

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
PRESIDENT JUDGE GENERAL COURT REGULATION NO. 98-03
In Re: Amendment to Philadelphia

Orphans' Court Rules 1.2, 32.1, 32.2 and 77.1

ORDER

AND NOW, this 2nd day of October, 1998, the Board of Judges of Philadelphia County having voted at the Board of Judges' Meeting held September 17, 1998 to amend existing Philadelphia Orphans' Court Rules [1.2](#), [32.1](#), [32.2](#) and [77.1](#), IT IS HEREBY ORDERED AND DECREED that the above referenced rules are amended as attached hereto.

Note: Bracketed text has been deleted. Bold text has been added.

This General Court Regulation is promulgated in accordance with Phila. Civ.R. 51 and Pa.R.C.P. 239 and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. As required by Pa.R.C.P. No. 239, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Orphans' Court Rules Committee. Copies of the Regulation shall also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, Jenkins Memorial Law Library, and the law library for the First Judicial District.

ALEX BONAVIDACOLA
PRESIDENT JUDGE
COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY

Rule *1.2 Argument List.

(a) *When Heard.* The argument list will be heard at 10 a.m. on the third Wednesday of each month except July, August and September.

(b) *Matters Heard.* **[Issues of law raised by petition and answers (when the pleadings are closed); preliminary objections; exceptions]** Exceptions to adjudications, **[to]** supplemental adjudications, **[to]** opinions, **[to]** reports of Auditors or Masters appointed by other than an Auditing Judge or Hearing Judge, **[to]** or orders and decrees of a Judge hearing a certification of the record **[or an appeal from judicial acts or proceedings of the Register]**; and motions for new trial or for judgment n.o.v. in **[issues tried by a] jury trials** shall be heard on the argument list. **[Issues of fact] Preliminary objections** will not be heard on the argument list.

(c) *Listing.* All matters shall be placed on an argument list at the time filed, in the manner set forth in Rule *1.2(c)(1)[,] and (2) **[and (3)]**. Counsel for the petitioner[, or exceptant **[or party filing preliminary objections]**] shall forthwith send notice of the date of the argument list on which the matters has been placed to all counsel of record.

(1) Counsel for the petitioner or exceptant may select a particular argument list at the time of filing by informing the Clerk of the monthly list desired. An argument list may be selected no later than 3 p.m. on the third Wednesday preceding the call of that list. Counsel may not select a list which is later than the third argument list scheduled after the filing date.

(2) If counsel for the petitioner or exceptant does not select a particular argument list at the time of filing, the Clerk shall place the matter on the third argument list therefrom. The Clerk shall forthwith send notice of said placement to said counsel, who shall notify all counsel of record as provided above.

[(3) Preliminary objections which shall be accompanied by a brief conforming to paragraphs (d)(1)(i), (ii), (v), (vi), (viii) and (viii) of this rule shall be placed on the next argument list which is at least three weeks following the filing of the Preliminary Objections.]

[4](3) Counsel for any party in interest may **[order] request** a matter **[other than preliminary objections]** on an earlier argument list by filing a praecipe with the Clerk which designates the particular monthly list desired. Such praecipe may be filed not later than 3 p.m. on the seventh Wednesday preceding the call of the designated list, except that in the case of a praecipe filed by counsel for the petitioner or exceptant, such praecipe may not be filed later than 3 p.m. on the third Wednesday preceding the call of the designated list. If more than one such praecipe is filed, the matter shall be heard on the earliest argument list designated which complies with the time limitations state above. Counsel for the party **[ordering] requesting** a matter **to be placed** on an earlier argument list shall forthwith send notice to all counsel of record which specifies the date of the earlier list.

(d) *Briefs.*

(1) **[Six] Four** copies of the brief for the petitioner or exceptant shall be filed with the Clerk not later than 3 p.m. on the third Wednesday preceding the call of the list. The briefs shall be typewritten or printed, with pages numbered consecutively, and shall contain, in the following order:

(i) an index;

(ii) a statement of the questions involved, as required by the rules of the Supreme Court, including the manner in which the question was disposed of by the Judge, Auditor or Master;

(iii) a copy of the adjudication or opinion of the Hearing Judge, or of the report of the Auditor or Master to which exceptions have been filed;

- (iv) a copy of the exceptions;
- (v) in cases begun by petition, copies of the pertinent docket entries and of the pleadings;
- (vi) a copy of the will and codicils or trust instrument and any other relevant documents;
- (vii) a history of the case; and
- (viii) the argument.

(2) Other parties in interest shall file **[six] four** copies of their briefs, with the Clerk no later than 3 p.m. on the Wednesday preceding the call of the list. The brief shall be typewritten or printed with pages numbered consecutively and shall contain an argument, preceded, if desired, by a counter-statement of the questions involved and a counter-history of the case.

(3) Copies of the briefs, filed with the Clerk shall be delivered forthwith to counsel of record for opposing parties.

(4) Typewriting-Typewriting shall be legible, and, except for quotations, shall be double spaced.

(5) Reproduction of Documents-Reproduction of documents and exhibits will not be accepted by the Court unless clearly legible.

(e) *Absence of Counsel.* The argument list will be called three times. On the third call, whether or not counsel be present, a case may, in the discretion of the Court, be disposed of finally or stricken from the list. A case which **[hits] has** been stricken from the list will not be placed on a subsequent list, except with the express permission of the Administrative Judge.

(f) *Oral Argument.* Oral argument shall not exceed 30 minutes per party except by special leave obtained from the Administrative Judge prior to the argument date.

Rule *32.1 Pleadings.

The pleadings in the Orphans' Court shall be limited to a petition, an answer, **new matter**, reply, preliminary objections, and an answer to preliminary objections.

(a) *New Matter[s].* Any defense which is not a denial of the averments of fact in the petition shall be set forth under the heading "New Matter["] ."

(b) *Reply.* A reply shall be required when new matter is set forth in the answer.

(c) *Preliminary Objections. [Answer.]*

(1) Preliminary objections shall be **[available to any party, but shall be]** limited to questions of (i) law[;], (ii) form[;], or (iii) jurisdiction[.], **may be filed by any party, and shall be accompanied by one original brief prepared in conformity with Rule *1.2(d)(1)(i)-(ii), (v)-(viii), (d)(3) and (d)(4).**

(2) An answer to preliminary objections shall be **[limited to the averments of fact concerning jurisdiction set forth in the preliminary objections.]** accompanied by one original brief, prepared in

conformity with Rule *1.2(d)(2), (d)(3), and (d)(4), and shall be filed within twenty (20) days after service of the preliminary objections and accompanying brief.

Rule *32.2 Disposition of Pleadings.

(a) *Failure to Answer a Petition.* If the respondent fails to file an answer **to a petition**, the Court may enter a decree granting the prayer of the petition.⁽¹⁾

(b) *Failure to Reply.* If the petitioner fails to file a reply to an answer which contains new matter, the averments of fact set forth under new matter shall be deemed admitted and the case will be **[at issue] ripe for disposition.**

[(c) Failure to File an Answer to Preliminary Objections. If the petitioner fails to file an answer to preliminary objections raising questions of jurisdiction, the averments of fact set forth in the preliminary objections shall be deemed admitted and the case will be at issue on the preliminary objections.]

(c) Disposition of Preliminary Objections.

(1) The Assigned Judge shall rule on the preliminary objections. If no judge has been assigned, the Administrative Judge, at the request of any party in interest, shall assign a judge, on a rotation basis, to rule on the preliminary objections.

(2) Preliminary Objections raising questions of fact. Averments of fact raised in preliminary objections shall be deemed admitted if no answer is filed. If an answer is filed which denies averments of fact raised in preliminary objections, the Assigned Judge may schedule an evidentiary hearing.

(3) Preliminary Objections which may be disposed of as a matter of law. If no issues of fact are raised by the preliminary objections and answer, the Assigned Judge shall dispose of the preliminary objections as a matter of law, and shall deem all averments of fact in the pleading to which the preliminary objections have been filed to be admitted for the purpose of ruling on the preliminary objections.

(4) Oral argument on preliminary objections may be scheduled at the discretion of the Assigned Judge.

(d) *Joinder of Issue.* No formal joinder of issue is required.

(1) *Issues of Fact.* Issues of fact will not be heard on the argument list. Except as otherwise provided by Rules *77.1 and *104, when an issue of fact is raised by the pleadings, the Administrative Judge, upon the written request of any party, may refer the matter to a Master, to the Auditing Judge if an account is to be filed, or to a Hearing Judge.

(2) *Issues of Law.* **[When the pleadings are closed, any party in interest may order the matter on the argument list. Averments of fact in the pleading to which preliminary objections raising questions of law have been filed shall be deemed admitted for the purpose of the argument.] Pleadings that are closed shall be disposed of in conformity with Rule *32.2(c)(1), (3) and (4), dealing with disposition of preliminary objections.**

⁽¹⁾ **If an answer is filed which raises issues of fact, either petitioner's counsel or respondent's counsel should write to the Administrative Judge and request that the pleadings be assigned to a Hearing Judge for disposition.**

Rule *77.1 Exceptions. Rules Governing.

[(a) Exceptions may be filed to any adjudication, opinion, order or decree not later than twenty (20) days after the date thereof; and in the absence of exceptions filed within that time, the adjudication, opinion, order or decree shall be final unless otherwise provided in the adjudication, opinion, order or decree.]

(a) All challenges to an order, decree, opinion, or adjudication of an account shall be raised by written exceptions. An order, decree, or opinion shall become final, and an adjudication of an account shall be confirmed absolutely as of course, after the expiration of twenty (20) days after the date of such order, decree, opinion, or adjudication, unless written exceptions thereto are filed within said twenty (20) days.

(b) Notwithstanding the provisions of subparagraph (a) hereof, the [The] Court will not entertain exceptions to the decree of a Hearing Judge awarding a jury trial or to any other interlocutory order or decree.

(c) Notwithstanding the provisions of provisions of subparagraph (a) hereof, exceptions to the disposition of schedules of distribution by the Auditing Judge shall only be filed in accordance with Rule *72(e)(3).

(d) Exceptions shall be filed with the Clerk, served in accordance with Rule *35.1(b), and listed for argument as provided in Rule *1.2(c).

(e) Exceptions shall be in writing, numbered consecutively, and signed by the exceptant or the exceptant's attorney. Each exception shall:

- (1) be specific as to description and amount;**
- (2) in no event raise questions which could have been raised previously by claim or objection;**
- (3) raise but one issue of law or fact, but if there are several exceptions relating to the same issue of law or fact, all such exceptions shall be included in one exception; and**
- (4) set forth briefly the reason or reasons in support of the exception.**

Note: Under this rule, the filing of timely exceptions is necessary to preserve an issue for appellate review. See Estate of Volkhardt, 484 Pa. 52, 398 A. 2d 656 (1979). This rule does not, however, address the issue of whether an order, decree, or opinion is otherwise appealable or final under the appellate rules. See generally Hunter, Pennsylvania Orphans' Court Commonplace Book, Appeals § 6; Pa. R.App.P. §§ 301-342.

[Comment: Generally, the Court will not entertain exceptions to matters which could have been but were not raised at the audit of the account or at the hearing on any petition or other application to the Court.]