

THE COURTS

Title 225—RULES OF EVIDENCE

[225 PA. CODE ARTS. VI AND VIII]

Order Amending Rules 803.1 and 804 and Approving the Revision of the Comment to Rule 613 of Rules of Evidence; No. 730 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 1st day of March, 2017, upon the recommendation of the Committee on Rules of Evidence; the proposal having been published for public comment at 45 Pa.B. 6476 (November 7, 2015):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

1) Pennsylvania Rules of Evidence 803.1 and 804 are amended; and

2) The Comment to Pennsylvania Rule of Evidence 613 is revised;

in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective April 1, 2017.

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE VI. WITNESSES

Rule 613. Witness's Prior Inconsistent Statement to Impeach; Witness's Prior Consistent Statement to Rehabilitate.

(a) *Witness's Prior Inconsistent Statement to Impeach.* A witness may be examined concerning a prior inconsistent statement made by the witness to impeach the witness's credibility. The statement need not be shown or its contents disclosed to the witness at that time, but on request, the statement or contents must be shown or disclosed to an adverse party's attorney.

* * * * *

Comment

Pa.R.E. 613 differs from F.R.E. 613 to clarify its meaning and to conform to Pennsylvania law.

Pa.R.E. 613(a) and (b) are similar to F.R.E. 613(a) and (b), but the headings and the substance make it clear that the paragraphs are dealing with the use of an inconsistent statement to impeach. The disclosure requirement in paragraph (a) is intended to deter sham allegations of the existence of an inconsistent statement.

Pa.R.E. 613(b) differs from F.R.E. 613(b) in that extrinsic evidence of a prior inconsistent statement is not admissible unless the statement is shown or disclosed to the witness during the witness's examination. Paragraph (b) is intended to give the witness and the party a fair opportunity to explain or deny the allegation.

To be used for impeachment purposes, an inconsistent statement need not satisfy the requirements of Pa.R.E. 803.1(1)(A)—(C).

F.R.E. 613 does not contain a paragraph (c); it does not deal with rehabilitation of a witness with a prior consistent statement. Pa.R.E. 613(c) gives a party an opportunity to rehabilitate the witness with a prior consistent statement where there has been an attempt to impeach the witness. In most cases, a witness's prior statement is hearsay, but F.R.E. 801(d)(1)(B) treats some prior consistent statements offered to rebut impeachment as not hearsay. Pa.R.E. 613(c) is consistent with Pennsylvania law in that the prior consistent statement is admissible, but only to rehabilitate the witness. *See Commonwealth v. Hutchinson*, [521 Pa. 482,] 556 A.2d 370 (Pa. 1989) (to rebut charge of recent fabrication); *Commonwealth v. Smith*, [518 Pa. 15,] 540 A.2d 246 (Pa. 1988) (to counter alleged corrupt motive); *Commonwealth v. Swinson*, [426 Pa. Super. 167,] 626 A.2d 627 (Pa. Super. 1993) (to negate charge of faulty memory); *Commonwealth v. McEachin*, [371 Pa. Super. 188,] 537 A.2d 883 (Pa. Super. 1988) (to offset implication of improper influence).

Pa.R.E. 613(c)(2) is arguably an extension of Pennsylvania law, but is based on the premise that when an attempt has been made to impeach a witness with an alleged prior inconsistent statement, a statement consistent with the witness's testimony should be admissible to rehabilitate the witness if it supports the witness's denial or explanation of the alleged inconsistent statement.

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 23, 1999, effective immediately; amended March 10, 2000, effective July 1, 2000; rescinded and replaced January 17, 2013, effective March 18, 2013; **amended March 1, 2017, effective April 1, 2017.**

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical amendments to paragraph (b)(3) published with the Court's Order at 29 Pa.B. 1714 (April 3, 1999).

Final Report explaining the March 10, 2000 amendments adding "inconsistent" to section (a) published with the Court's Order at 30 Pa.B. 1645 (March 25, 2000).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the March 1, 2017 revision of the Comment published with the Court's Order at 47 Pa.B. 1627 (March 18, 2017).

ARTICLE VIII. HEARSAY

Rule 803.1. Exceptions to the Rule Against Hearsay—Testimony of Declarant Necessary.

The following statements are not excluded by the rule against hearsay if the declarant testifies and is subject to cross-examination about the prior statement:

Comment

A witness must be subject to cross-examination regarding the prior statement. See *Commonwealth v. Romero*, 722 A.2d 1014, 1017-1018 (Pa. 1999) (witness was not available for cross-examination when witness refused to answer questions about prior statement).

(1) *Prior Inconsistent Statement of Declarant-Witness.* A prior statement by a declarant-witness that is inconsistent with the declarant-witness's testimony and:

(A) was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition;

(B) is a writing signed and adopted by the declarant; or

(C) is a verbatim contemporaneous electronic [, **audiotaped, or videotaped**] recording of an oral statement.

Comment

The Federal Rules treat statements corresponding to Pa.R.E. 803.1(1) and (2) as “not hearsay” and places them in F.R.E. 801(d)(1)(A) and (C). Pennsylvania follows the traditional approach that treats these statements as exceptions to the hearsay rule if the declarant testifies at the trial.

Pa.R.E. 803.1(1) is consistent with prior Pennsylvania case law. See *Commonwealth v. Brady*, [510 Pa. 123,] 507 A.2d 66 (Pa. 1986) (seminal case that overruled close to two centuries of decisional law in Pennsylvania and held that the recorded statement of a witness to a murder, inconsistent with her testimony at trial, was properly admitted as substantive evidence, excepted to the hearsay rule); *Commonwealth v. Lively*, [530 Pa. 464,] 610 A.2d 7 (Pa. 1992). In *Commonwealth v. Wilson*, [550 Pa. 518,] 707 A.2d 1114 (Pa. 1998), the Supreme Court held that to be admissible under this rule an oral statement must be a verbatim contemporaneous recording in electronic, audiotaped, or videotaped form.

An inconsistent statement of a witness that does not qualify as an exception to the hearsay rule may still be introduced to impeach the credibility of the witness. See Pa.R.E. 613.

(2) **Prior Statement of Identification by Declarant-Witness.** A prior statement by a declarant-witness identifying a person or thing, made after perceiving the person or thing, provided that the declarant-witness testifies to the making of the prior statement.

Comment

Pennsylvania treats a statement meeting the requirements of Pa.R.E. 803.1(2) as an exception to the hearsay rule. F.R.E. 801(d)(1)(C) provides that such a statement is not hearsay. This differing organization is consistent with Pennsylvania law.

Pa.R.E. 803.1(2) differs from F.R.E. 801(d)(1)(C) in several respects. It requires the witness to testify to making the identification. This is consistent with Pennsylvania law. See *Commonwealth v. Ly*, 599 A.2d 613 (Pa. 1991). The Pennsylvania rule includes identification of a thing, in addition to a person.

(3) **Recorded Recollection of Declarant-Witness.** A memorandum or record made or adopted by a declarant-witness that:

(A) is on a matter the declarant-witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the declarant-witness when the matter was fresh in his or her memory; and

(C) the declarant-witness testifies accurately reflects his or her knowledge at the time when made.

If admitted, the memorandum or record may be read into evidence and received as an exhibit, but

may be shown to the jury only in exceptional circumstances or when offered by an adverse party.

Comment

Pa.R.E. 803.1(3) is similar to F.R.E. 803(5), but differs in the following ways:

1. Pennsylvania treats a statement meeting the requirements of Pa.R.E. 803.1(3) as an exception to the hearsay rule in which the testimony of the declarant is necessary. F.R.E. 803(5) treats this as an exception regardless of the availability of the declarant. This differing organization is consistent with Pennsylvania law.

2. Pa.R.E. 803.1(3)(C) makes clear that, to qualify a recorded recollection as an exception to the hearsay rule, the witness must testify that the memorandum or record correctly reflects the knowledge that the witness once had. In other words, the witness must vouch for the reliability of the record. The Federal Rule is ambiguous on this point and the applicable federal cases are conflicting.

3. Pa.R.E. 803.1(3) allows the memorandum or record to be received as an exhibit, and grants the trial judge discretion to show it to the jury in exceptional circumstances, even when not offered by an adverse party.

Pa.R.E. 803.1(3) is consistent with Pennsylvania law. See *Commonwealth v. Cargo*, 444 A.2d 639 (Pa. 1982).

(4) **Prior Statement by a Declarant-Witness Who Claims an Inability to Remember the Subject Matter of the Statement.** A prior statement by a declarant-witness who testifies to an inability to remember the subject matter of the statement, unless the court finds the claimed inability to remember to be credible, and the statement:

(A) was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition;

(B) is a writing signed and adopted by the declarant; or

(C) is a verbatim contemporaneous electronic recording of an oral statement.

Comment

Pa.R.E. 803.1(4) has no counterpart in the Federal Rules of Evidence. The purpose of this hearsay exception is to protect against the “turncoat witness” who once provided a statement, but now seeks to deprive the use of this evidence at trial. It is intended to permit the admission of a prior statement given under demonstrably reliable and trustworthy circumstances, see, e.g., *Commonwealth v. Hanible*, 30 A.3d 426, 445 n. 15 (Pa. 2011), when the declarant-witness feigns memory loss about the subject matter of the statement.

A prior statement made by a declarant-witness having credible memory loss about the subject matter of the statement, but able to testify that the statement accurately reflects his or her knowledge at the time it was made, may be admissible under Pa.R.E. 803.1(3). Otherwise, when a declarant-witness has a credible memory loss about the subject matter of the statement, see Pa.R.E. 804(a)(3).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 10, 2000, effective July 1, 2000; rescinded and replaced January 17, 2013, effective March 18, 2013; amended March 1, 2017, effective April 1, 2017.

Committee Explanatory Reports:

Final Report explaining the amendment to paragraph (1) and the updates to the Comment to paragraph (1) published with the Court's Order at 30 Pa.B. 1646 (March 25, 2000).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the March 1, 2107 revision of the Comment and addition of paragraph (4) published with the Court's Order at 47 Pa.B. 1627 (March 18, 2017).

Rule 803.1(2). [Prior Statement of Identification] (Reserved).

[(2) *Prior Statement of Identification by Declarant-Witness.* A prior statement by a declarant-witness identifying a person or thing, made after perceiving the person or thing, provided that the declarant-witness testifies to the making of the prior statement.

Comment

Pennsylvania treats a statement meeting the requirements of Pa.R.E. 803.1(2) as an exception to the hearsay rule. F.R.E. 801(d)(1)(C) provides that such a statement is not hearsay. This differing organization is consistent with Pennsylvania law.

Pa.R.E. 803.1(2) differs from F.R.E. 801(d)(1)(C) in several respects. It requires the witness to testify to making the identification. This is consistent with Pennsylvania law. *See Commonwealth v. Ly*, 528 Pa. 523, 599 A.2d 613 (1991). The Pennsylvania rule includes identification of a thing, in addition to a person.]

Rule 803.1(3). [Recorded Recollection] (Reserved).

[(3) *Recorded Recollection of Declarant-Witness.* A memorandum or record made or adopted by a declarant-witness that:

(A) is on a matter the declarant-witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the declarant-witness when the matter was fresh in his or her memory; and

(C) the declarant-witness testifies accurately reflects his or her knowledge at the time when made.

If admitted, the memorandum or record may be read into evidence and received as an exhibit, but may be shown to the jury only in exceptional circumstances or when offered by an adverse party.

Comment

Pa.R.E. 803.1(3) is similar to F.R.E. 803(5), but differs in the following ways:

1. Pennsylvania treats a statement meeting the requirements of Pa.R.E. 803.1(3) as an exception to the hearsay rule in which the testimony of the declarant is necessary. F.R.E. 803(5) treats this as

an exception regardless of the availability of the declarant. This differing organization is consistent with Pennsylvania law.

2. Pa.R.E. 803.1(3)(C) makes clear that, to qualify a recorded recollection as an exception to the hearsay rule, the witness must testify that the memorandum or record correctly reflects the knowledge that the witness once had. In other words, the witness must vouch for the reliability of the record. The Federal Rule is ambiguous on this point and the applicable federal cases are conflicting.

3. Pa.R.E. 803.1(3) allows the memorandum or record to be received as an exhibit, and grants the trial judge discretion to show it to the jury in exceptional circumstances, even when not offered by an adverse party.

Pa.R.E. 803.1(3) is consistent with Pennsylvania law. *See Commonwealth v. Cargo*, 498 Pa. 5, 444 A.2d 639 (1982).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended March 10, 2000, effective July 1, 2000; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the amendment to subsection (1) and the updates to the Comment to subsection (1) published with the Court's Order at 30 Pa.B. 1646 (March 25, 2000).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).]

Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant is Unavailable as a Witness.

(a) *Criteria for Being Unavailable.* A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter, **except as provided in Rule 803.1(4)**;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this [**subdivision**] **paragraph** (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

Comment

[This rule is identical to F.R.E. 804(a).] Pa.R.E. 804(a)(3) differs from F.R.E. 804(a)(3) in that it excepts from this rule instances where a declarant-

witness's claim of an inability to remember the subject matter of a prior statement is not credible, provided the statement meets the requirements found in Pa.R.E. 803.1(4). This rule is otherwise identical to F.R.E. 804(a). A declarant-witness with credible memory loss about the subject matter of a prior statement may be subject to this rule.

Rule 804(b). The Exceptions.

(b) *The Exceptions.* The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) *Former Testimony.* Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

Comment

Pa.R.E. 804(b)(1) is identical to F.R.E. 804(b)(1).

In criminal cases the Supreme Court has held that former testimony is admissible against the defendant only if the defendant had a “full and fair” opportunity to examine the witness. *See Commonwealth v. Bazemore*, [531 Pa. 582,] 614 A.2d 684 (Pa. 1992).

Depositions

Depositions are the most common form of former testimony that is introduced at a modern trial. Their use is provided for not only by Pa.R.E. 804(b)(1), but also by statute and rules of procedure promulgated by the Pennsylvania Supreme Court.

The Judicial Code provides for the use of depositions in criminal cases. 42 Pa.C.S. § 5919 provides:

Depositions in criminal matters. The testimony of witnesses taken in accordance with section 5325 (relating to when and how a deposition may be taken outside this Commonwealth) may be read in evidence upon the trial of any criminal matter unless it shall appear at the trial that the witness whose deposition has been taken is in attendance, or has been or can be served with a subpoena to testify, or his attendance otherwise procured, in which case the deposition shall not be admissible.

42 Pa.C.S. § 5325 sets forth the procedure for taking depositions, by either prosecution or defendant, outside Pennsylvania.

In civil cases, the introduction of depositions, or parts thereof, at trial is provided for by Pa.R.C.P. No. 4020(a)(3) and (5).

A video deposition of a medical witness, or any expert witness, other than a party to the case, may be introduced in evidence at trial, regardless of the witness's availability, pursuant to Pa.R.C.P. No. 4017.1(g).

42 Pa.C.S. § 5936 provides that the testimony of a licensed physician taken by deposition in accordance with the Pennsylvania Rules of Civil Procedure is admissible in a civil case. There is no requirement that the physician testify as an expert witness.

(2) *Statement Under Belief of Imminent Death.* A statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

Comment

Pa.R.E. 804(b)(2) differs from F.R.E. 804(b)(2) in that the Federal Rule is applicable in criminal cases only if the defendant is charged with homicide. The Pennsylvania Rule is applicable in all civil and criminal cases, subject to the defendant's right to confrontation in criminal cases.

In *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court interpreted the Confrontation Clause in the Sixth Amendment of the United States Constitution to prohibit the introduction of “testimonial” hearsay from an unavailable witness against a defendant in a criminal case unless the defendant had an opportunity to confront and cross-examine the declarant, regardless of its exception from the hearsay rule. However, in footnote 6, the Supreme Court said that there may be an exception, *sui generis*, for those dying declarations that are testimonial.

(3) *Statement Against Interest.* A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

Comment

This rule is identical to F.R.E. 804(b)(3).

(4) *Statement of Personal or Family History.* A statement made before the controversy arose about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

Comment

Pa.R.E. 804(b)(4) differs from F.R.E. 804(b)(4) by requiring that the statement be made before the controversy arose. *See In re McClain's Estate*, 392 A.2d 1371 (Pa. 1978). This requirement is not imposed by the Federal Rule.

(5) *Other exceptions (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 804(b)(5) (now F.R.E. 807).

(6) *Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.* A statement offered against a party that wrongfully caused—or acquiesced in wrongfully causing—the declarant's unavailability as a witness, and did so intending that result.

Comment

This rule is identical to F.R.E. 804(b)(6).

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 10, 2000, effective immediately; rescinded and replaced January 17, 2013, effective March 18, 2013; amended March 1, 2017, effective April 1, 2017.

Committee Explanatory Reports:

Final Report explaining the March 10, 2000 revision of the Comment to paragraph (b)(4) published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 620 (February 2, 2013).

Final Report explaining the March 1, 2017 amendment of paragraph (a)(3) published with the Court's Order at 47 Pa.B. 1627 (March 18, 2017).

Rule 804(b)(2). [Statement Under Belief of Imminent Death] (Reserved).

[(2) *Statement Under Belief of Imminent Death*. A statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

Comment

Pa.R.E. 804(b)(2) differs from F.R.E. 804(b)(2) in that the Federal Rule is applicable in criminal cases only if the defendant is charged with homicide. The Pennsylvania Rule is applicable in all civil and criminal cases, subject to the defendant's right to confrontation in criminal cases.

In *Crawford v. Washington*, 541 U.S. 36 (2004), the Supreme Court interpreted the Confrontation Clause in the Sixth Amendment of the United States Constitution to prohibit the introduction of "testimonial" hearsay from an unavailable witness against a defendant in a criminal case unless the defendant had an opportunity to confront and cross-examine the declarant, regardless of its exception from the hearsay rule. However, in footnote 6, the Supreme Court said that there may be an exception, *sui generis*, for those dying declarations that are testimonial.]

Rule 804(b)(3). [Statement Against Interest] (Reserved).

[(3) *Statement Against Interest*. A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

Comment

This rule is identical to F.R.E. 804(b)(3).]

Rule 804(b)(4). [Statement of Personal or Family History] (Reserved).

[(4) *Statement of Personal or Family History*. A statement made before the controversy arose about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

Comment

Pa.R.E. 804(b)(4) differs from F.R.E. 804(b)(4) by requiring that the statement be made before the controversy arose. See *In re McClain's Estate*, 481 Pa. 435, 392 A.2d 1371 (1978). This requirement is not imposed by the Federal Rule.]

Rule 804(b)(5). [Other exceptions (Not Adopted)] (Reserved).

[(5) *Other exceptions (Not Adopted)*

Comment

Pennsylvania has not adopted F.R.E. 804(b)(5) (now F.R.E. 807).]

Rule 804(b)(6). [Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability] (Reserved).

[(6) *Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability*. A statement offered against a party that wrongfully caused—or acquiesced in wrongfully causing—the declarant's unavailability as a witness, and did so intending that result.

Comment

This rule is identical to F.R.E. 804(b)(6).

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 10, 2000, effective immediately; rescinded and replaced January 17, 2013, effective March 18, 2013.

Committee Explanatory Reports:

Final Report explaining the March 10, 2000 revision of the Comment to paragraph (b)(4) published with the Court's Order at 30 Pa.B. 1641 (March 25, 2000).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).]

FINAL REPORT¹

Revision of the Comment to Rule of Evidence 613 Amendment of Rules of Evidence 803.1 & 804

On March 1, 2017, effective April 1, 2017, upon the joint recommendation of the Committee on Rules of Evidence, the Court adopted a revision of the Comment to

¹ The Committee's Final Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

Pa.R.E. 613 and amendment of Pa.R.E. 803.1 to add a new paragraph (4) and Pa.R.E. 804(a)(3).

As described in the Publication Report, the Committee proposed amendments to protect against the “turncoat witness” who once provided a statement, but now seeks to deprive the use of this evidence at trial by feigning memory loss. “[T]he unwilling witness often takes refuge in a failure to remember.” 3A J. Wigmore, Evidence § 1043, at 1061.

New paragraph (4) to Pa.R.E. 803.1 excepts from the hearsay rule a prior statement when the declarant-witness claims an inability to remember the substance of the statement and the prior statement was given under circumstances identical to paragraph (1).

Pa.R.E. 804(a)(3), which considers a declarant unavailable to testify as a witness if the declarant testifies to not remembering the subject matter at issue, has been amended to recognize the new exception in Pa.R.E. 803.1(4). However, this new exception is not applicable if the court finds the claimed inability to remember to be credible. A witness with a credible inability to remember the subject matter at issue may be subject to Pa.R.E. 804.

Notwithstanding a witness’s claimed memory loss about the subject matter of the prior statement, the witness must still be subject to cross-examination about the statement pursuant to Pa.R.E. 803.1. Further, readers should note that these amendments do not attempt to codify or reflect requirements under the Confrontation Clause. See Pa.R.E. 802, Comment.

Relatedly, the Comment to Pa.R.E. 613 was revised to clarify that the criteria set forth in Pa.R.E. 803.1(1)(A)—(C) is not applicable to the use of inconsistent statements for impeachment pursuant to Rule 613.

[Pa.B. Doc. No. 17-464. Filed for public inspection March 17, 2017, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Rescission of Phila.Civ.R. *212.2 Sanctions for Failure to Settle; President Judge General Court Regulation No. 2017-01

Order

And Now, this 28th day of February, 2017, the Board of Judges of Philadelphia County having voted at the Board of Judges’ meeting held on February 16, 2017 to rescind Philadelphia Civil Rule *212.2 Sanctions for Failure to Settle *It Is Hereby Ordered and Decreed* that Philadelphia Civil Rule *212.2 is hereby rescinded.

This General Court Regulation is issued in accordance with Pa.R.J.A. 103 and shall be filed with the Office of Judicial Records (formerly the Prothonotary, Clerk of Courts and Clerk of Quarter Sessions) in a docket maintained for General Court Regulation issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this General Court Regulation shall be distributed to the Legislative Reference Bureau, together with a copy on a computer diskette, for publication in the *Pennsylvania Bulletin*. As required by Pa.R.J.A. 103(d)(6) one certified copy of this

General Court Regulation shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at <http://courts.phila.gov>, and shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the General Court Regulation shall also be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE SHEILA WOODS-SKIPPER,
President Judge, Court of Common Pleas

[Pa.B. Doc. No. 17-465. Filed for public inspection March 17, 2017, 9:00 a.m.]

Title 255—LOCAL COURT RULES

ADAMS COUNTY

Orphans’ Court Rules; Administrative Order No. 7 of 2017

Order of Court

And Now, this 2nd day of February, 2017, in recognition that the Supreme Court has vacated all local Orphans’ Court Rules with the exception of local rules promulgated under Chapter 14 (Guardianship of Incapacitated Persons), Chapter 15 (Adoptions) and Chapter 16 (Abortion Control Act) as of September 1, 2016, the Court hereby Orders that the Adams County Orphans’ Court Rules are vacated in their entirety and replaced as follows:

Rule 14. Guardianship of Incapacitated Persons.

Rule 14.1. Guardianship.

A. *Guardians*—Except in the case of an adult child living with his/her natural parent(s), preference in appointments shall normally be given to banking institutions and suitable persons who do not reside with the alleged incapacitated person, are not related to the person and who reside or have a regular place of business in Adams County.

B. *Estate*—Consent of Proposed Guardian—The written consent of the proposed guardian to act as guardian shall be attached to the petition.

C. *Estate—Proof of Service*—Proof of service shall be presented at the hearing. The affidavit of service shall, in all cases, recite that the petition and citation and notice were read and explained to the alleged incapacitated person.

D. *Sale of Personal Property*—Court approval for sale of personal property shall not be required.

Rule 14.3 to 14.5. Reserved.

Rule 15. Adoptions.

Rule 15.1. Investigations.

A. Adams County Children and Youth Services is designated as the agency to perform investigations required by the Court in accordance with the Adoption Act.

B. Fees for investigations by the agency shall be periodically set by the administrative order. Until changed, the fee shall be \$75.00. Fees for obtaining child abuse clearances and criminal histories shall be in addition to the investigation fee.

C. Petitioners and/or persons filing notices of intention to adopt shall, unless excused from an investigation, pay the investigation fee within two (2) weeks of filing a petition or notice of intention to adopt, whichever is filed first.

D. Petitioners shall, within the two (2) week period, provide the agency with a description of petitioners' home and detailed directions to it.

E. Persons who are otherwise subject to investigation and who request a waiver thereof shall include, with the application for waiver, either:

1. an affidavit setting forth in detail that person's criminal history and all indicated reports of child abuse that are known to the person, or

2. original or certified copies of the person's criminal history and child abuse clearance forms.

F. Upon receipt of the material described in (e), the Clerk shall promptly provide the agency with copies thereof.

Rule 15.2. Voluntary Relinquishment to Agency.

The caption for all pleadings and the docket entry shall carry the given name of the child.

Rule 15.3. Voluntary Relinquishment to Adult Intending to Adopt Child.

A. The caption for all pleadings and docket entry shall carry the given name of the child.

B. In addition to other information required by Pa.O.C. Rule 15.3, the petition shall describe any agreement between petitioner and natural parents regarding fees, costs, payments, or future rights of visitation and/or custody.

Rule 15.4. Involuntary Termination of Parental Rights.

A. The caption for all pleadings and the docket entry shall carry the given name of the child.

B. Information required by Local Rule 15.3(B) shall be provided.

Rule 15.5. Adoption.

A. *Petition.*

1. The caption for all pleadings and the docket entry regarding an adoption shall be in the name to be taken by the proposed adoptee. Where there was a prior relinquishment or termination proceeding known to the adopting parents, there shall be a reference thereto by number and year in the petition for adoption.

2. The petition shall contain the information required by Pa.O.C. Rule 15.3(b).

B. *Adult—Change of Name.* An adult to be adopted who desires to assume the surname of adopting parent or parents shall advertise such desire in accordance with Pa.R.C.P. 430(b)(1).

C. *Intermediary.* When a report is filed by an intermediary and the prior relinquishment or termination proceeding is not known to the adopting parents, the report of the intermediary shall refer to the prior relinquish-

ment or termination proceeding by number and year. Where the prior relinquishment or termination proceeding is not referred to in the Adoption Petition or in the report of the intermediary, but is known to the clerk, the Clerk shall place a memorandum in the adoption packet showing the reference to the prior relinquishment or termination proceeding.

Rule 15.6. Notice—Method and Time.

A. If personal service is not obtainable and the registered or certified mail is returned undelivered, then:

1. Notice shall be sent by regular mail to the last known address of the parent and an affidavit of mailing shall be filed of record.

2. Further notice by publication shall be given in accordance with Pa.O.C. Rule 5.1(c).

3. The notice by publication shall appear in substantially the following form:

IN THE COURT OF COMMON PLEAS, ADAMS COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

ORPHANS' COURT DIVISION

NOTICE

TO: (Party to Whom Notice is Given)

You are hereby notified that a Petition for (Adoption/Involuntary Termination of Parental Rights to Child) has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for _____ at _____ o'clock, __.M., prevailing time, at the Courthouse at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the (Adoption/Involuntary Termination of Your Parental Rights) with respect to your child.

You should contact your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get help.

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, Pennsylvania 17325
Telephone Number: 717-337-9846

4. Proof of notice by publication shall be presented to the Court at the time of the hearing.

Rule 15.7. Impounding—Docket Entries—Reports—Privacy.

The docket maintained by the Clerk shall carry only the name and date of each paper filed and shall also carry the date in reference to final action, which entry shall consist of a notation either that the decree was entered or that the petition was dismissed. Adoptions shall be indexed on an annual basis rather than to a term and number. An alphabetical index will be maintained for the convenience of the Clerk.

Rule 16. Abortion Control Act Proceedings.

Rule 16.1 through 16.5. Reserved.

Rule 16.6. Dockets. Docket Maintenance.

In addition to the requirements of Pa.O.C. Rule 16.6, all docket entries shall be referenced under an "AC" number, with the appropriate year, and not under an "OC" number.

Rule 16.7 through 16.12. Reserved.

These rules shall become effective after all the provisions of the Pennsylvania Rules of Judicial Administration 103 are met, to include the following:

a. A copy of this order shall be submitted to the Orphans' Court Procedural Rules Committee for review to rulescommittees@pacourts.us;

b. Upon receipt of a statement from the Orphans' Court Procedural Rules Committee that the local rule is not inconsistent with any general rule of the Supreme Court, two (2) certified copies of this Order together with a computer diskette that complies with the requirement of 1 Pa. Code § 13.11(b), or other compliant format, containing the text of the local rule(s) adopted hereby shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. One copy of this Order shall be forwarded to the Administrative Office of the Pennsylvania Courts via e-mail to adminrules@pacourts.us.

d. A copy of the proposed local rule(s) shall be published on the 51st Judicial District website;

e. This Order shall be filed in the Office of the Prothonotary of Adams County and a copy thereof shall be filed with the Adams County Clerk of Courts and the Adams County Law Library for inspection and copying;

f. The effective date of the local rule(s) shall be 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

MICHAEL A. GEORGE,
President Judge

[Pa.B. Doc. No. 17-466. Filed for public inspection March 17, 2017, 9:00 a.m.]

ADAMS COUNTY**Orphans' Court Rules; Administrative Order No. 7A of 2017****Order of Court**

And Now, this 1st day of March, 2017, after review by the Supreme Court of Pennsylvania Orphans' Court Procedural Rules Committee, the Court makes a correction to the proposed Orphans' Court Rules as outlined in Administrative Order 7 of 2017, as follows:

Rule 15.6(A)(2): Further notice by publication shall be given once a week during three successive calendar weeks in the local legal periodical and in a newspaper of general circulation published at or near his or her last known residence within the county.

In all other respects, Administrative Order 7 of 2017 remains in full effect.

The District Court Administrator is hereby directed to proceed to submit these proposed Rules to the *Pennsylvania Bulletin* for publication.

By the Court

MICHAEL A. GEORGE,
President Judge

[Pa.B. Doc. No. 17-467. Filed for public inspection March 17, 2017, 9:00 a.m.]

ERIE COUNTY**Order Adopting Orphans' Court Rules; Doc. No. 52-2017****Order**

And Now, to wit, this 21st day of February, 2017, it is hereby *Ordered* that the following Erie County Orphans' Court Rules are adopted, effective 30 days after their publication in the *Pennsylvania Bulletin*.

This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration 103(d).

JOHN J. TRUCILLA,
President Judge

CHAPTER I**RULE 1****PRELIMINARY RULES****1.3. Additional Definitions.**

The following words, when used in these Rules, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

"Business days" shall be deemed to include Mondays through Fridays excepting weekdays when the Court House is closed.

"Local Rule" or "Local Rules" shall mean the Erie County Orphans' Court Rules, singularly or collectively, as the context may dictate, promulgated in accordance with PA.R.J.A. No. 103(d).

CHAPTER II**RULE 2****ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS****2.4. Petition for Adjudication/Statement of Proposed Distribution; Supplements/Additions.**

Additional Receipts and Disbursements—Receipts and/or disbursements received or made after filing the Account and Petition for Adjudication/Statement of Proposed Distribution may be accounted for in a supplemental account, which shall be signed and verified by the accountant(s) and filed with the Clerk, with notice in the same manner as required by Pa.O.C. Rule 2.5(a)—(g) with respect to an Account.

2.6. Filing for a Particular Audit.

Accounts to appear on a particular audit list must be filed in accordance with the audit calendar published by the Clerk's office.

2.7. Objections to Accounts or Petitions for Adjudication/Statement of Proposed Distribution. Time.

(a) Within twenty days of filing an objection, the objecting party or his/her attorney shall schedule a hearing thereon with the Court allowing ample time for the objection to be heard. The Accountant or his/her attorney may (but is not required to) schedule a hearing during the same period pursuant to the same procedure. The party scheduling the hearing shall notify all other parties who receive notice pursuant to Rule 2.5 and the Orphans' Court Auditor of the date and time thereof.

(b) The Orphan's Court Auditor may periodically identify Accounts for which objections have been filed and no hearing scheduled to the Court and send the notice if so directed by the Court.

2.9. Schedule of Distribution: Confirmation of Title to Real Property.

Approval of a schedule of distribution of real estate shall be in the nature of a confirmation of title in the respective distributees.

(a) *Separate Awards of Real Property.* A schedule of distribution shall set forth separate awards of real property in separate paragraphs.

(b) *Description of Real Property. Certification by Counsel.* Real property shall be described in the manner appearing in the last deed of record and shall, in addition, include information pertinent to the derivation of decedent's title.

2.10. Foreign Heirs and Unknown Distributees. Report by Fiduciary.

(b) The report required by Pa.O.C. Rule 2.10(b) shall be submitted at the audit to the Court and the Auditor and shall include substantially the following:

(1) *Unknown Distributee.* If it appears that the existence, identity or whereabouts of a distributee is unknown, or there are no known heirs, the fiduciary shall submit the written report, verified by the fiduciary or the fiduciary's counsel, in which shall be set forth:

(i) The nature of the investigation made to locate the heirs of the decedent, in complete detail; and

(ii) In cases of intestacy, or where there are no known heirs, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain. The term "investigation", as used in this Rule, shall include inquiry of or to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; beneficial organizations; insurance records; church membership; school records; social security, Veterans' Administration or military service records; naturalization records, if not native born; and such other sources of information as the circumstances may suggest.

(2) *Foreign Distributees.* If the fiduciary requests the Court to withhold distribution to a foreign distributee, he or she shall submit the written report, verified by the fiduciary or the fiduciary's counsel, in which shall be set forth:

(i) the relationship of the distributee to the decedent, and any available information concerning his/her present whereabouts;

(ii) in cases of intestacy, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain; and

(iii) the reasons for the request that distribution be withheld, and the suggested manner of withholding.

CHAPTER III

RULE 3

PETITION PRACTICE AND PLEADING

3.16. Motion Court Practice.

(1) *Motion Court.* Unless otherwise ordered by the Court, Motion Court will be held every Monday through Thursday at 9:00 a.m.

(2) *Cover Sheet.* All motions presented at motion Court shall include a completed motion Court cover sheet in the form required by the Court.

(3) *Notice Requirements Prior to Presentation at Motion Court.* Prior to the presentation to the Court of any motion or petition requesting an immediate Order of Court, other than a Rule to Show Cause which grants no relief, opposing counsel and unrepresented parties must be given notice, subject to the following:

(i) *Contents of Notice.* The notice must give the date and time when the motion or petition will be presented to the Court and must be accompanied by a copy of the proposed motion and Order.

(ii) *Certification of Notice.* The motion or petition must contain a certificate signed by counsel verifying that proper notice or citation was given under this Rule.

(iii) *Length of notice required.* Except where otherwise required under law, the following notice shall be required:

(a) If the motion or petition is uncontested, either two (2) full business days' notice must be given by personal delivery or facsimile transmission to each party or their counsel's office, or five (5) full business days' notice must be given if notice is by mail.

(b) Where such motion or petition does not meet the requirements of subsection (iii)(a) above, twenty (20) days' notice as set forth in Pa.O.C. Rule 2.5(d) and 3.5(b).

(iv) *Failure to give notice.* The Court will not enter an Order on a petition or motion without the Certificate of Notice being attached unless a special cause is shown to the Court.

CHAPTER IV

RULE 4

FORMAT AND SERVICE OF LEGAL PAPER BY PARTIES AND COURT; ELECTRONIC FILING

Rule 4.1. Format of All Legal Paper.

(a) No paper or other document may be filed in the Register of Wills or Clerk other than paper 8 1/2" x 11" size. The only exception to this Rule is the filing of a will or other original document.

(b) Every pleading and motion shall be endorsed with the name, address, Pennsylvania Supreme Court Identification Number and telephone number of counsel.

Rule 4.5. Service of Legal Paper by Court and Clerk.

(c) The Clerk and the Court may serve all notices, opinions, and orders via delivery to the counsel's box held by such counsel or his or her firm in the Office of the Prothonotary at the Erie County Courthouse, and the Docket shall specifically note this method of service.

Explanatory Comment

This rule provides an additional alternative for the Clerk and the Court to serve notices, opinions, and orders. This rule does not permit service upon counsel via counsel's box by any persons or entities other than the Clerk and the Court.

CHAPTER V

RULE 5

RULES GOVERNING SPECIFIC TYPES OF PETITIONS

5.2. Family Exemption. Petition for Settlement of Small Estate.

The family exemption petition as set forth in Pa.O.C. Rule 5.2 may be included in a petition for settlement of small estate as set forth in Local Rule 5.16.

5.10. Public Sale of Real Property. Method of Serving Notice.

Notice of the public sale of real property (containing the date, time, and place of sale and any other information required by Act of Assembly) shall be given:

(1) By advertisement once a week for three successive weeks, the first of which shall be at least twenty (20) days prior to the date set for the sale of the property, in the *Erie County Legal Journal* and in one newspaper of general circulation in Erie County; and

(2)(i) By handbills, one of which shall be posted at a conspicuous place on the real property to be sold, and at least three of which shall be posted in three public places in the vicinity of such real property, at least twenty (20) days prior to the date set for the sale of the property; and

(ii) By personal notice, sent via registered or certified mail, to all interested parties, of the time and place of the proposed sale, at least twenty (20) days prior to the date set for the sale of the property.

5.16. Settlement of Small Estates.

(a) *Form of Petition. Contents.*

Petitions under PEF Code § 3102, as amended, for the settlement of small estates shall, in addition to the requirements of Chapter III of the State Orphans' Court Rules, set forth:

(1) The name and address of the petitioner and the relationship of the petitioner to the decedent.

(2) The name, date of death, and domicile of decedent, whether the decedent died testate or intestate, the dates of the probate of the will and of the grant of letters, if any, and whether the personal representative has been required to give bond and, if so, the amount.

(3) The names and relationship of all beneficiaries entitled to any part of the estate under the will or intestate laws, a brief description of their respective interests, whether any of them has received or retained any property of the decedent by payment of wages under Section 3101 of the PEF Code and whether any of them are minors, incapacitated, or deceased with the names of their fiduciaries.

(4) The person or persons, if any, entitled to the family exemption; whether or not the individual was a member of the same household as the decedent at the time of decedent's death; and, if a claim thereof is made in this petition, any additional facts necessary to establish the prima facie right thereto.

(5) An inventory of the real and personal estate of the decedent, with values ascribed to each item, either incorporated in the petition or attached as an exhibit.

(6) An itemization of all administrative costs, funeral expenses, debts and distributions, and of assets then remaining for distributions.

(7) A list showing the nature, amount and preference of all unpaid claims against the estate and indicating which are admitted.

(8) That twenty (20) days' written notice of intention to present the petition has been given to every unpaid beneficiary, heir, or claimant who has not joined in the petition, or to the Attorney General, if the decedent's heirs are unknown.

(9) A prayer for distribution of the property, setting forth the persons entitled and their distributive shares,

and requesting the discharge of the personal representative and the release of surety, if letters have been granted and advertised.

(b) *Required Exhibits.*

The following exhibits shall be attached to the petition:

(1) The original of the decedent's will, if it has not been probated.

(2) Joinders or notice to unpaid beneficiaries, heirs, and claimants.

(3) A receipt for the filing of an inheritance tax return reporting the assets which are the subject of the petition.

(4) A certification that a copy of the proposed petition and decree has been given to all beneficiaries and unpaid creditors at least twenty (20) days prior to presentation of the petition.

(5) Written confirmation by the Pennsylvania Department of Public Welfare of the amount of any claim for assistance provided to the decedent.

(c) The family exemption petition as set forth in Pa.O.C. Rule 5.2 may be included in a petition for settlement of small estates.

5.17. Determination of Title to Real Property. PEF Code Section 3546.

(a) *Contents of Petition.* A petition under PEF Code Section 3546 for the determination of title to real property shall, in addition to the requirements of Chapter III of the State Orphans' Court Rules, set forth:

(1) the name of the petitioner and the relationship of the petitioner to the decedent;

(2) the facts on which the claim of the petitioner is based;

(3) whether the decedent died testate or intestate, and where, when and to whom letters were granted;

(4) a description of real property located within the Commonwealth, and instrument number or the place, book, and page of recording of the last deed thereto;

(5) the names and addresses of all known creditors and interested parties; and

(6) the facts material to a determination of the title.

(b) *Exhibits.* The following exhibits shall be attached to the petition:

(1) The notice which has been given to creditors, interested parties, and, if the heirs of the decedent are unknown, a copy of the notice given to the Attorney General; and

(2) A copy of the decedent's Will.

(c) *Service.* The decree shall be served on all known interested parties and creditors of the decedent thirty (30) days prior to final confirmation, which must be at least three (3) months after the date of the decree nisi. The final confirmation date shall be advertised once in the legal publication of the County in which the real property is located and once in a newspaper of general circulation for the County in which the real property is located, or as the Court shall otherwise direct.

5.18. Filing of Dispositive Instruments Including Wills Without Issuance of Letters.

(a) In every proceeding involving a dispositive instrument requiring the filing of a Pennsylvania Inheritance Tax Return other than a grant of letters, the fiduciary shall within six (6) months of the event giving rise to the

disposition of any interest in any property, notify all individuals and entities (and the Attorney General where required) named in said dispositive instrument, and all heirs named in a Proof of Death filed in conjunction therewith, of the happening of the event giving rise to the disposition of the interest. The notice shall be submitted by regular U.S. mail and shall include the following:

- (1) The name of the creator of the property interest;
- (2) The nature of the property interest created;
- (3) Notification that the addressee has been named as a beneficiary in said dispositive instrument and a copy of such instrument or a description of the beneficiary's interest under the terms of the instrument; and
- (4) The address where a copy of the dispositive interest instrument can be acquired if desired.

Comment: 20 Pa.C.S. § 301(b) provides that the title to real estate is vested in beneficiaries and/or heirs, as applicable upon the death of the decedent subject to the right of the personal representative to administer the estate. 20 Pa.C.S. § 3357(a) provides that beneficiaries and/or heirs, as applicable, can give a good deed to real estate if more than one year has elapsed after death and no letters have been issued or within such year if no letters have been issued in the Commonwealth. As a result there can be circumstances when the probate of a will or filing of a proof of death that identifies the beneficiaries and establishes the decedent died intestate may along with an inheritance tax return and notice to medical assistance, etc. serve as a less expensive form of estate "administration" when the only assets are real estate and there are no creditors to speak of. The purpose of Local Rule 5.18, which is to apply when a will is probated but letters not issued, is to provide for notice to parties named in the will that has been probated.

CHAPTER VII

RULE 7

RULES RELATING TO PRE-HEARING AND HEARING PROCEDURE

7.1. Depositions, Discovery and Production of Documents.

The procedure relating to depositions, discovery and production of documents shall be governed by special Order of Court.

- (a) Leave to take depositions and/or to obtain discovery or production of documents shall be granted only upon petition with good cause shown, except upon agreement of counsel.
- (b) In the case of a will contest, no discovery shall be allowed prior to the filing of the contest or caveat.
- (c) The procedure relating to perpetuation of testimony shall be governed by special Order of Court in every case.

CHAPTER IX

RULE 9

AUDITORS AND MASTERS

9.1. Notice of Hearings.

- (a) An Auditor or Master shall give at least twenty (20) days' notice of the time and place of his or her first hearing to all parties in the manner set forth in Pa.O.C. Rule 4.3.
- (b) Notice of succeeding hearings given by an Auditor or Master at a hearing of which proper notice has been given shall constitute sufficient notice of such succeeding hearings.

9.6. Filing of Report.

An Auditor or Master shall, at the time of the filing of his or her report, give notice of the filing to all parties in the manner set forth in Pa.O.C. Rule 4.3.

9.7. Confirmation or Approval of Report.

The Court shall hold a hearing on the confirmation of an Auditor's Report or the approval of a Master's Report. Any party may request a hearing through Court Administration.

9.8. Compensation of Auditor or Master.

The Auditor or Master shall be compensated as directed by the Court and from such sources as the Court shall direct.

CHAPTER X

RULE 10

REGISTER OF WILLS

10.1. Forms—Death Certificates—Estates.

(a) A death certificate for the decedent shall be presented to the Register of Wills for inspection and verification of information at the time of the presentation of a Petition for Grant of Letters.

10.3. Hearings.

(a) *Extension of Time*—The Register of Wills, upon his or her own motion, or upon the motion of any party, may extend any limitation of time prescribed by these Rules.

(b)(1) *Limitations on Discovery*—Discovery before the Register, upon application to the Register by an interested party, shall be limited to the following: depositions, request for production of documents, request for admissions, subpoenas.

(b)(2) *Objections to Discovery*—Objections to discovery shall be addressed to, and shall be decided by, the Register of Wills or the Deputy Register or solicitor presiding over the hearing.

(b)(3) *Additional Discovery*—Requests for additional discovery beyond the scope of these rules shall be made to the Court.

10.4. Appeals from the Register of Wills.

Appeals from an order or decree of the Register shall be to the Court in accordance with PEF Code § 908.

CHAPTER XIV

RULE 14

INCAPACITATED PERSONS

14.1. Procedure.

(a) All petitions requiring a hearing shall first be submitted along with a petition cover sheet, proposed Order for scheduling a hearing and proposed final decree to the Family/Orphans' Court Administrator for assignment of a hearing date.

(1) Upon the assignment of a hearing date by the Family/Orphans' Court Administrator, the original Petition or Motion and one copy shall be filed with the Clerk of the Orphans' Court. A copy shall also be given to the Family/Orphans' Court Administrator.

(2) All other pleadings not requiring a hearing shall be filed directly with the Clerk of the Orphans' Court.

(b) Emergency petitions requiring the immediate attention of the Court shall be presented to the Family/Orphans' Court duty judge.

(c) The petitioner shall serve the petition, along with the citation and notice as set forth in Supreme Court Form G-01, on the alleged incapacitated person in accordance with PEF Code § 5511(a).

(d) The petitioner shall serve a copy of the guardianship petition, along with a copy of the citation and notice served on the alleged incapacitated, by first class mail to the following persons:

(1) All persons who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he or she died intestate at the time;

(2) The person or institution providing residential services to the alleged incapacitated person;

(3) Any attorney in fact under a durable power of attorney;

(4) Such other parties as the Court may direct.

(e) All petitions required by this Rule shall be signed by the moving party or that party's counsel.

(f) *Proof of Service.* Prior to a hearing under Chapter XIV of the Rules, the petitioner shall file an affidavit or verification that the proper service of notice of the petition and hearing was made to all parties listed in the petition and to any other parties required by the Court, by law, or by the Rules to be notified.

(g) *Emergency Guardianships.*

(1) A petition for emergency guardianship under PEF Code § 5513 may be filed by separate petition or with a petition for appointment of a permanent guardian. Reasons for the need for emergency guardianship shall be clearly set forth in the petition.

(2) A petition for emergency guardianship may be presented in Motion Court for the purpose of obtaining a temporary order. Once an emergency order is issued, the petitioner shall obtain a final hearing date from Court Administration.

CHAPTER XV

RULE 15

ADOPTION

15.1. Procedure.

(a) All Petitions or Motions requiring a hearing including those pertaining to Adoptions, Involuntary Terminations, Voluntary Relinquishments and Confirmation of Consent shall first be submitted to the Family/Orphans' Court Administrator at such times as provided in Erie County Civil Rule 304 for assignment of a hearing date.

(b) Upon the assignment of a hearing date the original Petition or Motion shall be filed with the Clerk and a copy of the Order setting the date of the hearing shall be given to the Family/Orphans' Court Administrator.

(c) All other pleadings not requiring a hearing shall be filed with the Clerk of the Orphans' Court.

(d) Any Motion or Petition requiring immediate attention of the Court shall be presented at Family/Orphans' Court Motion Court, with notice to all parties as required by Erie County Civil Rule 440.

15.4.1. Involuntary Termination of the Parental Rights of a Putative Father Whose Identity or Whereabouts Cannot be Ascertained.

The parental rights of a natural or putative father whose identity or whereabouts cannot be ascertained must be terminated by an involuntary termination proceeding prior to approval of a final adoption.

(a) The involuntary termination petition must aver that the natural mother does not know the identity or whereabouts of the natural or putative father, must include his last known address, if known, and must also specify all attempts made by the petitioner to determine the correct identity of the natural or putative father.

(b) Notice of the involuntary termination petition and hearing shall be served on the natural or putative father by publication in the form and manner approved by the Court following presentation of a separate Motion for Service by Publication and Affidavit of Diligent Search as required by Pa.R.C.P. 430.

(c) Publication shall include, as a minimum, the contents of the citation attached to the Involuntary Termination Petition. Proof of publication shall be submitted to the Court prior to hearing.

15.4.2. Petition to Terminate Putative Father's Rights Under § 2503(d) and § 2504(c).

(a) *Contents.* A Petition to terminate a putative father's rights under 23 Pa.C.S.A. Section 2503(d) or 2504(c) shall contain the following:

(1) The names and addresses of the petitioners;

(2) The names and addresses of the birth parents and the putative father;

(3) The date the child was relinquished to an agency or to an adult intending to adopt the child, the date that a report of intention to adopt was filed, and the date of any proceedings to terminate the parental of the birth parents, including voluntary relinquishment, involuntary termination, or confirmation of consent;

(4) A statement of any further proceedings pending in the adoption; and

(5) The certification from the Pennsylvania Department of Vital Statistics pursuant to 23 Pa.C.S.A. § 5103 showing that no claim of paternity has been filed.

(b) *Procedure.*

(1) Upon presentation of a Petition to Terminate putative father's rights under 23 Pa.C.S.A. §§ 2503(d) or 2504(c), the Family/Orphans' Court Administrator shall schedule a hearing, which shall not be less than ten (10) days after the filing of the petition.

(2) Notice shall be provided in the form provided in 23 Pa.C.S.A. § 2513(b), and service shall be as provided in State Rule 15.6.

(3) Notice shall be given to the birth parents and putative father, and to the parents or guardians of a birth parent or putative father who has not reached age 18.

(4) Following hearing, the Court shall issue such decree as clearly sets forth that the parental rights of the putative father are terminated.

(5) A Petition to Terminate Putative Father's Rights may be brought in the name of the attorney for the adopting parents.

15.5. Petition to Confirm Consent to Adoption, including Stepparent adoptions.

All written consents to adoption must be confirmed by Court prior to the entry of a final Adoption Decree.

(a) *Form of Petition. Contents.* The Petition to Confirm Consent shall include the following:

(1) The names and addresses of the petitioners;

(2) The names and addresses of the birth parents;

(3) The date the child was relinquished to an agency or to an adult intending to adopt the child, the date that a report of intention to adopt was filed, and the date the consent to adoption was signed by the birth parent or parents. The original consent shall be attached to the petition or shall be part of prior pleadings; and

(4) A statement of any further proceedings pending in the adoption.

(b) *Procedure.*

(1) The Petition to Confirm Consent shall be presented to the Family/Orphans Court Administrator to schedule a hearing. The hearing shall be scheduled not less than ten (10) days after the filing of the petition and not less than sixty (60) days after the filing of the consent to adoption, whichever is later.

(2) Notice shall be in the form provided in 23 Pa.C.S.A. Section 2513(b), and service shall be as provided in State Rule 15.6. Notice shall be given to the birth parents and putative father, if applicable, and to the parents or guardians of a consenting parent who has not reached age 18.

(3) Following hearing, the Court shall issue such decree as clearly sets forth that the consent to adoption is confirmed and that all rights of the consenting birth parent are terminated.

(4) A Petition to Confirm Consent may be brought in the name of the attorney for adopting parents.

(5) The Adoption petition shall be filed separately from Petition to Confirm Consent, Petition for Voluntary Relinquishment, or Petition for Involuntary Termination of Parent Rights, and may be filed simultaneously with any aforesaid Petition.

(c) *Hearing.*

At the hearing to confirm the consent the petitioner shall present such information as may be necessary to allow the Court to review the circumstances of the execution and the submission of all written consents to adoption so as to determine their validity. The Court shall then enter an order confirming or rejecting the written consent to adoption.

[Pa.B. Doc. No. 17-468. Filed for public inspection March 17, 2017, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Edward Bissau Mendy (# 66328), having been disbarred in the state of Louisiana, the Supreme Court of Pennsylvania issued an Order on March 7, 2017, disbaring Edward Bissau Mendy from the Bar of this Commonwealth, effective April 6, 2017. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

JULIA M. FRANKSTON-MORRIS, Esq.,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 17-469. Filed for public inspection March 17, 2017, 9:00 a.m.]
