

MEMORANDUM

TO: Lisa M. Rhode, Counsel

FROM: Interested Members of the Real Property, Probate and Trust Law Section of the PBA¹

DATE: July 10, 2013

RE: Comments and Questions regarding the Proposed Orphans' Court Rules

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Explanatory Report: The second paragraph of the section of the Explanatory Report captioned "Proposed new Orphans' Court Rules 1.1 through 1.6" states that local rules will need to be revised, renumbered and reissued within one year from the adoption of the new Supreme Court Orphans' Court Rules (hereinafter "Proposed Rules"). Rule 1.5 does not refer to this one year time period. Rule 1.5(a) will operate to vacate all existing Local Rules. The explanatory note appears to suggest that local rules must complete the process described in Rule 1.5(e) within one year, but the Rule makes no such provision. Why is there a "one year" limitation?

I. Preliminary Rules

Rule 1.2 Construction and Application of Rules:

Paragraph (a): Please add to end of the second sentence: "or that is approved by written consent of all parties in interest" to encourage settlement agreements on procedural and substantive matters.

Paragraph (b): The blanket incorporation of the Pennsylvania Rules of Civil Procedure 101 through 152 (with the exception of Pennsylvania Rules of Civil Procedure 126 and 133) will require practitioners to cross-reference. Please consider restating those rules within the Proposed Rules so they are all in one place.

Rule 1.3 Definitions: As a general comment, the capitalization of defined terms is perceived as ungrammatical and legally unsound. To make defined terms more visible, please consider doing so through a change of font, such as italics, bold, or underlining.

Several terms are used in the Proposed Rules but are not defined or the definitions may be incomplete. Please consider **adding** or ~~omitting~~ the following language:

"Ancestor" (appears in Rule 2.4(b)(2)(ii)(B), which deals with virtual representation) -- One who precedes in lineage, such as a parent or grandparent.

¹ The comments contained herein are a compilation by Aubrey H. Glover of comments and observations by Aubrey H. Glover, Louis M. Kodumal, Eric R. Strauss, Bridget M. Whitley, Daniel B. Evans, Jennifer L. Rawson, Allison T. Smith, John W. Metzger, and Cynthia A. McNicholas, as members of the Real Property, Probate and Trust Law Section of the Pennsylvania Bar Association. The views expressed within this memorandum are not official comments or views made on behalf of the Pennsylvania Bar Association.

“Fiduciary” – an **agent under a power of attorney, custodian under the Uniform Transfers to Minors Act**, executor, administrator, Guardian, trustee or agent, and any other person acting in any similar capacity, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the Court

Under current Rule 2.3, the phrase “agent under a power of attorney” is included. The proposed definition excludes the phrase “under a power of attorney” yet “agent” is not separately defined. Additionally, a custodian under the Uniform Transfers to Minors Act also should be included.

“Interested Party”— One or more individuals or entities having or claiming an interest in the estate, trust, person or other entity that is the subject of the legal proceeding and **such additional persons or organizations as the Court, in its discretion, shall deem to have a material interest in the outcome of or right to participate in a proceeding before the Orphans’ Court.**

The definition should be expanded to include “such additional persons or organizations as the Court, in its discretion, shall deem to have a material interest in the outcome of or right to participate in a proceeding before the Orphans’ Court.” Proceedings in the Orphan’s Court often arise amidst an increasingly complex family and social structure where roles traditionally assumed by blood relatives are now assumed by other individuals or organizations. Upon proper showing, the Court should have the discretion to expand the scope of the parties deemed to have an interest in a proceeding as the interests of justice and equity require.

“Legal Paper” This definition lacks any intuitive meaning and less than optimal. Please consider renaming this as “Filed document.”

“Pleading” – a type of Legal Paper that must be signed and Verified in accordance with the Rules 3.13 and 3.14 and includes, but is not limited to, petitions, answers, replies, **and** preliminary objections-and-motions.

Parenthetically, the new rules should liberalize motions practice in the Orphans’ Court.

“Sui Juris”—Of full age and legal capacity.

The use of Latin terminology is archaic. Please either remove the term from the Proposed Rule or include the definition provided to clarify that, as used in the Proposed Rules, the term includes those individuals who are not minors and have not been adjudicated as incapacitated persons.

Finally, please consider defining the terms “Auditor” and “Master.” Any definition of these words should be defined in terms of experience, qualifications, educational background requirements, standing with local or state bar association and other appropriate criteria. The general nature of their duties should be set forth, as well either in the definition section or under Chapter X Auditors and Masters of the Proposed Rules.

Rule 1.4 Waiver of Time Limitations: Please add to the end of the sentence the following language “, **so long as such extension or reduction does not adversely affect the substantive rights of the parties. Further, this power shall not confer upon the Court the power to enlarge or reduce a time period proscribed by statute.**”

Rule 1.5 Local Rules:

Please revise the Rule to refer to the one (1) year period within which local rules need to be revised, renumbered and reissued.

Paragraph (e): Please consider moving the definition of “Committee” to Rule 1.3 Definitions.

Paragraph (i): The delegation of the power to suspend local rules by the Supreme Court to the Committee is of concern. Such a delegation appears to be overbroad. Please retain the power to suspend local rules in the Supreme Court.

Clerks of the local Orphans' Courts should be encouraged to publish their local rules on their websites (if they have them).

The counties should be given at least one year to develop new local rules that conform to these rules.

Rule 1.6 Mediation by Local Rule or Special Order: The words "Local Rule" should be deleted. To encourage Mediation, it should always be available and not limited to whether a Local Rule implementing mediation has been adopted.

Rule 1.7 Entry and Withdrawal of Counsel: The Note to the Proposed Rule states that this Rule is based on many local rules of similar import. At least one Local Rule (Allegheny County Rule 1.2B) permits appearance by endorsement of an attorney's name, office address, telephone number in Pennsylvania and identification number on any paper presented to the court. The standard form for Petition for Probate and Grant of Letters contains a block for the attorney to sign, entering her/his appearance. Please add these as permitted methods of appearance.

The Proposed Rule would be easier to read if the different methods of appearance were numbered (i), (ii), (iii) and so on.

Rule 1.7(a) refers to appearances before both the Court and the Register, while Rule 1.7(b) refers only to the Court. Counsel should be allowed to withdraw appearances before the Register without the need for the consent of the Register unless there is a dispute pending before the Register, such as a will contest or contested petition for letters of administration.

Rule 1.8 Forms: The availability of model forms is commendable and uniformity is a welcome theme throughout the Proposed Rules. However, the mandatory and exclusive use of the forms adopted by the Supreme Court does not address those matters that are unique and require more space or different formatting than the forms provide. Further, these forms may not be available to unsophisticated pro se litigants or fully understood by such litigants, possibly leading to the denial of due process. At a minimum, please revise the forms to allow additional 8.5" x 11" pages to be attached so that further explanation and clarification can be provided when warranted. In the alternative, allow explanations for those matters that are unique and require more space or different formatting than the forms provide.

II. Accounts, Objections and Distributions

Rule 2.1 Form of Account:

Paragraph (c): Please mention that the Principal and Income Act (Chapter 81 of the PEF Code) is an additional elaboration of the requirements of the Rule.

Paragraph (d): – For cemetery companies, the renewal of the real estate license by the Dept. of State still requires an Account to be filed. As a result, the filing of three years' worth of verified financial statements in lieu of an Account may be of limited availability/utility.

Rule 2.2 Form; Assets Transfer by the Exercise of a Power of Appointment: Please explain what circumstances this rule would apply. Does it apply when assets are appointed to an estate or when testamentary assets are appointed and added to a trust already in existence? It appears

to apply all “appointed assets” regardless of whether they are appointed to an estate or are testamentary assets appointed to a trust already in existence

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

Paragraph (a): The Proposed Rule requires the Petition for Adjudication to be filed with the Clerk at the time of filing an Account. This is a departure from current practice in some counties where the original Petition is filed at the time of the audit (notice to Interested Parties ten days prior to the presentation as provided by Current Rule 5.3) and the account is filed by a deadline in advance of the audit date.

At present, Line 17 of the Supreme Court Petition for Adjudication for a Decedent’s Estate requires a list of the additional receipts and disbursements since the closing date of the Account (a supplemental Account, as it were). If the Petition is filed at the same time as the account, there will never be any information to provide on this line. There is no additional mechanism to provide a supplemental Account from the closing date of the Account to a date as close to the audit date as possible. In some counties, this time frame is six weeks or more. This needs to be addressed as there can be months if not years between the filing of an account and the adjudication, and there should be a streamlined process for disclosing routine transactions during that period.

Paragraph (b): The information required by this rule is addressed in the Supreme Court Petition for Adjudication Forms, such as Line 8(c) for a Decedent’s Estate which provides:

8. Written notice of the Audit as required by Pa. O.C. Rules 6.3, 6.7 and 6.8 has been or will be given to all parties in interest listed in item 9 below, all unpaid creditors and all claimants listed in item 10 below. In addition, notice of any questions requiring Adjudication as discussed in item 14 below has been or will be given to all persons affected thereby.

...

(C) If any person entitled to Notice is not sui juris (e.g., minors or incapacitated persons), Notice of the Audit has been or will be given to the appropriate representative on such party’s behalf as required by Pa. O.C. Rule 5.2.

As the model forms will need to be updated to reflect the new rule numbers, it is suggested that either (i) the Form Petition provide that the information required by this rule be attached as an Exhibit to the Petition so that it only need be addressed in relevant situations; (ii) the Form Petition be revised to provide space for the required information under the proposed rule, or (iii) the rule be revised to provide that the required information is to be provided by Exhibit to the Petition.

As a general comment, virtual representation will improve the efficiency of the Orphans’ Court and its use should be encouraged. However, as articulated within this rule, the procedural requirements appear more complicated and burdensome than they really are. For the sake of clarity, please consider removing the virtual representation provisions from this rule and combine the provisions, as the subject of separate rules, within the virtual representation provisions appearing elsewhere, such as in Proposed Rules 3.4 and 3.18.

Rule 2.5. Audit Notice:

Paragraph (a)(3): This rule appears overly broad in that it requires notice, by inference, to next of kin whose known claims have not been satisfied in full. What if a disgruntled family member threatens a will contest but fails to timely file an appeal from probate per 20 Pa.C.S.A § 908? Must the accountant still furnish notice to that person? This subsection of the rule should require notice to all residuary legatees, individuals or entities whose interest is provided for under the governing instrument and will not be paid in full. Those claimants who have failed to timely file an appeal from probate should not be entitled to notice under this subsection.

Paragraph (b): The word “not” appears to be missing following the words “counsel and.”

Paragraph (c): The general rule requiring notice to be given to the beneficiaries of an estate or trust where notice must be given to an executor or trustee is unduly burdensome. Instead of requiring notice be given to the beneficiaries of an estate or trust when the notice is required to be given to the Personal Representative or trustee under all circumstances, perhaps this rule could be narrowed to require the accountant to identify to the Court the beneficiaries of an estate or trust and whether they are minors or incapacitated. This would provide the Court with the opportunity to specifically require notice to the beneficiaries of an estate or trust as the Court deems appropriate in a particular case to protect the interests of justice, but that the default would be that notice is only required to be given to the executor or trustee, who would presumably represent the interest of the beneficiaries for whose benefit they serve.

This rule is also inconsistent with Proposed Rule 11.5 (current Rule 5.6(8)) which only requires notice of the administration of an estate to the trustee of a trust which is a beneficiary. The two rules should be consistent. Otherwise, the first time the beneficiary of a trust or estate becomes aware that the trust or estate has an interest in another trust or estate may be 20 days prior to the audit of the account.

Paragraph (d): This rule provides that written notice must be mailed “at least 20 days prior to the audit or the date by which objections must be filed to the Account, whichever is later.” Proposed Rule 2.7(a) provides that objections must be filed on or before the time and date of the audit. Therefore, “the audit” and “the date on which objections must be filed to the Account” are the same date. Please simplify the rule by describing the date to mark the 20 days lead by which the written notice must be sent as either “the audit” or “the date on which objections must be filed to the Account.”

Paragraph (e): In its proposed form, it is not clear whether beneficiaries who received the initial notice and failed to timely file a response would have a second chance—a “Mulligan”- to file objections at a later date, merely because the accountant was unable to timely serve another interested party. Proposed Rule 2.7 does not offer guidance on this issue. It is suggested that both rules clarify what rights a party who received initial notice but failed to timely object has under these provisions. Please consider clarifying the Proposed Rules to provide that a party who received the initial notice but failed to timely object NOT be granted a second opportunity to file objections prior to a continued audit date.

Paragraph (f): Please provide that delivery of notice be in the manner set forth in Pennsylvania Rule of Civil Procedure 403, which provides for service by return receipt, but if the return receipt mail is returned as “refused,” the accountant can send notice by first-class mail and service is complete if the mail is not returned to the sender within 15 days after mailing. This provision strikes a balance between the need for beneficiaries to have fair and adequate advance notice and

the interest of the accountant to proceed contrary to the desires of a disinterested or disgruntled beneficiary who simply refuses to accept certified mail.

Please allow notice to be delivered via facsimile (as permitted under Proposed Rule 3.17) or by electronic mail (as permitted under Proposed Rule 8.1(h)), when consented to by the Interested Parties.

Paragraph (g): Please provide a time certain for when the certificate of service and copy of the audit notice must be filed with the Clerk if they are not appended to the Petition for Adjudication. One interpretation is that the Rule already provides a deadline – they must be filed on or before the audit date.

Paragraph (h): Since paragraph (d) of this rule requires that a copy of the Account, Petition for Adjudication/Statement of Proposed Distribution, and any Legal Papers filed therewith shall be sent with the audit notice, please consider eliminating this paragraph from the rule, with the exception of retaining (h)(4).

Please explain what is meant by “the Accountant’s understanding of the nature of each contested or unpaid claim”. The remaining information required for a contested claim (detailed description, whether the claim is admitted or contested, and if admitted why the claim is not being paid in full) should be sufficient factual information to provide to the Interested Parties.

Rule 2.7 Objections to Accounts, Petitions for Adjudication/Statements of Proposed

Distribution: As suggested above under comments to Proposed Rule 2.5, a party who receives notice and fails to timely file objections should not be granted the second chance to file objections prior to a continued audit date merely because the accountant was unable to serve another party with notice of the account.

Rule 2.8. Responsive Pleadings Allowed After Objections Are Filed

Paragraph (a): Please explain whether, to avoid the waiver of any rights, it is necessary to respond to each averment or objection if an Answer is filed. To the extent a responsive pleading is not required and failure to file a response does not result in waiver, this rule is inconsistent with Proposed Rule 3.5(c), under which a party who fails to file a responsive pleading is deemed to have joined in the petition and prayer for relief. This inconsistency creates a trap for the unwary.

Paragraph (b): This paragraph requires service of any Answers to objections and preliminary objections to be provided to each Interested Party and claimant who received the audit notice pursuant to Rule 2.5. However, paragraph (d) provides that answers to preliminary objections need only be served upon the Objector or his or her counsel, if represented. These two paragraphs are inconsistent. Please revise this rule to provide that all persons who receive the audit notice must receive the preliminary objections and any answers to the preliminary objections.

Paragraph (c): Please explain why the grounds for filing Preliminary Objections to Objections to an Account are limited to lack of subject matter jurisdiction and lack of standing when the grounds for filing Preliminary Objections in other matters are far broader under Proposed Rule 3.9. This creates a potential trap for the unwary and a lack of uniformity within the rules, which frustrates one of the stated objectives of the Proposed Rules.

Please consider expanding these grounds for filing Preliminary Objections to Objections to conform with those set forth in Proposed Rule 3.9(b) or the Pennsylvania Rules of Civil

Procedure. Please also consider including Preliminary Objections for vagueness and failure to conform to the requirements of an accounting. Sometimes the form of an account may be so deficient that the filing of specific objections is hampered.

III. Petition Practice and Pleadings

Generally, there is a concern that pro se parties may have difficulty understanding these requirements. If a filing by a pro se party does not comply with these rules, does the Register of Wills/Clerk have sufficient authority to reject such filings. Perhaps, any filing that is rejected for failing to comply with these rules should be returned to the party along with a notice of what is deficient with the filing and an opportunity to cure the problem by filing a corrected submission within a given period of time.

Rule 3.4 Form of Petition; Exhibits; Consents; Signing and Verification:

Paragraph (a)(6)(iii) Please consider removing this paragraph because it appears to be superfluous as it merely duplicates the requirements of Proposed Rule 3.4(a)(7).

Paragraph (a)(7): The provisions regarding virtual representation, as articulated in Proposed Rule 3.4(a)(7), though important, needlessly clutter the rule. As suggested above in the comments to Proposed Rule 2.4, provisions for all virtual representation should be gathered under one rule, which could be briefly cross-referenced in other provisions.

Rule 3.5 Mode of Proceeding on Petition:

Please provide a definition of “Citation” in Proposed Rule 1.3.

Paragraph (a) Citation Practice:

Subparagraph (1): Please clarify when personal jurisdiction has been obtained. Some practitioners and courts opine, for example, that the Orphans’ Court has personal jurisdiction over a Personal Representative the moment they are sworn in, thus no Citation is required for a Petition to Compel an Account. Other practitioners and Courts take the position that a Citation is necessary in this instance. For the sake of clarity and to promote uniformity, the Proposed Rules should provide further guidance on this issue.

Paragraph (c) Failure to File a Responsive Pleading: Please amend this paragraph to allow an Interested Party who does not file a responsive Pleading to still file an appeal of an Order issued in response to the Petition.

The consequences of failing to file a responsive pleading are inconsistent with what is stated in Proposed Rule 2.8(a) and create a potential trap for the unwary. This is particularly true if a party decides not to file a response because another party in interest has already filed a response that addresses the issues that party would have otherwise raised. The suggested approach would be to conform the language of Proposed Rule 2.8(a) with the language of 3.5(c) to encourage parties to bring all issues of concern to the attention of the court at the earliest possible stage of the proceedings.

Of concern is the discretion of the court to allow or deny the issuance of a citation, making this either a needless formality or a problem if a petitioner is without any remedy when a petition is wrongly denied. The requirement of court approval also violates the goal of uniformity between Orphans’ Court practice and civil division practice in general.

Rule 3.6 Pleadings Allowed After Petition:

Paragraph (f): Please allow for the same range of motions practice as is allowed by the Pennsylvania Rules of Civil Procedure, which could include motions related to discovery, postponements of scheduled conferences, and other procedural matters, to cite a few examples.

Rule 3.9 Preliminary Objections: Please review the comments set forth under Proposed Rule 2.8(c), especially with regard to the inclusion of vagueness and failure to conform to the requirements of an accounting. These additional grounds, so proposed, should be available to objectors.

Rule 3.13 Signing: There are definitions of “Facsimile copy” and “Electronic Filing” in Proposed Rule 1.3, but Proposed Rule 3.13 uses an undefined term “electronic transmission.” Please provide a definition of this term or rephrase the rule to avoid using the term “electronic transmission.”

Rule 3.17 Service of Legal Papers Other than Citations or Audit Notices:

An undefined term, “electronic transmission” is used.

Rule 3.18 Notice or Citation to Individuals or Entities:

Paragraphs (a)(1)(ii) and 3.18(a)(2): The virtual representation provisions should be made the subject of a separate rule which address virtual representation in the Orphans’ Court, generally.

IV. Rules Governing Specific Types of Petitions

Rule 4.1 Declaratory Judgment:

Paragraph (b)(3): Please modify this paragraph to read “the identification of all Interested Parties; and” so as to match the syntax of paragraphs (1), (2) and (4).

The Proposed Rule should also clarify the application of virtual representation to lineals.

Rule 4.5 Appointment of a Guardian ad litem or a Trustee ad litem

Paragraph (a)(1): The phrase “and/or” at the end of Rule 4.5(a)(1) is ungrammatical and unnecessary because the text of (a) already specifies that both may be appointed.

Rule 4.6 Appointment of a Guardian for the Estate or Person of a Minor:

Paragraph (b): A statement should be required about whether the proposed guardian for property passing from a decedent was appointed by the Will of the decedent, or if the decedent’s Will appointed any guardian.

Paragraph (c): The list of Exhibits in paragraph (c) should also include the Birth Certificate and copies of any wills relevant to the Petition. However, procedures should be implemented to safeguard birth certificates that are filed as an Exhibit in light of privacy and identity theft concerns.

Paragraph (d): The mandated use of a single Petition in paragraph (d) may be cumbersome and violate the privacy interests of children being listed on the same petition versus separate petitions.

Rule 4.7 Appointment of Trustee:

Paragraph (a) Contents of Petition: Inclusion of Petition of Statement Regarding the Attorney General: Please explain why this is the only rule of the Proposed Rules 4.1 – 4.7

governing specific types of petitions that has the requirement for a statement in the Petition concerning whether the Attorney General has been given notice under Proposed Rule 7.1. The Attorney General may have an interest in any of the types of other petitions addressed in Proposed Rules 4.1 – 4.7, and may have an interest in other petitions generally. Please consider relocating this paragraph to Proposed Rule 3.4 to be required in any Petition where notice is required under Proposed Rule 7.1.

The reference to “any Court” should be changed to “any tribunal,” because the question should not be limited to the courts of Pennsylvania. Also, in (a)(5), “trust beneficiaries” should probably be changed to “qualified beneficiaries of the trust.”

Rule 4.11 Private Sale of Real Property or Options Therefor:

In light of 20 Pa.C.S. § 3351, please explain why is Proposed Rule 4.11 needed.

Rule 4.15 Confirmation of Appointment:

Please consider including a provision that specifies Proposed Rule 4.15 applies to an initial trustee as well as a successor trustee. This kind of Petition is sometimes needed when benefits are paid directly to a testamentary trustee and the payor wants proof of the identity of the trustee.

V. Guardianships of Incapacitated Persons

Please provide a rule stating that that annual guardianship reports are not to be treated as accountings and subject to the various requirements of these rules.

VI. Rules Relating to Pre-Hearing and Hearing Procedures

Rule 6.1 Depositions, Discovery, Production of Documents and Perpetuation of Testimony:

More training will need to be undertaken by the bench, bar, and Register of Wills staff as to discovery practice and the issuance of subpoenas.

Rule 6.3 Motion for Summary Judgment:

Paragraph (a): Please consider a provision indicating when pleadings are closed.

Paragraph (b): The 30 day response deadline is inconsistent with the 20 day time period generally followed throughout other parts of the Proposed Rules (e.g. Proposed Rules 2.5, 2.8, 3.5, 3.7 and 3.9). The expressed goal of providing consistency with the Pa Rules of Civil Procedure is of questionable value and runs counter to the expressed goal of uniformity. Either all deadlines should be extended to 30 days or limited to 20 days.

We would keep the reply time as 30 days, consistent with Pennsylvania Rule of Civil Procedure 1035.3(a).

VII. Charities – Notice to Attorney General

Rule 7.1. Charities – Notice to the Attorney General.

Paragraph (a)(8): Please specify whether by “estimated present value” the actual dollar amount at the present time or the actuarial calculation of present value should be used. Also, please consider increasing the amount that triggers notice to a larger amount, perhaps adjusted to reflect cost of living increases.

VIII. Electronic Filing

Rule 8.1 Electronic Filing and Service of Legal Papers:

Paragraph (h)(2): “An email sent is not an email received,” as the saying goes. In this day and age, individuals and law firms are occasionally plagued by malfunctioning hardware, software, and transmission networks. Service by sending an email to a party or lawyer who may be out of the office on medical leave or vacation or who may, through no fault of their own, not receive the message, is insufficient. This rule should require that service be complete upon delivery of the email and **acknowledgment of receipt** by the recipient, either as a “read receipt” or a responsive email accepting its delivery and not merely an automated email advising you that the recipient is on vacation. An undefined term, “electronic transmission” is used.

Paragraphs (h) and (i) Service of Legal Papers by Court and Clerk: Although these two paragraphs are part of current Rule 3.7, they have nothing to do with electronic filing. These paragraphs are still applicable in counties that do not have electronic filing. Please consider relocating paragraphs (h) and (i) to Proposed Rule 3.17 – Service of Legal Papers Other than Citations or Audit Notices by (i) replacing Proposed Rule 3.17(a)(1)(3) with Proposed Rule 8.1(h), and (ii) adding Proposed Rule 8.1(i) to as Proposed Rule 3.17(e).

IX. Petition for Reconsideration

Please explain why this is a Petition and not a “Motion” for Reconsideration since the Petition for Reconsideration should focus on applicable law and no new facts outside the record are to be introduced and considered.

Rule 9.2 Petitions for Reconsideration: Please move the text in the “Note” following the rule to the rule itself and print it in **bold** with respect to the appeal period not being tolled. This is a potential trap for the unwary.

X. Auditors and Masters

There is an increase in need for the services of auditors and masters in the Orphans’ Court and further consideration should be given to broaden the scope of the Proposed Rules to encourage their use and clarify the source and nature of their authority. As previously mentioned, the terms “auditor” and “master” are not defined. The Proposed Rules do not (i) describe the circumstances under which the Court may appoint an auditor or master, or (ii) address the manner in which a master shall conduct a hearing. Please consider drawing from Proposed Rule 11.3 regarding hearings by the Register of Wills as a starting point to fill in these gaps.

Rule 10.2 Filing of Report: Please explain the circumstances under which the court may extend the time for filing of a report. The rule refers to an “application” but does not indicate who may make the application. Is it upon the master’s application, an Interested Party, or both? Masters hearings are often used to force parties to narrow issues and reach a settlement. The master should be given latitude to extend the time period where the parties agree.

XI. Register of Wills

Rule 11.3 Hearings: The mandated use of recording will increase expenses for the parties involved, perhaps significantly. Significant training of staff and associated expenses may be incurred by Registers, due to the unfamiliarity of the staff with Motion practice, the PA Rules of Evidence, and other formalities.

Rule 11.5 Notice to Beneficiaries and Intestate Heirs: Most practitioners do not want or need the notices required by Rule 11.5(g). Please revise the rule to provide that the giving of a notice that such information was available from the Register's office should be sufficient. This way, a pro se Personal Representative will be put on notice of the requirements without providing this rule and forms of notice to experienced practitioners who already have this information.