

**RULE 5: NOTICE**

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**Rule 5.1. Method.**

Except where otherwise provided by a rule adopted by the Supreme Court or by an Act of Assembly, whenever notice is to be given a person, it shall be given

- (a) by service upon the attorney appearing of record for such person; or
- (b) if there is no such attorney, by personal service, delivery at the residence of such person or by mail, if his residence is known; or
- (c) if his residence is not known, by publication once a week during three successive calendar weeks in the legal periodical, if any, and in a newspaper of general circulation published at or near his last known residence within the county; or
- (d) in such other manner as the court shall direct.

**Rule 5.2. Method; person under incapacity.**

Whenever notice is to be given a person who is not sui juris, notice shall be given to his guardian or trustee, but if there is no such guardian or trustee, notice shall be given in such manner as the court by general rule or special order shall direct. The return of such notice or an averment of such notice in a pleading shall set forth the incapacity of the person who is not sui juris and the name and address of his representative or other person who has been notified on his behalf.

**Explanatory Note:** See the explanation to Rule 3.3.

**Rule 5.3. Time for notice.**

Whenever notice of the intention to do any act is required, such notice shall be given at least ten days prior to the doing of the act, unless a different period is specified by a rule adopted by the Supreme Court or by an Act of Assembly.

**Rule 5.4. Return of notice.**

Return of notice shall be by affidavit of the person serving, mailing, publishing or delivering such notice.

**Rule 5.5. Charities—notice to the Attorney General.**

In every proceeding in the Orphans' Court involving or affecting a charitable interest with the exception hereinafter set forth, at least fifteen days advance

written notice thereof shall be given to the Attorney General of the Commonwealth of Pennsylvania at his principal office at Harrisburg, Pennsylvania, or to a deputy of his whom he shall have designated for such purpose for the judicial district in which the proceeding is pending. The notice shall include or be accompanied by such of the following as may be appropriate

- (a) The caption of the case;
- (b) a description of the nature of the proceeding;
- (c) the date, time and place when the matter is to be heard by the court to the extent then known;
- (d) the name of the decedent, settlor, incompetent or minor, if not disclosed by the caption;
- (e) a copy of the will or other instrument creating the charitable interest;
- (f) the name and address of any specific charity which may be affected by the proceeding;
- (g) if the charitable interest is a present interest, a description and the approximate market value of that interest;
- (h) if the charitable interest is a future interest and the estimated present value of the property involved exceeds \$25,000, a brief description thereof including the conditions precedent to its vesting in enjoyment and possession, the names and ages of persons known to have interests preceding such charitable interest, and the approximate market value of the property involved;
- (i) a description of any unresolved claim and any material question of interpretation or distribution likely to be submitted for adjudication which may affect the value of the charitable interest;
- (j) the names and addresses of all fiduciaries;
- (k) the name and address of counsel for the fiduciary; and
- (l) the name and address of counsel for any charity who has received notice or has appeared for it and the name of the charity which he represents.

Proof of service of the above notice by registered or certified mail or an acknowledgment of such notice received from the Attorney General or his deputy shall be filed of record in every proceeding involving a charitable interest prior to the entry of any decree.

Unless the Orphans' Court directs otherwise by local rule adopted after the effective date hereof, no notice to the Attorney General or his designated deputy shall be required with respect to a pecuniary legacy to a charity in the amount of \$25,000 or less which has been or will be paid in full.

**Explanatory Note:** This is an adaptation from rules presently in effect in a number of counties which in turn were derived from informal recommendations made by Mr. Justice McBride when he was Attorney General, published in *Fiduciary Review*, April 1958. That same article lists many non-accounting type proceedings in which notice would also be required.

Reproduction and mailing costs for the sender, as well as voluminous filing problems for the Attorney General seem to render it inadvisable to require submission of a copy of the account, pleadings, or other documents with the initial notice. The 15-day period should be adequate to

enable the Attorney General to request and obtain a copy thereof in any proceeding where he deems further consideration desirable. The rule has been drafted with the objective that it be adaptable to a printed form of charitable notice. A number of counties have already adopted printed forms with considerable success.

There has not been complete unanimity among practitioners with regard to the scope of the doctrine announced in *Pruner Estate*, 390 Pa. 529, 136 A.2d 107, 1957. Despite the fact that the reported opinion referred only to charitable trusts and despite the distinction drawn between a charitable trust and an outright legacy to charity in *Craig Estate*, 356 Pa. 564, 52 A.2d 650, 1947, it is thought that the underlying principles *parens patriae* should be equally applicable to an outright pecuniary legacy to a named charity. On the other hand it seems useless to demand notice of a small pecuniary legacy which has or will be paid in full.

This notice is not intended to supplant or obviate the required application for leave of the Attorney General to institute cy pres proceedings for pre-1948 trusts under the provisions of the Act of 1855, P. L. 328, as amended.

The words "or his designated deputy" are added to conform with the wording in the initial paragraph and for further identification of the person to whom notice is usually most appropriate. The change from \$10,000 to \$25,000 avoids a nuisance for all parties in instances where the services of the Attorney General are not required.

*Committee Comment—2006:* See Appendix for form of notice under Rule 5.5.

#### Source

The provisions of this Rule 5.5 amended October 16, 2006, effective 30 days from the date of entry of this order, 36 Pa.B. 6760. Immediately preceding text appears at serial pages (252119) to (252120) and (255427).

### Rule 5.6. Notice to Beneficiaries and Intestate Heirs.

(a) *Requirement of notice.* Within three (3) months after the grant of letters, the personal representative to whom original letters have been granted or the personal representative's counsel shall send a written notice of estate administration in the form approved by the Supreme Court to:

- (1) every person, corporation, association, entity or other party named in decedent's will as an outright beneficiary whether individually or as a class member;
- (2) the decedent's spouse and children, whether or not they are named in, or have an interest under, the will;
- (3) where there is an intestacy in whole or in part, to every person entitled to inherit as an intestate heir under Chapter 21 of the Probate, Estate and Fiduciaries Code;
- (4) the appointed guardian of the estate, parent or legal custodian of any beneficiary who is a minor child under the age of eighteen years;
- (5) the appointed guardian of the estate or, in the absence of such appointment, the institution or person with custody of any beneficiary who is an adjudicated incapacitated person;
- (6) the Attorney General on behalf of any charitable beneficiary whose interest exceeds \$25,000 or which will not be paid in full;

- (7) the Attorney General on behalf of any governmental beneficiary;
- (8) the trustee of any trust which is a beneficiary; and
- (9) such other persons and in such manner as may be required by any local rule of court.

(b) *Definition of Beneficiary.* “Beneficiary” shall be deemed to include any person who may have an interest by virtue of the Pennsylvania anti-lapse statute, 20 Pa.C.S. § 2514.

(c) *Manner of notice.* Notice shall be given by personal service or by first-class, prepaid mail to each person and entity entitled to notice under subdivision (a)(1)—(9) whose address is known or reasonably available to the personal representative.

(d) *Certification of notice.* Within ten (10) days after giving the notice required by subdivision (a) of this Rule, the personal representative or the personal representative’s counsel shall file with the Register or Clerk a certification that notice has been given as required by this Rule. No fee shall be charged by the Register or Clerk for filing the certification required by this subdivision.

(e) *Failure to file certification.* Upon the failure by the personal representative or the personal representative’s counsel to file the certification on a timely basis, the Register shall, after ten (10) days prior written notice to the delinquent personal representative and his counsel, notify the Court of such delinquency.

**Official Note:** The 1998 amendment to subdivision (e) is not intended to limit the inherent power of the Court to impose sanctions upon a delinquent personal representative or counsel.

(f) *Effect of notice.* This Rule shall not alter or diminish existing rights or confer new rights.

(g) *Copies of rule.* The Register shall deliver a copy of Rule 5.6 and the forms of notice and certification approved by the Supreme Court to each personal representative and counsel at the time letters are granted.

**Explanatory Note:** It is not the intention of the Rule to require notice beyond the degree of consanguinity entitling a person to inherit under Chapter 21 of the Probate, Estates and Fiduciaries Code.

*Committee Comment—2006:* The form of notice and certification of notice required by Rule 5.6 and formerly set forth in rule 5.7 have been revised and moved to the Appendix. Subparagraph (f) has been restated to correct a typographical error in the prior version of the rule.

#### Source

The provisions of this Rule 5.6 adopted April 30, 1992, effective July 1, 1992, 22 Pa.B. 2678; amended December 23, 1998, effective January 1, 1999, 29 Pa.B. 327; amended October 16, 2006, effective 30 days from the date of entry of this order, 36 Pa.B. 6760. Immediately preceding text appears at serial pages (255427) to (255428) and (252123) to (252124).

**Rule 5.7. [Reserved].**

*Committee Comment—2006:* The form of notice and certification of notice required by Rule 5.6 and formerly set forth in rule 5.7 have been revised and moved to the Appendix.

**Source**

The provisions of this § 5.7 adopted December 23, 1998, effective January 1, 1999, 29 Pa.B. 327; reserved October 16, 2006, effective 30 days from the date of entry of this order, 36 Pa.B. 6760. Immediately preceding text appears at serial page (252125) to (252127).

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