



Pennsylvania Association of Elder Law Attorneys

Pennsylvania Association of Elder Law Attorneys (PAELA)
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February 25, 2019

Wayne M. Pecht, Esquire, Chair
Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
P.O. Box 62635
Harrisburg, PA 17106-2635

Re: Proposed Pennsylvania Orphans' Court Rule 5.50 ("Proposed Rule")

Dear Chairman Pecht:

I am writing to you as President of the Pennsylvania Association of Elder Law Attorneys. The Proposed Rule has an admirable goal of establishing a uniform and efficient process for small estate administration in Pennsylvania. However, we believe that the Proposed Rule creates an unintended issue for those estates that include joint assets.

The Proposed Rule includes provision 5.50(b)(2), which requires information regarding a decedent's joint assets if the estate is insolvent:

(2) Assets. All assets of decedent's estate, other than real estate, and the value of each asset. ***If it appears that all creditors cannot be paid in full, then include all other assets in which the decedent had an interest as a joint tenant with rights of survivorship, together with the value of each such asset and decedent's fractional interest therein.***
(Emphasis added).

The requirement to include jointly-owned assets, when an estate is insolvent, has no statutory basis and is inconsistent with any precedent in the settlement of decedents' estates in Pennsylvania. For instance, there is an overlay of law relating to joint ownership of banks accounts and joint brokerage accounts, which is governed by the Multiple Party Accounts Act, Chapter 63 of the Probate, Estates and Fiduciaries Code that has not been considered in developing this proposed rule, and including this provision creates an ***incorrect expectation that these joint assets may in fact be subject to creditor claims.***

Also, many small estates that could benefit from this process may have involved a decedent who received Medicaid services in a nursing home or in the community. By including a requirement to include joint assets as part of the legal process for setting the small estate, there likely is to be confusion as to the proper treatment of an estate recovery claim under Medicaid. Pennsylvania law specifically states that property held by a decedent and another at the time of death as a joint owner is ***not subject to a Medicaid estate recovery claim.***

PAELA supports the committee efforts to refine our Commonwealth's process for a small estate administration. However, because of the problematic section 5.50(b)(2), we cannot support this proposed rule change unless the provision requiring inclusion of a decedent's joint assets is removed.

Very Truly Yours,

Linda M. Anderson
President

**SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

Proposed Adoption of Pa. O.C. Rule 5.50

The Orphans' Court Procedural Rules Committee ("Committee") is planning to propose to the Supreme Court of Pennsylvania the adoption of new Pa. O.C. Rule 5.50. This rule will set forth the contents of a petition filed pursuant to 20 Pa.C.S. § 3102, pertaining to the settlement of small estates.

Pursuant to 20 Pa.C.S. § 3102, 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"). Upon reviewing several local rules addressing small estate petitions, the Committee considered whether a statewide rule governing such petitions would be beneficial. The Committee established a subcommittee, which examined local rules and polled counties on the extent of small estate practice. The subcommittee recommended that the Committee draft a statewide rule addressing these types of petitions, and identified certain information and exhibits that should be included in petitions for the settlement of small estates.

Accordingly, the Committee proposes the adoption of new Rule 5.50 to prescribe the contents of a petition filed to settle a small estate pursuant to 20 Pa.C.S. § 3102. The Committee invites all comments, concerns, and suggestions regarding this proposal.

**SUPREME COURT OF PENNSYLVANIA
ORPHANS' COURT PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa. O.C. Rule 5.50

The Orphans' Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of Pa. O.C. Rule 5.50, providing for petitions for the settlement of small estates pursuant to 20 Pa.C.S. § 3102, for the reasons set forth in the accompanying publication 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 neither will constitute a part of the rules nor 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:

**Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
orphanscourtproceduralrules@pacourts.us**

All communications in reference to the proposal should be received by **March 4, 2019**. 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 Orphans' Court Procedural Rules Committee,

Wayne M. Pecht, Esq.
Chair

[This is an entirely new Rule.]

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.** 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 heir, as applicable; and

(v) whether a claim for family exemption is included, 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 the value of each asset. If it appears that all creditors cannot be paid in full, then include all other assets in which the decedent had an interest as a joint tenant with right of survivorship, together with the value of each such asset and decedent's fractional interest therein.

(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) whether a Statement of Claim Request Form, as required to comply with the Medical Assistance Estate Recovery Program, was sent to the Department of Human Services, the date the form was sent, 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 heir, as applicable, who has not consented to or joined in the petition.

(5) Taxes. A statement that a Pennsylvania inheritance tax return need not be filed and the reason for such assertion, or a statement that a Pennsylvania inheritance tax return has been filed, that all taxes due thereon 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 Appraisalment 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 Request Form referenced in subparagraph (b)(3)(iii).

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

Explanatory Comment: In subparagraph (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.

See Rule 3.4(b) for the requirement to attach a proposed form of decree to a petition.

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.