

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**  
**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

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**No. 3 of 2023**

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**President Judge General Court Regulation**

*In re: Adoption of Philadelphia Court of Common Pleas Orphans' Court Rules 3.5A, 5.50A and 14.2A*

**ORDER**

AND NOW, this 17<sup>th</sup> day of February, 2023, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on February 16, 2023, to adopt Phila. O.C. Rule 3.5A, 5.50A and Phila. O.C. Rule 14.2A, as attached to this Order, and as required by Pa.R.J.A. 103, the Supreme Court Procedural Rules Committee has reviewed the attached local rules, has determined that Phila. O.C. Rule 3.5A, Phila O.C. Rule 5.50A and Phila. O.C. Rule 14.2A are not inconsistent with applicable statewide rules, and has authorized their promulgation.

NOW, therefore, it is hereby ORDERED and DECREED that Philadelphia Court of Common Pleas Orphans' Court Rules are adopted, as attached, effective thirty days after publication in the *Pennsylvania Bulletin*.

As required by Pa.R.J.A. 103(d), the local rule which follows this Order was submitted to the Supreme Court of Pennsylvania Orphans' Court Procedural Rules Committee for review, and written notification has been received from the Rules Committee certifying that the local rule is not inconsistent with any general rule of the Supreme Court. This Order and the attached local rule 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 Administrative Orders issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this Administrative Order and the attached local rule, as well as one copy of the Administrative Order and local rule shall be distributed to the Legislative Reference Bureau 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 Administrative Order and local rule 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 Administrative Order and local rules 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.

/s/ Idee C. Fox

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**IDEE C. Fox, J.**

**President Judge, Court of Common Pleas  
Philadelphia County**

**Rule 3.5A. Procedure for Determination when No Response Is Filed to a Petition under Pa.R.O.C.P. 3.5(a) or 3.5(b)**

(1) When a party to whom a citation issued under Pa.R.O.C.P. 3.5(a), or to whom a petition with notice under 3.5(b) is directed, has not filed an answer or preliminary objection within the response time provided by law, the petitioner may file a praecipe for an order or decree, which shall include:

- (a) A proposed form of order or decree;
- (b) A concise explanation of the procedural posture of the matter identifying the pleading to be disposed of; and
- (c) Specific averments as to the exact nature of service of the underlying petition, and a copy of the appropriate certification or proof of service.

(2) The party filing a praecipe for an order or decree must serve all interested parties with the praecipe according to the provisions of Pa.R.O.C.P. 4.3 no later than the date that the praecipe is filed, and shall attach a certificate of service listing the names and addresses of those individuals and entities who were served with the praecipe, and by what means they were served.

(3) Upon receipt of a praecipe for an order or decree, the Court may issue an order or decree granting any of the following relief:

- (a) A hearing;
- (b) An off-the-record or on-the-record conference;
- (c) Disposition on the pleadings already of record; or
- (d) Such other relief as is appropriate.

(4) Upon issuance of an order or decree described hereunder, the party requesting the order or decree shall serve the order or decree on the party to whom the citation or petition with notice was directed according to the provisions of Pa.R.O.C.P. 4.3, and shall file of record a certification of service within 10 days of the date of the order or decree, listing the names and addresses of those individuals and entities who were served, and by what means they were served.

(5) A party to whom an order or decree described hereunder is directed may, within 20 days of the entry of such an order or decree, file a petition to vacate the order or decree. This petition shall include:

- (a) A concise explanation of why no timely answer, preliminary objection, or other response was filed; and
- (b) The answer, preliminary objection, or other response which the party seeks leave to file.

Upon review of such a petition and for cause shown, the Court may vacate the order or decree, and permit an appropriate responsive pleading to be filed within such time as it shall determine.

**Probate Section Comment:** The period for filing an appeal is not tolled by the filing of a petition to vacate an order or decree unless the Court grants the petition to vacate before the expiration of the appeal period. Nothing herein precludes the Court from entering appropriate relief after the response time provided by law has expired if no praecipe for an order or decree is filed. This Rule does not apply to Petitions for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person.

**Rule 5.50A. Settlement of Small Estates by Petition.**

(1) In addition to the requirements set forth under Pa.R.O.C.P. 5.50(b), a petition for the settlement of a small estate filed pursuant to 20 Pa.C.S. § 3102 shall also set forth:

- (a) If Letters of Administration or Letters Testamentary were granted, where, to whom, and when they were granted, and the amount of bond, if any, given by the personal representative;
- (b) A prayer for the discharge of the personal representative and the release of any bond or surety given.

(2) In addition to the exhibits required under Pa.R.O.C.P. 5.50(c), the following exhibits shall also be attached to the petition:

- (a) A copy of the Letters of Administration or Letters Testamentary, if any, that were granted; and
- (b) A proposed decree setting forth a list of all disbursements and distributions of the assets of the estate and, in appropriate cases, for the discharge of the personal representative and the release of any bond or surety.

(3) No appraisal of the decedent's personal property is required, unless ordered by the Court.

**Probate Section Comment:** This rule replaces Phila. O.C. Rule 5.16A.

**Rule 14.2A. Petition for Adjudication of Incapacity and Appointment of a Guardian of the Person or Estate of an Incapacitated Person.**

(1) *Petition Contents.* When the petitioner avers, as required by Pa.R.O.C.P. 14.2(a)(6), (7) and (8), the existence of an executed health care power of attorney or advance health care directive, or an executed power of attorney, or any other writing by the alleged incapacitated person pursuant to Title 20, Chapters 54, 56 or 58, the petition shall state the position of the Petitioner as to the continuation of the duties of the agent identified under such document(s).

(2) *Exhibits.*

(a) A Preliminary Decree and a Final Decree, as set forth in the Appendix maintained pursuant to Phila. O.C. Rule 1.8(c), shall be attached to the face of a petition for adjudication of incapacity.

(b) Consent of Proposed Guardian. The signed written consent of the proposed guardian to act as guardian, as set forth in the Appendix maintained pursuant to Phila. O.C. Rule 1.8(c), shall be attached to the petition.

(3) *Emergency Guardians.*

(a) *Appointment.* The Court, upon petition and hearing at which clear and convincing evidence is shown, may appoint an emergency guardian or guardians of the person and the estate of an alleged incapacitated person when it appears that the person lacks capacity, is in need of a guardian and a failure to make such appointment would result in irreparable harm to the person or estate of the alleged incapacitated person. The Court may also appoint an emergency guardian of the person pursuant to 20 Pa.C.S. § 5513, for an alleged incapacitated person who is present in this Commonwealth but is domiciled outside the Commonwealth, regardless of whether he or she has property in this Commonwealth.

(b) *Applicability of Other Provisions.* The provisions of 20 Pa.C.S. § 5511, including those relating to counsel, shall be applicable to such proceedings, except when the Court has found such provisions to be impractical.

(c) *Duration of Emergency Guardianship.*

(i) *Person.* An emergency order appointing an emergency guardian of the person may be in effect for up to seventy-two (72) hours. If the emergency continues, the emergency order may be extended for no more than twenty (20) days from the expiration of the initial emergency order, upon application to the Court.

(ii) *Estate*. The duration of an emergency order appointing an emergency guardian of the estate shall not exceed thirty (30) days.

(iii) If continuing guardianship of person or estate is necessary, a full guardianship proceeding must be instituted pursuant to 20 Pa.C.S. § 5511 during or after the expiration of the period of the emergency order or any extension.

(iv) The use of an expert report or deposition testimony in lieu of live in-person testimony in emergency guardianship proceedings must be specifically authorized by the court. The use of telephonic live testimony is left to the discretion of the court.

(4) *Citation with Notice*.

(a) *Issuance of Citation*. Upon the issuance of a citation following the granting of a preliminary decree to a petition for adjudication of incapacity, Petitioner or their designee shall pick up the original citation from the Clerk in person, or contact the Clerk to request another arrangement. Such requests may or may not be honored, at the discretion of the Clerk.

(b) *Alias Citation*. If the original citation was not personally served on the alleged incapacitated person at least twenty (20) days prior to the scheduled hearing date, the Court upon request may issue an alias citation. The Alias Citation must be served on the alleged incapacitated person at least twenty (20) days prior to the newly scheduled hearing date, in the same manner as the original citation.

*Note*: An Alias Citation is not required if the original citation has been timely served on the alleged incapacitated person and a continuance is requested from the originally scheduled hearing date.

*Probate Section Comment*: 20 Pa.C.S. § 5512.1 elaborates the basis upon which the Court shall make a finding of incapacity. The description and the steps taken to find less restrictive alternatives must include sufficient information to satisfy the requirements of 20 Pa.C.S. § 5518. 20 Pa.C.S. § 5511 establishes that the Court may adjudicate an individual incapacitated and appoint a guardian only upon petition and hearing and upon the presentation of clear and convincing evidence. If the alleged incapacitated person is in a hospital, nursing home or other institution, service must be made upon an attorney or authorized personnel of the institution and notice of the hearing should be given to the director or other authorized official of such facility. If the alleged incapacitated person is a veteran, notice of the hearing must be given to the Veterans' Administration. A shorter time period for service may be permitted in connection with petitions for the appointment of an emergency guardian.