

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 11]

Proposed Amendment of Pa.R.A.P. 1116

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 1116 governing the answer to the petition for allowance of appeal for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They will neither constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by October 2, 2020. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Appellate Court
Procedural Rules Committee*

PATRICIA A. McCULLOUGH,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

PETITION FOR ALLOWANCE OF APPEAL

Rule 1116. Answer to the Petition for Allowance of Appeal.

(a) *General rule.*—Except as otherwise prescribed by this rule, within 14 days after service of a petition for

allowance of appeal an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading, shall set forth any procedural, substantive or other argument or ground why the order involved should not be reviewed by the Supreme Court, and shall comply with Pa.R.A.P. [**1115(a).7**] **1115(a)(7)**. No separate motion to dismiss a petition for allowance of appeal will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the petition for allowance of appeal will not be filed. The failure to file an answer will not be construed as concurrence in the request for allowance of appeal.

(b) *Children's fast track appeals.*—In a children's fast track appeal, within 10 days after service of a petition for allowance of appeal, an adverse party may file an answer.

(c) *Length.*—An answer to a petition for allowance of appeal shall not exceed 9,000 words. An answer that does not exceed 20 pages when produced by a word processor or typewriter shall be deemed to meet the 9,000 word limit. In all other cases, the attorney or the unrepresented filing party shall include a certification that the answer complies with the word count limit. The certificate may be based on the word count of the word processing system used to prepare the answer.

(d) *Supplementary matter.*—The cover of the answer, pages containing the table of contents, table of citations, proof of service, signature block, and anything appended to the answer shall not count against the word count limitations of this rule.

(e) *Certificate of compliance with Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.*—An answer to a petition for allowance of appeal shall contain the certificate of compliance required by Pa.R.A.P. 127.

Official Note: This rule and Pa.R.A.P. 1115 contemplate that the petition and answer will address themselves to the heart of the issue, such as whether the Supreme Court ought to exercise its discretion to allow an appeal, without the need to comply with the formalistic pattern of numbered averments in the petition and correspondingly numbered admissions and denials in the response. While such a formalistic format is appropriate when factual issues are being framed in a trial court [**(as in the petition for review under Chapter 15)**], **as in the petition for review under Chapter 15**, such a format interferes with the clear narrative exposition necessary to outline succinctly the case for the Supreme Court in the allocatur context.

Parties are strongly encouraged to raise any waiver-based or procedural objection to a petition for allowance of appeal in an answer to the petition. In addition, parties are reminded that they may raise waiver-based, procedural, and jurisdictional objections after the grant of a petition for allowance of appeal, but before merits briefing, through a dispositive motion filed under Pa.R.A.P. 1972.

PUBLICATION REPORT

Proposed Amendment of the Official Note to Pa.R.A.P. 1116

The Appellate Court Procedural Rules Committee is considering proposing the amendment of the Official Note to Pennsylvania Rule of Appellate Procedure 1116 to encourage the early identification of waiver in discretionary appeals before the Supreme Court. The Committee undertook review of this issue based, in part, upon a suggestion that:

Any appellee that intends to assert a waiver defense with respect to any issue presented for review in a petition for allowance of appeal, see Rule 1115(3), should be required to file an answer to said petition notifying this Court of its intention to assert such a defense. An appellee failing to comply with this requirement would then be precluded from asserting the defense in any subsequent filings with this Court in the case then at bar. Where an appellee provides the notice as required, it would remain within this Court's discretion to grant allocatur and decide the issue on its substantive merits.

Commonwealth v. Bishop, 217 A.3d 833, 844 (Pa. 2019) (J. Donohue concurring).

Preliminarily, waiver may occur at multiple stages in a proceeding. Often, waiver results at the trial court level through a lack of preservation. See, e.g., Pa.R.E. 103 (Rulings on Evidence); Pa.R.C.P. No. 227.1 (Post-Trial Relief); Pa.R.Crim.P. 607 (Challenges to the Weight of Evidence). Waiver may also result after an appeal has been taken. See, e.g., Pa.R.A.P. 1925(b)(4)(vii); Pa.R.A.P. 2116(a).

To assist the appellate courts in detecting waiver, the Rules of Appellate Procedure require the appellant to identify where and how issues raised on appeal were preserved before the trial court. See, e.g., Pa.R.A.P. 2117, 2119. When the lack of preservation is patent, the Rules are intended to identify the presence of waiver to winnow those issues from review. However, waiver may also result from imperfect issue preservation or inadequate advocacy. Latent waiver, as opposed to patent waiver, is more difficult to discern and may be subject to reasonable dispute. See, e.g., *Commonwealth v. Gonzalez*, 608 A.2d 528, 531 (Pa. Super. 1992) (claim on appeal is waived where appellant neither cites supportive precedent nor gives any reference to record evidence which substantiates argument); Pa.R.A.P. 2119(a).

Regarding petitions for allowance of appeal, a respondent could raise the issue of waiver in an answer to a petition for allowance of appeal. See Pa.R.A.P. 1116(a). The Committee considered a requirement that waiver be identified by answer in every matter. To lend perspective, in 2018, there were 1,973 petitions for allowance of appeal filed with the Supreme Court, but appeals were allowed in only 96 cases. This represents a 95.1% attrition rate based entirely on the merits. The additional workload of raising waiver by answer in every matter did not appear to be warranted given this rate of denial on the merits. Instead, it seemed more efficient that efforts be focused on identifying waiver in the appeals granted review.

Additionally, the Committee believed that the decision whether to file an answer pursuant to Pa.R.A.P. 1116(a) should be left to the discretion of the respondent. When latent waiver might exist, an answer, together with attendant word limitations, may not be an adequate vehicle to present and analyze an assertion of waiver.

Similarly, the Rules of Appellate Procedure do not provide a mechanism for a petitioner to file a reply to an answer that suggests waiver. Moreover, the merits of a petition for allowance of appeal may only concern waiver found by the intermediate appellate court, which would obviate the need for an answer to raise waiver.

The Committee next considered a requirement that an answer identifying waiver be filed only after the Court has identified a petition for allowance containing a potentially meritorious issue. Such a practice would be similar to that in the United States Supreme Court, which, as a practical matter, grants petitions for writ of certiorari only after ordering a response from the party opposing the petition. See Stephen M. Shapiro *et al.*, Supreme Court Practice Ch. 6.37(k) (11th ed. 2019) (“[I]f the respondent has not filed a response, or has affirmatively waived the right to file, and if the Court believes that the petition may have some merit, the respondent will typically be asked to file a response.”). The Committee did not favor this approach because it 1) places a burden on the Court to order the party or parties to file an answer; 2) lengthens the review process; 3) potentially identifies meritorious issues that may nonetheless be denied review; and 4) implicates the preceding concern that an answer may not be an adequate vehicle to analyze a possible waiver claim.

The Committee further considered a requirement that a respondent raise waiver after a petition for allowance of appeal has been granted, but before argument. This approach would allow the Court to address waiver before the merits of the appeal. Additionally, the timing may be more appropriate where waiver is not patent because the record would have been transmitted to the Court. See Pa.R.A.P. 1122 (requiring transmission of record after an appeal is allowed).

The Rules of Appellate Procedure already provide a mechanism to raise the issue of waiver via application and seek dismissal of an appeal. See Pa.R.A.P. 1972(a)(5). Further, this procedure would provide the Court with the flexibility to set a separate briefing schedule to decide the application prior to consideration of the merits or to defer consideration. Moreover, the appellant is permitted to file an answer to the application. See Pa.R.A.P. 123(b).

The Committee believed that filing such an application pursuant to Pa.R.A.P. 1972(a)(5) should remain discretionary for respondent rather than be mandated. Requiring an application may have the unintended consequence of foreclosing earlier identification of patent waiver in an answer to a petition for allowance of appeal. Further, a party may wish to defer raising waiver until merits briefing if a finding of waiver would result in only one of several issues being dismissed on appeal, *i.e.*, incomplete relief.

Concerning the possible consequence for belatedly raising waiver, *i.e.*, “waiving waiver,” such an approach seemed counter-intuitive to long established issue preservation practice. See, e.g., *Dilliaine v. Lehigh Valley Trust*, 322 A.2d 114, 116-17 (Pa. 1974); Pa.R.A.P. 302. Relatedly, the operation of “waiving waiver” may also arguably impede the Court's authority to find waiver sua sponte. See *Wirth v. Commonwealth*, 95 A.3d 822, 836-37 (Pa. 2014); *Commonwealth v. Hill*, 16 A.3d 484, 494 (Pa. 2011).

Undoubtedly, delaying the issue of waiver until consideration of the merits can cause the unnecessary expenditure of time and resources if waiver would operate to dismiss an entire appeal. To encourage parties to identify

waiver earlier in the appellate process, the Committee proposes to amend the Official Note to Pa.R.A.P. 1116 to suggest raising waiver in opposition to a petition for allowance of appeal and through an application pursuant to Pa.R.A.P. 1972. Through this amendment, the Committee seeks to alleviate the inefficiencies discussed in the concurring opinion in *Bishop* without altering longstanding principles of petition for allowance of appeal practice.

All comments, concerns, and suggestions concerning this proposal are welcome.

[Pa.B. Doc. No. 20-1169. Filed for public inspection August 28, 2020, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 23]

Order Amending Rule 2323 of the Pennsylvania Rules of Appellate Procedure; No. 289 Appellate Procedural Rules Doc.

Order

Per Curiam

And Now, this 18th day of August, 2020, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 2323 of the Pennsylvania Rules of Appellate Procedure is amended in the following form.

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

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 23. SESSIONS AND ARGUMENT

ORDER AND CONTENT OF ARGUMENT

Rule 2323. Physical Exhibits.

[If] Unless otherwise provided by an appellate court's internal operating procedures, if physical exhibits other than documents are to be used at the argument, the person presenting argument shall arrange to have them placed in the courtroom before the court convenes on the date of the argument. After the argument, the person bringing the exhibits shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice given by the prothonotary, they shall be destroyed or otherwise disposed of as the prothonotary shall think best.

Official Note: For the internal operating procedure of the Supreme Court, see 210 Pa. Code § 63.3(D)(1)(h); for the internal operating procedure of the Superior Court, see 210 Pa. Code § 65.34(C).

[Pa.B. Doc. No. 20-1170. Filed for public inspection August 28, 2020, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1920]

Order Amending Rule 1920.17 of the Pennsylvania Rules of Civil Procedure; No. 709 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 18th day of August, 2020, upon the recommendation of the Domestic Relations Procedural Rules Committee, the proposal having been published for public comment in the *Pennsylvania Bulletin*, 49 Pa.B. 7168 (December 7, 2019):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1920.17 of the Pennsylvania Rules of Civil Procedure is amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on October 1, 2020.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.17. [**Discontinuance. Withdrawal of Complaint**] **Withdrawal Complaint and Discontinuing Divorce Action. Withdrawal Ancillary Claims Raised in Pleadings. Notice. Death of a Party.**

[(a) The plaintiff may withdraw the divorce complaint and discontinue the divorce action by praecipe that includes a certification that:

- (1) no ancillary claims or counterclaims have been asserted by either party; and
- (2) grounds for divorce have not been established.

(b) A party may withdraw a claim of equitable distribution only:

(1) by written consent of both parties filed with the court, or

(2) after filing and serving on the other party a written notice that the party intends to withdraw the claim of equitable distribution 20 days after service of the notice.]

(a) **Withdrawal Complaint and Discontinuing Divorce Action. A plaintiff may withdraw a divorce complaint and discontinue the divorce action by:**

(1) **a motion, except as provided in subdivision (a)(2), which has been served on the defendant; or**

(2) **a praecipe, which includes the plaintiff's certification that:**

(i) **neither equitable division of marital property nor custody claims are pending;**

(ii) **the defendant has filed neither a counterclaim nor a separate petition raising claims; and**

(iii) the parties have not established grounds for divorce.

(b) *Withdrawing Ancillary Claims Raised in Pleadings.* Without discontinuing the divorce action, the party who raised an ancillary claim may withdraw the claim by a *praecipe* filed with the prothonotary, except:

(1) a party who raised an equitable division of marital property claim may withdraw the claim only:

(i) with the parties' written and filed agreement, including as required by Pa.R.C.P. No. 1920.42(a)(4), (b)(4), or (c)(4);

(ii) with the opposing party's written consent; or

(iii) after filing and serving on the opposing party a notice that the party intends to withdraw the equitable division claim 20 days after service of the notice.

Official Note: See subdivision (c) for the notice.

(2) a party who raised a custody claim in a divorce action may withdraw the claim only as provided in Pa.R.C.P. No. 1915.3-1(b).

(c) The notice required in subdivision [(b) above] (b)(1)(iii) shall be substantially in the following form:

(Caption)

NOTICE OF INTENTION TO WITHDRAW CLAIM FOR
EQUITABLE [DISTRIBUTION] DIVISION OF
MARITAL PROPERTY

TO: _____
(PLAINTIFF) (DEFENDANT)

(Plaintiff) (Defendant) intends to withdraw [(his) (her)] his or her pending claim for equitable [distribution of property twenty] division of marital property 20 days after the service of this notice. Unless you have already filed [with the court a written claim for equitable distribution] ancillary claims, which are permitted under the Divorce Code, including equitable division of marital property, you should do so within [twenty] 20 days of the service of this notice, or you may lose the right to assert [a claim for equitable distribution. If] those ancillary claims, if the court enters a decree in divorce [is entered and you have not filed a claim for equitable distribution, you will forever lose the right to equitable distribution of property].

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(Name)

(Address)

(Telephone)

(d) [In the event one party dies during the course of the divorce proceeding, no decree of divorce has been entered and grounds for divorce have been established, neither the complaint nor economic claims can be withdrawn except by the consent of the surviving spouse and the personal representative of the decedent. If there is no agreement, the economic claims shall be determined pursuant to the Divorce Code.] Death of a Party.

(1) If a party dies after the parties have established grounds for divorce but before the court has entered the divorce decree:

(i) the surviving spouse or the decedent's personal representative may only withdraw the complaint or an ancillary claim with the parties' written consent;

(ii) the Divorce Code shall determine the disposition of an ancillary claim raised in a pleading, unless:

(A) the parties have an agreement that resolves the ancillary claim; or

(B) the parties have withdrawn the complaint or ancillary claim as provided in subdivision (d)(1)(i); and

Official Note: See 23 Pa.C.S. § 3323(g) for establishing grounds for divorce when a party dies during the pendency of the divorce action.

[If no] (iii) if a personal representative has not been appointed within one year of the decedent's death, [then,] upon motion of the surviving party, the court may allow the withdrawal or dismissal of the complaint [and/or any] or a pending [economic claims] ancillary claim.

(2) If a party dies before the parties have established grounds for divorce, the divorce action abates, and the Probate, Estates, and Fiduciaries Code, 20 Pa.C.S. §§ 101 et seq., controls the decedent's property disposition.

Official Note: See In re Estate of Bullotta, 838 A.2d 594, 596 (Pa. 2003) ("Generally, a divorce action abates with the death of one of the spouses.").

To the extent that *Tosi v. Kizis*, 85 A.3d 585 (Pa. Super. 2014), holds that 23 Pa.C.S. § 3323(d.1) does not prevent the plaintiff in a divorce action from discontinuing the divorce action following the death of the defendant after grounds for divorce have been established, it is superseded.

Comment—2020

As the Divorce Code permits a party to raise a child custody claim in a divorce complaint, subdivision (b)(2) addresses withdrawing a custody count. Pa.R.C.P. No. 1920.32 requires a custody claim raised in a divorce action to follow the custody practices and procedures, and Pa.R.C.P. No. 1915.3-1(b) provides specific limitations on withdrawing a custody action. As such, subdivision

(b)(2) has been added to clarify that a party desiring to withdraw a custody claim raised in a divorce pleading shall do so consistent with Pa.R.C.P. No. 1915.3-1(b).

[Pa.B. Doc. No. 20-1171. Filed for public inspection August 28, 2020, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

**PART II. ORPHANS' COURT RULES
[231 PA. CODE PART II]**

Order Amending the Note to Rule 2.4 and Adopting Rule 5.50 of the Pennsylvania Orphans' Court Rules; No. 847 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 18th day of August, 2020, upon the recommendation of the Orphans' Court Procedural Rules Committee; the proposal having been published for public comment at 49 Pa.B. 444 (February 2, 2019):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Note to Rule 2.4 of the Pennsylvania Orphans' Court Rules is amended in the following form and Rule 5.50 of the Pennsylvania Orphans' Court Rules is adopted in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on October 1, 2020.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

CHAPTER II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

Rule 2.4. Petition for Adjudication/Statement of Proposed Distribution; Virtual Representation.

* * * * *

Note: Although substantially modified, Rule 2.4 is derived from former Rule 6.9. One modification is to require averments for virtual representation under 20 Pa.C.S. § 751(6) generally and representation in "trust matters" pursuant to 20 Pa.C.S. §§ 7721 *et seq.* Another substantial modification is the addition of subparagraph (e) that requires counsel to sign the petition for adjudication/statement of distribution attesting that the submitted petition for adjudication/statement of distribution accurately replicates the Model Form and subjects counsel to rules and sanctions as provided in Pa.R.C.P. Nos. 1023.1 through 1023.4. (See Rule 3.12.)

See Rule 5.50 for procedures governing petitions for the settlement of small estates filed pursuant to 20 Pa.C.S. § 3102.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

* * * * *

CHAPTER V. RULES OF GOVERNING SPECIFIC TYPES OF PETITIONS

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

Rule 5.50. Settlement of Small Estates by Petition.

(a) *Applicability.* This Rule applies to all petitions filed pursuant to 20 Pa.C.S. § 3102, pertaining to settlement of small estates by petition.

(b) *Contents.* In addition to the requirements provided by the Rules in Chapter III, a petition shall set forth the following:

(1) *Estate.*

(i) the name and address of each petitioner and the petitioner's relationship to the decedent;

(ii) the decedent's name, date of death, and domicile at the time of death;

(iii) a statement whether the decedent died testate or intestate and, if testate, that the original will is attached, or that the original will cannot be produced, the reason it cannot be produced, and that a photocopy of the original will is attached;

(iv) the name and address of each testate or intestate beneficiary, and if any such beneficiary is a minor or otherwise incapacitated, the name and address of such beneficiary's legal representative, as applicable; and

(v) whether a claim for family exemption is included, and if the claimant is not the surviving spouse, the relationship of the claimant to the decedent, and a statement that the claimant resided with the decedent at the date of death and if the claimant is the surviving spouse, that he or she has not forfeited the right to claim the family exemption.

(2) *Assets.* All assets of decedent's estate, other than real estate and property distributable under 20 Pa.C.S. § 3101, and the value of each asset.

(3) *Liabilities.*

(i) the names and addresses of all known creditors, total amounts claimed by each, whether the debts have been satisfied, and an itemized list of all debts, including whether or not admitted, a description of the property claimed and the gross value thereof, and whether there is any objection to the debt, and if so, by whom;

(ii) an itemized list of unpaid administrative expenses, unpaid taxes, all other unpaid debts, and, if insolvent, as prioritized under 20 Pa.C.S. § 3392; and

(iii) if the decedent was 55 years of age or older at the time of death, whether a request for a statement of claim was sent to the Department of Human Services in accordance with 62 P.S. § 1412, the date the request was made, and the response received from the Department.

(4) *Distribution.*

(i) the name of any distributee paid prior to the filing of the petition, including the nature and amount of each payment;

(ii) the name of each proposed distributee and respective proposed distribution;

(iii) the name of each interested person who has consented to or joined in the petition; and

(iv) the names of each testate or intestate beneficiary, as applicable, who has not consented to or joined in the petition.

(5) *Taxes.* A statement that a Pennsylvania inheritance tax return has been filed, that all taxes due on the assets listed on the petition have been paid in full, and that proof of such payment is attached to the petition, or the reason why payment has not occurred.

(c) *Exhibits.* The following items shall be attached as exhibits to the petition in the following order:

- (1) an original death certificate;
- (2) the decedent's will, if any;
- (3) Pennsylvania Department of Revenue Notice of Appraisal and Assessment of Tax;
- (4) original consents, joinders, and statements of no objection signed by interested parties; and
- (5) a copy of any correspondence received from the Department of Human Services in response to the statement of claim referenced in subparagraph (b)(3)(iii).

(d) *Notice.* The petitioner shall serve written notice on interested parties in compliance with Chapter III.

Explanatory Comment: 20 Pa.C.S. § 3101, referenced in paragraph (b)(2), sets forth certain allowable payments to the decedent's family members, and to a licensed funeral director for the decedent's burial expenses. Property payable under 20 Pa.C.S. § 3101 shall not be included when determining whether the decedent's personal property exceeds a gross value \$50,000.

In paragraph (b)(3), the term "creditors" includes creditors of the decedent on the date of death, providers of funeral services, and providers of goods and services to the petitioner arising from settlement of the estate.

The Medical Assistance Estate Recovery Program, established by federal law, requires the Commonwealth to recover the Medical Assistance costs from decedents' estates. See 42 U.S.C. § 1396p; 62 P.S. § 1412.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*. See Rule 1.99.

Orphans' Court Procedural Rules Committee Report

Amendment of the Note to Pa. O.C. Rule 2.4 and Adoption of Pa. O.C. Rule 5.50

The Orphans' Court Procedural Rules Committee ("Committee") recommended to the Supreme Court the amendment of the Note to Rule 2.4 of the Pennsylvania Orphans' Court Rules ("Rules") and the adoption of Rule 5.50 governing petitions filed pursuant to 20 Pa.C.S. § 3102 pertaining to the settlement of small estates. A small estate is one with a gross value not exceeding \$50,000 "exclusive of real estate and property payable under 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) but including property claimed as the family exemption." See 20 Pa.C.S. § 3102.

The Committee became aware of numerous counties with local rules governing petitions for the settlement of small estates. When a decedent is of modest means or insolvent, proceeding via a small estate petition may be a cost-effective alternative to the conventional administration and settlement process. The Committee recommended a statewide rule addressing this type of petition and identified certain information and exhibits that should be included in petitions for the settlement of small estates. The petition for the settlement of a small estate will require information about the petitioner and decedent, beneficiaries of the decedent, the decedent's assets, liabilities, distributions, and taxes, and will require the attachment of supporting exhibits. The petition is also subject to the general requirements for petitions set forth in Chapter III of these Rules. The amendment of the Note to Rule 2.4 adds a cross-reference to new Rule 5.50.

[Pa.B. Doc. No. 20-1172. Filed for public inspection August 28, 2020, 9:00 a.m.]