;

(5) the names and addresses of the [ **next of kin** ] **presumptive adult heirs** of the [ **incompetent** ] **incapacitated person**; and

(6) an averment that [ **the mental health of the incompetent has been restored** ] (i) **there has been significant change in the person's capacity;** (ii) **there has been a change in the need for guardianship services;** or (iii) **the guardian has failed to perform duties in accordance with the law or act in the best interest of the incapacitated person.**

**Official Note: See 20 Pa.C.S. § 5512.2.**

**Rule 14.4. Proceedings relating to real estate.**

A petition for the public or private sale, exchange, lease, or mortgage of real estate of an [ **incompetent** ] **incapacitated person** or the grant of an option for the sale, exchange or lease of the same shall conform as far as practicable to the requirements of these rules for personal representatives, trustees and guardians of minors in a transaction of similar type.

[Pa.B. Doc. No. 99-77. Filed for public inspection January 15, 1999, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### CARBON COUNTY

#### Adoption of Local Procedure for the Automated Expungement of Records at Conclusion of Accelerated Rehabilitative Disposition Program; No. 139 MI 98

##### Administrative Order No. 16-1998

*And Now*, this 29th day of December, 1998, it is hereby *Ordered and Decreed* that Carbon County *Adopts* the following local procedure governing the Automated Expungement of Records at the Conclusion of Accelerated Rehabilitative Disposition Program which shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

The Carbon County District Court Administrator is *Ordered and Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order and Procedure with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Criminal Procedural Rules Committee.
4. Forward one (1) copy for publication in the Carbon County Law Journal.
5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Order and Procedure in the Clerk of Courts Office.

*By the Court*

JOHN P. LAVELLE,  
*President Judge*

#### Automated Expungement of Records at Conclusion of Accelerated Rehabilitative Disposition Program

##### A) *Disposition*

The following procedure shall be used to finalize disposition of all cases in the Accelerated Rehabilitative Disposition (ARD) Program:

1) The Court Data Processing Director will create an alphabetically sequenced file, which lists those persons presently under the Accelerated Rehabilitative Disposition (ARD) Program, or having ever participated in such a program. The Chief of Adult Probation and the District Attorney will each receive a copy.

2) Each month, the Data Processing Unit will create a list of all probationers whose ARD probation period has terminated the previous month. This list will be distributed as in (1) above.

3) The District Attorney will be responsible for reviewing the list. If the District Attorney has an objection, he must voice that objection within thirty (30) days of creation of the list.

4) If a case is reinstated for cause prior to the completion of the stipulated ARD probation period, the District Attorney must notify the Court Calendar Officer so that the case will then be properly relisted for trial.

##### B) *Expungement*

The following procedure shall be effective immediately to automatically expunge the criminal case record for those defendants who have completed the conditions(s) of the ARD Program.

1) At the end of each month, the Adult Probation Office will prepare a list of all cases reaching final disposition under the ARD Program during the month. A copy of the list shall be provided to the District Attorney. The produced list will carry a date on which the cases will be tentatively scheduled before the President Judge or his/her appointee. This date will be the first scheduled motion list date of the next month.

2) The District Attorney will review the listing of potential expungements and present the complete list to the President Judge indicating any cases which he/she feels should not be expunged along with the reason why the expungement should not take place. For proper cause, the case will be deleted from the expungement list by the President Judge.

3) In those cases in which the item is deleted, a letter will be produced and forwarded to the last known address of the defendant and to his attorney-of-record informing each that the case will not be automatically expunged by the Court, but that a petition may be initiated.

The intent of an expungement will be to prevent the inquiry into a person's criminal history of the expunged case by reference to the criminal records of 1) the local police department, 2) the Pennsylvania State Police, 3) the Federal Bureau of Investigation, and 4) the file

folders and computer files of the Carbon County Common Pleas Court and District Justice Courts.

4) The fashion in which this will be accomplished will be as follows:

a) The defendant computer record will be removed from the computer file maintained by the Clerk of Courts Office so that reference to an individual's computer criminal history may not be made from either the video screens or current batch-processed disposition listing.

b) At the same time the Court's computer record is expunged as in 4(a) above, an Order will be automatically produced ordering the local police department to destroy all criminal records, fingerprints, photographs, and photographic plates and to update the criminal extract to totally eliminate reference to the expunged incident.

c) The order in (b) above shall also order the Carbon County Bureau of Collections, the Adult Probation Office, the District Justice Offices, the Pennsylvania State Police and the Federal Bureau of Investigation to destroy all records pertaining to the same arrest.

d) The order in (b) above shall also order the Court Data Processing Director to remove all references pertaining to the same arrest from the computer indices of the Court of Common Pleas of Carbon County and the District Justices of Carbon County.

e) A letter shall be automatically produced for the District Attorney and mailed to the local police department and to the last known address of the defendant, informing him or her that the local police department, the Pennsylvania State Police, and the Federal Bureau of Investigation have been ordered to expunge the criminal record for that specific case, that this procedure will be allowed only once in a person's life and that expungement will take place within ninety (90) days of the date of the Expungement Order. A copy of this letter shall also be sent to the defendant's attorney-of-record.

f) A certification, which states that the destruction of records has taken place as ordered, affixed to the Expungement Order shall be signed and returned by the local police department to the Clerk of Courts. Said certification shall also be signed by the Court Data Processing Director. The Clerk of Courts shall then insert a copy of the certification with each appropriate case folder. The applicable case folder shall then be placed in a confidential status.

5. A monthly updated confidential list of completed expungements under this procedure shall be maintained by the Court.

[Pa.B. Doc. No. 99-78. Filed for public inspection January 15, 1999, 9:00 a.m.]

---

## SUPREME COURT

### Accreditation of the National Board of Trial Advocacy as a Certifying Organization; No. 0491 Disciplinary Doc. No. 3

#### Order

*Per Curiam:*

*And Now*, this 29th day of December, 1998, upon consideration of the recommendation of the Pennsylvania Bar Association Review and Certifying Board, the National Board of Trial Advocacy is hereby accredited as a certifying organization in the areas of family law trial advocacy, criminal law trial advocacy and civil law trial advocacy for a period of five calendar years.

[Pa.B. Doc. No. 99-79. Filed for public inspection January 15, 1999, 9:00 a.m.]

---