

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 3]

Amendment of Rules 311 and 342 of the Rules of Appellate Procedure; No. 217 Appellate Proce- dural Rules Doc.

Amended Order

Per Curiam

And Now, this 29th day of December, 2011, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published before adoption at 40 Pa.B. 3659 (July 3, 2010):

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 311 and 342 of the Pennsylvania Rules of Appellate Procedure are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective and applicable to all Orphans' Court orders entered forty-five days after adoption.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

INTERLOCUTORY APPEALS

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:

* * * * *

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

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

* * * * *

(g) *Waiver of objections.*

(1) Where an interlocutory order is immediately appealable under this rule, failure to appeal:

(i) Under Subdivisions [(a)(1—(7), (a)(9)] (a), (b)(2) or (f) of this rule shall not constitute a waiver of the objection to the order and the objection may be raised on any subsequent appeal in the matter from a determination on the merits.

(ii) Under Subdivisions (b)(1) or (c) of this rule shall constitute a waiver of all objections to jurisdiction over the person or over the property involved or to venue, etc. and the question of jurisdiction or venue shall not be considered on any subsequent appellate review of the matter.

(iii) Under [Subdivisions (a)(8) or] Subdivision (e) of this rule shall constitute a waiver of all objections to such orders and any objection may not be raised on any subsequent appeal in the matter from a determination on the merits.

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Official Note:

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The appeal rights under this rule, and under Rule 312 ([**interlocutory appeals by permission**] **Interlocutory Appeals by Permission**), Rule 313 ([**collateral orders**] **Collateral Orders**), Rule 341 ([**final orders generally**] **Final Orders; Generally**), and Rule 342 ([**final distribution orders**] **Appealable Orphans' Court Orders**), are cumulative; and no inference shall be drawn from the fact that two or more rules may be applicable to an appeal from a given order.

* * * * *

Following a 2005 amendment to Rule 311, orders determining the validity of a will or trust were appealable as of right under former subdivision (a)(8). Pursuant to the 2011 amendments to Rule 342 (Appealable Orphans' Court Orders), such orders are now immediately appealable under subdivision (a)(2) of Rule 342.

Paragraph (a)(8) (Other cases)—Paragraph (a)(8) is directed primarily to statutes and general rules hereafter enacted or promulgated. The current text of the Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Criminal Procedure, etc., should be consulted to identify any interlocutory appeal rights provided for therein. *See also, e.g.*, 42 Pa.C.S. § 7320 (appeals from court orders), concerning appeals from certain orders in nonjudicial arbitration proceedings, which section is not suspended by these rules. *See* Rule 5102(a) (Judicial Code unaffected).

* * * * *

[Explanatory Comment—2005

Orders determining the validity of a will or trust including, but not limited to, orders of the Orphans' Court following the grant or denial of probate by the Register of Wills are immediately appealable pursuant to the 2005 amendment of this rule. Prior to the 2005 amendment, the Superior Court often permitted an immediate appeal from such orders without determining the basis for an immediate appeal under the Rules of Appellate Procedure. *See Estate of Janosky*, 2003 Pa. Super. 230, 827 A.2d 512 (2003), and *Estate of Luongo*, 2003 Pa. Super 171, 823 A.2d 942 (2003). However, in *Estate of Schmitt*, 2004 Pa. Super 43, 846 A.2d 127 (2004), a panel of the Superior Court held that an order sustaining the Register's striking of a caveat was not immediately appealable as a final order under Pa.R.A.P. 341(b). In response to the *Schmitt* decision, the Appellate Court Procedural Rules Committee decided that while orders determining the validity of a will or trust are not strict final orders under Subdivision (b) of Rule 341, it is not practical to administer an estate or trust while there is a pending challenge to the validity of the instrument.

Accordingly, a party seeking to probate an instrument, or to challenge the validity of an instrument, will be allowed to take an immediate interlocutory appeal as of right under Rule 311, and shall be bound by the waiver doctrine if such party does not file an immediate appeal. See the 2005 amendment to Subdivision (g) of this rule.]

FINAL ORDERS

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

[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.

Official Note: This rule was amended in 2001 to allow appeals from orders determining an interest in realty, personalty or status of individuals or entities, upon certification of the Orphans' Court judge. Prior to the 2001 amendment, this rule only permitted appeals from an order of distribution not final under Rule 341(b). The amendment to the rule was not intended to preclude immediate appeals in Orphans' Court matters as heretofore permitted under Rule 311 (Interlocutory Appeals as of Right) and Rule 313 (Collateral Orders).

However, Rule 342 may have been ambiguous in that regard because in *Estate of Sorber*, 2002 Pa. Super. 226, 803 A.2d 767 (2002), a panel of the Superior Court interpreted the 2001 amendment of Rule 342 to preclude immediate appeals from collateral orders unless determined to be final by the Orphans' Court judge. The holding in *Estate of Sorber*, to wit, that Rule 342 precludes collateral order appeals under Rule 313, is now superseded by the 2005 amendment to Rule 342.

The 2005 amendment provides that Rule 342 is not the exclusive means for appealing orders: (a) determining an interest in realty or personalty or the status of individuals or entities, or (b) making a distribution. An aggrieved party may appeal such orders under any other Rule in Chapter 3 of the Rules of Appellate Procedure to the extent that the order meets the requirements for appealability under any such rule.]

(Editor's Note: The following rule is new and printed in regular type to enhance readability.)

Rule 342. Appealable Orphans' Court Orders.

(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, or authorizing or directing a distribution from an estate or trust;

(2) An order determining the validity of a will or trust;

(3) An order interpreting a will or a document that forms the basis of a claim against an estate or trust;

(4) An order interpreting, modifying, reforming or terminating a trust;

(5) An order determining the status of fiduciaries, beneficiaries, or creditors in an estate, trust, or guardianship;

(6) An order determining an interest in real or personal property;

(7) An order issued after an inheritance tax appeal has been taken to the Orphans' Court pursuant to either 72 Pa.C.S. § 9186(a)(3) or 72 Pa.C.S. § 9188, or after the Orphans' Court has made a determination of the issue protested after the record has been removed from the Department of Revenue pursuant to 72 Pa.C.S. § 9188(a); or

(8) An order otherwise appealable as provided by Chapter 3 of these rules.

(b) *Definitions.* As used in this rule:

(1) "estate" includes the estate of a decedent, minor, incapacitated person, or principal under Chapters 33, 35, 51, 55 and 56 of Title 20 of the Pennsylvania Consolidated Statutes ("Probate, Estates and Fiduciaries Code") ("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)—(7) of this rule shall constitute a waiver of all objections to such order and such objections may not be raised in any subsequent appeal.

Official 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. Because of this amendment, many Orphans' Court orders that may have been considered constructive final orders prior to 1992 became unappealable interlocutory orders. Although 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 previously had been considered final under the "final aspect" doctrine. See, e.g. *Estate of Habazin*, 679 A.2d 1293 (Pa. Super. 1996).

In response, the Supreme Court revised Rule 342 that initially permitted appeals from Orphans' Court orders concerning distribution even if the order was not considered final under the definition of Rule 341(b). In 2001, Rule 342 was amended to also allow appeals from orders determining an interest in realty or 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 proceed appropriately.

Since 2005, it has become apparent that other adversarial disputes arise during the administration of an estate, trust or 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. See *Estate of Stricker*, 602 Pa. 54, 63-64, 977 A.2d 1115, 1120 (2009) (Saylor, J., concurring). 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. See *id.* (citing *Commonwealth v. Castillo*, 585 Pa. 395, 401, 888 A.2d 775, 779 (2005) (rejecting the exercise of discretion in permitting appeals to proceed)).

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

In order to facilitate orderly administration of estates, trusts and guardianships, the 2011 amendments list certain orders that will be immediately appealable without any requirement that the Orphans' Court make a determination of finality. Orders falling within subdivisions (a)(1)—(7) no longer require the lower court to make a determination of finality.

Subdivisions (a)(1)—(7) list orders that are unique to Orphans' Court practice, but closely resemble final orders as defined in Rule 341(b). 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. The prior 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. The remainder of subdivision (a)(1) permits appeals from orders of distribution as Rule 342 always has permitted since its initial adoption. Subdivision (a)(2) is a new placement for orders determining the validity of a will or trust that previously were appealable as interlocutory appeals as of right following the 2005 amendment to Rule 311. See prior Rule 311(a)(8). Subdivision (a)(3) is a new provision that allows an immediate appeal from an order interpreting a will 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 or determining if an underlying

agreement executed by the decedent during life creates rights against the estate. Subdivision (a)(4) addresses trusts and is similar to subdivision (a)(3), but also permits immediate appeals from orders modifying, reforming or terminating a trust since such judicial actions are now permitted under 20 Pa.C.S. § 7740 et seq. Subdivision (a)(5) is intended to clarify prior Rule 342 in several respects: First, an appealable Orphans' Court order concerning the status of individuals or entities means an order determining if an individual or entity is a fiduciary, beneficiary or creditor, such as an order determining if the alleged creditor has a valid claim against the estate. Second, such orders include orders pertaining to trusts and guardianships as well as estates. Finally, this subdivision resolves a conflict in prior appellate court decisions by stating definitively that an order removing or refusing to remove a fiduciary is an immediately appealable order. Subdivision (a)(6) retains the same language from prior Rule 342. Subdivision (a)(7) permits appeals of an Orphans' Court order concerning an inheritance tax appraisal, assessment, allowance or disallowance when such order is issued separately and not in conjunction with the adjudication of an account. Sections 9186 and 9188 of Chapter 72 provide three procedures, outside the context of an accounting, whereby either the personal representative or the Department of Revenue may bring before the Orphans' Court a dispute over inheritance taxes imposed. See also *Estate of Gail B. Jones*, 796 A.2d 1003 (Pa. Super. 2002) (analogizing a petition regarding the apportionment of inheritance taxes to a declaratory judgment petition given that an estate account had not yet been filed). A decision concerning inheritance taxes issued in conjunction with the adjudication of an account would be appealable under subdivision (a)(1).

In keeping with the 2005 amendment that added subdivision (2) to prior Rule 342, subdivision (a)(8) tracks subdivision (2) of former Rule 342. Subdivision (2) was adopted in response to *Estate of Sorber*, 2002 Pa. Super. 226, 803 A.2d 767 (2002), a panel decision holding that Rule 342 precluded immediate appeals from orders that would have otherwise been appealable as collateral orders under Rule 313 unless the Orphans' Court judge made a determination of finality under Rule 342. Subdivision (a)(8) makes clear that Rule 342, as amended, is still not the sole method of appealing an Orphans' Court order and an order not otherwise immediately appealable under Rule 342 may still be immediately appealable if it meets the criteria under another rule in Chapter 3 of these rules. Examples would include injunctions appealable under Rule 311(a)(4), Interlocutory Orders Appealable by Permission under Rules 312 and 1311, Collateral Orders appealable under Rule 313, and an order approving a final accounting which is a true final order under Rule 341. 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)—(7) of this rule shall constitute a waiver of all objections to such order and may not be raised in any subsequent appeal. See Subdivision (c) of this Rule. The consequences of failing to appeal an Orphans' Court order under (a)(8) will depend on whether such order falls within Rules 311, 312, 313, 1311 or 341.

[Pa.B. Doc. No. 12-1407. Filed for public inspection July 27, 2012, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Sharon S. Terrell having been temporarily suspended from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated September 27, 2010; the Supreme Court of Pennsylvania issued an Order dated July 12, 2012, suspending Sharon S. Terrell from the practice of law in this Commonwealth consistent with the Order of the Supreme Court of New Jersey. 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*.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 12-1408. Filed for public inspection July 27, 2012, 9:00 a.m.]
