

RULE 2. [Reserved]

- Rule
- 2.1. [Reserved].
- 2.2. [Reserved].
- 2.3. [Reserved].

Rule 2.1. [Reserved].

Source

The provisions of this Rule 2.1 reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial page (307573).

Rule 2.2. [Reserved].

Source

The provisions of this Rule 2.2 reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial page (307573).

Rule 2.3. [Reserved].

Source

The provisions of this Rule 2.3 amended October 18, 2004, effective immediately, 34 Pa.B. 5891; reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial page (307573).

CHAPTER II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

- Rule
- 2.1. Form of Account.
- 2.2. Form; Assets Transferred by the Exercise of a Power of Appointment.
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- 2.8. Pleadings Allowed After Objections are Filed.
- 2.9. Confirmation of Accounts; Awards.
- 2.10. Foreign Heirs and Unknown Distributees.
- 2.11. Appointment of Official Examiners.

Source

The provisions of this Chapter II adopted December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098, unless otherwise noted.

Rule 2.1. Form of Account.

(a) Except where otherwise provided by an order of the court in a particular matter, Accounts shall be prepared and filed with the clerk in conformity with the form of the Model Accounts set forth in the Appendix or in conformity with any other form adopted by the Supreme Court subsequent to the date of adoption of these Rules.

(b) As illustrated in the Model Accounts, Accounts shall conform to the following rules:

(1) The dates of all receipts, disbursements and distributions, the sources of the receipts, and the persons to whom disbursements and distributions are made and the purpose thereof shall be stated. When a number of payments have been received from the same source or disbursed or distributed to the same recipient for the same purpose over a period of time, such receipts, disbursements or distributions need not be itemized, but may be stated in total amounts only, with beginning and ending dates within the period covered.

(2) Except where otherwise provided by an order of the court in a particular matter, principal and income shall be accounted for separately within the Account.

(3) Assets held by the accountant on the closing date of the Account shall be separately itemized.

(4) Every Account shall contain:

(i) a cover page;

(ii) a summary page with page references;

(iii) separate schedules, as needed, which set forth receipts, gains or losses on sales or other dispositions, disbursements, distributions, investments made, changes in holdings, and other schedules as appropriate; and

(iv) signature and verification pages signed by all the accountants stating the Account and verified by at least one of the accountants. The verification of a personal representative's Account shall contain a statement that the Grant of Letters and the first complete advertisement thereof occurred more than four months before the filing of the Account, unless the personal representative has been directed by the court to file an Account prior to that time.

(c) The Uniform Fiduciary Accounting Principles with accompanying commentaries and illustrations, recommended by the Committee on National Fiduciary Accounting Standards in collaboration with the National Center for State Courts, shall serve as an elaboration of the requirements of this Rule.

(d) When a non-profit corporation incorporated for charitable purposes or a cemetery company is required to file an Account, such corporation or company may file its financial statements for its three most recent fiscal years in lieu of

filing an Account in the form required by this Rule. Financial statements shall be verified to be true and correct by a representative of the non-profit corporation or cemetery company.

- (1) The court may require the corporation or company to submit its financial information in some other form or for some longer period.
- (2) The court may require more or less financial information as it deems appropriate, including some or all of the following:
 - (i) the statute or other authority under which the corporation or company was incorporated and the date of its incorporation;
 - (ii) the names and addresses of the trustees or directors of the corporation or company;
 - (iii) a concise statement of the general purpose of the corporation or company; and
 - (iv) a copy of the corporation's or company's charter or articles of incorporation and bylaws.

Note: Rule 2.1 is substantively similar to former Rule 6.1 and Rule 12.15, except that certain subparagraphs have been reordered and Rule 12.15 and its Official Note have become subparagraph (d).

Explanatory Comment: Piggy-backed Accounts and limited Accounts are permitted pursuant to 20 Pa.C.S. §§ 762, 3501.2, and 7799.1.

Rule 2.2. Form; Assets Transferred by the Exercise of a Power of Appointment.

Assets that are appointed pursuant to the exercise of a power of appointment shall be accounted for separately, and testamentary assets shall be segregated from appointive assets.

Note: Rule 2.2 has been revised but remains substantively similar to subparagraph (d) of former Rule 6.1.

Rule 2.3. Form; Separate Accounts for Minors.

Unless the court for cause shown directs otherwise, the estate of each minor or the custodial account of each minor shall be accounted for separately.

Note: Rule 2.3 is substantively similar to former Rule 6.2, except that Rule 2.3 now also expressly encompasses the Account of a minor's custodial account.

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

- (a) A petition for adjudication/statement of proposed distribution shall be filed with the clerk at the time of filing an Account.
- (b) In addition to other information required by the form, the petition for adjudication/statement of proposed distribution shall set forth the name of each

interested party (whether *sui juris* or not) who is not receiving notice of the filing of the Account and the filing of the petition for adjudication/statement of proposed distribution because another individual or entity is proposed to represent such interested party pursuant to 20 Pa.C.S. § 751(6) or §§ 7721—7726, and shall set forth additional facts as to the following:

- (1) a statement of the interested party's interest in the property; and
- (2) for representation being proposed pursuant to 20 Pa.C.S. § 751(6),
 - (i) a statement that the interested party is not *sui juris* or is unborn, unknown or unascertained; and
 - (ii) one of the following:
 - (A) a statement that the proposed representative has an interest in the property similar to that of the interested party who is not *sui juris* or is unborn, unknown or unascertained; or
 - (B) a statement that the proposed representative is the *sui juris* living ancestor of the interested party who is not *sui juris* or is unborn, unknown or unascertained and that such living *sui juris* ancestor has an interest in the property that is not adverse to that of the interested party who is not *sui juris* or is unborn, unknown or unascertained; and
- (3) for representation in trust matters being proposed pursuant to 20 Pa.C.S. §§ 7721—7726,
 - (i) an explanation about how the interested party's interest in the property can be adequately represented by the proposed representative pursuant to 20 Pa.C.S. § 7723,
 - (ii) a statement that with respect to the matter at issue there is no conflict of interest between the proposed representative and the interested party to be represented that will or might affect the impartiality of the proposed representative (except as provided pursuant to 20 Pa.C.S. § 7723(7)); and
 - (iii) one of the following:
 - (A) either a statement that the proposed representative has been informed of the right to decline such representation pursuant to 20 Pa.C.S. § 7725 within the time period set forth therein and has failed to inform the trustee in writing that he or she declines to be the proposed representative; or
 - (B) that the proposed representative's signed consent to serve is attached as an exhibit to the petition for adjudication/statement of proposed distribution.
- (c) The petition for adjudication/statement of proposed distribution shall be accompanied by such legal paper as is required by the form.
- (d) At least one of the accountants stating the Account shall sign and verify the petition for adjudication/statement of proposed distribution in accordance with Rules 3.12 and 3.13.
- (e) Counsel for the accountant shall sign the petition for adjudication/statement of proposed distribution in accordance with and pursuant to Rule 3.12.

Note: Although substantially modified, Rule 2.4 is derived from former Rule 6.9. One modification is to require averments for virtual representation under 20 Pa.C.S. § 751(6) generally and representation in “trust matters” pursuant to 20 Pa.C.S. § 7721 *et seq.* Another substantial modification is the addition of subparagraph (e) that requires counsel to sign the petition for adjudication/statement of distribution attesting that the submitted petition for adjudication/statement of distribution accurately replicates the Model Form and subjects counsel to rules and sanctions as provided in Pa.R.C.P. Nos. 1023.1 through 1023.4. (*See* Rule 3.12.)

Explanatory Comment: The Supreme Court has adopted form petitions for adjudication/statements of proposed distribution of a decedent’s estate, trust, guardian of an incapacitated person’s estate, guardian of a minor’s estate, and the estate of a principal stated by an agent under a power of attorney. These form petitions for adjudication/statements of proposed distribution are the exclusive forms for adjudicating an Account, and consequently, the local court and clerk must accept these statewide forms and may not accept or allow any other forms previously permitted under local rules. The exclusive statewide form petitions for adjudication/statements of proposed distribution appear in the Appendix and are available electronically at www.pacourts.us/forms under the For-the-Public category.

Cover sheets or checklists may be required by local rule as permitted by Rule 1.8(c).

Rule 2.5. Notice of Account Filing.

(a) No Account shall be confirmed or statement of proposed distribution approved unless the accountant has given written notice of the filing of the Account as provided in subparagraph (d) of this Rule to the following, as applicable:

(1) every unpaid claimant who has given written notice of his or her claim to the accountant or who has performed any action that is the equivalent of giving written notice as provided in 20 Pa.C.S. §§ 3384 or 7755;

(2) any other individual or entity with an asserted claim known to the accountant that is not shown in either the Account or the petition for adjudication/statement of proposed distribution as being either paid in full or to be paid in full;

(3) any other individual or entity known to the accountant to have or claim an interest in the estate or trust as a beneficiary, heir, or next of kin, except for those legatees or claimants whose legacies or claims have been satisfied in full as reflected in the Account or will be satisfied in full as proposed in the petition for adjudication/statement of proposed distribution; and

(4) For an Account where a charitable interest is involved, refer to Rule 4.4.

(b) Notice to an individual or entity shall be given in accordance with Rule 4.2; provided, however, that if the individual or entity is represented by counsel who has entered his or her appearance in accordance with Rule 1.7(a), notice shall be given to counsel and the individual or entity.

(c) If the proposed distribution is to an estate or trust and a charity is a “qualified beneficiary,” as defined in 20 Pa.C.S. § 7703, of that recipient estate or trust, then notice shall be given to the Attorney General on behalf of the chari-

table beneficiary. If the proposed distribution is to an estate or trust and any one of the accountants stating the Account is a personal representative or a trustee of the recipient estate or trust, then notice shall also be given to the beneficiaries of the estate or trust, to the extent known.

(d) Written notice, as provided in subparagraph (a) of this Rule, shall be mailed at least 20 days prior to the audit in those counties having a separate Orphans' Court Division or 20 days prior to the date by which objections must be filed in all other counties, and the written notice shall state the date of the audit or the date by which objections must be filed, and the time and place of the audit, if one is to be held, to the extent then known. If an audit is to be held and the time and place of the audit is not known at the time the notice is mailed, the notice shall state that the time and place of the audit will be provided upon request. A copy of the Account, petition for adjudication/statement of proposed distribution, and any legal paper filed therewith shall be sent with the notice, unless the recipient of the notice is a trust beneficiary who is not a "qualified beneficiary" as defined in 20 Pa.C.S. § 7703, or unless the court orders otherwise in a particular matter.

(e) If the audit of an Account is continued or the date for filing written objections is extended, additional notice shall be mailed at least 20 days prior to the date of the continued audit or the new date for filing written objections to all of those who initially received notice of the Account's filing. The additional notice shall state the date of the continued audit or the date by which objections must be filed, and the time and place of the continued audit, if one is to be held, to the extent then known. If the time and place of the continued audit is not known at the time the additional notice is mailed, the additional notice shall state that the time and place of the continued audit will be provided upon request.

(f) All notices and additional notices shall be sent by first-class United States mail, postage prepaid. Service by mail is complete upon mailing.

(g) A certificate of service and a copy of the notice shall be appended to the petition for adjudication/statement of proposed distribution or filed with the clerk prior to the audit or continued audit date, in those counties having a separate Orphans' Court Division, or by the date when objections must be filed in all other counties.

(h) The notice shall contain the information provided in subparagraphs (1), (2), and (3), as applicable, and, in all cases, shall contain a statement as provided in subparagraph (4):

(1) the accountant's position on any known dispute or interpretation question, together with a copy of any instrument or material parts thereof containing any provision which forms the basis of the dispute or question;

(2) the accountant's understanding of the nature of each contested or unpaid claim, a detailed explanation that specifically identifies the claim, whether the claim is admitted or contested, and if admitted, why the claim is not being paid in full;

(3) if the Account and petition for adjudication/statement of proposed distribution is not sent with the notice pursuant to subparagraph (d) of this Rule, the notice shall state the amount of all compensation paid or payable to the accountant, all attorneys' fees paid or payable, and that copies of the Account and petition for adjudication/statement of proposed distribution are available upon request; and

(4) that any recipient of the notice who objects to any transaction shown in the Account, any interpretation or position taken by the accountant, or to any payment, failure to pay, distribution proposed, or any other aspect of the petition for adjudication/statement of proposed distribution must file written objections in accordance with Rule 2.7 with the clerk on or before the audit date in those counties holding an audit and by a specified date in all other counties, and if there is no such objection, then no action need be taken as such recipient will be deemed to have approved the Account, as stated, and agreed with the accountant's position on any dispute or question as set forth in the petition for adjudication/statement of proposed distribution, if any, and with the accountant's proposed disbursements and distribution.

Note: Although substantially modified, Rule 2.5 is derived from former Rule 6.3.

Explanatory Comment: Pursuant to the cross-references to 20 Pa.C.S. §§ 3384 and 7755, notice of the claim given to accountant's counsel of record is notice to the accountant. *See* 20 Pa.C.S. § 3384(b)(4). If the court is inclined not to agree with accountant's position, interpretation or proposed disbursements and distribution, best practice would be for the court to direct the accountant to notify the interested parties of the court's position and what additional action must be taken by any interested party who objects to the court's position.

Rule 2.6. Filing with the Clerk.

All Accounts shall be filed with the clerk.

Note: Rule 2.6 is derived from what was formerly Rule 6.6. Former Rule 6.4 regarding the time for filing the first Account of the personal representative has been deleted as it is codified in 20 Pa.C.S. § 3501.1.

Rule 2.7. Objections to Accounts or Petitions for Adjudication/Statements of Proposed Distribution.

(a) Objections to an Account and/or a petition for adjudication/statement of proposed distribution shall be filed with the clerk on or before the time and date of the audit in those counties holding an audit, and by a specified date in all other counties, with a copy sent by first-class United States mail, postage prepaid, to the accountant or the accountant's counsel, if represented, and to each interested party and claimant who received the notice pursuant to Rule 2.5, to the extent known.

(b) Objections shall be in writing, with consecutively numbered paragraphs, signed by counsel, or if not represented by counsel, then by all the objectors in

accordance with Rule 3.12. Objections shall be verified by at least one of the objectors in accordance with Rule 3.13.

- (c) Each objection shall:
- (1) be specific as to description and amount;
 - (2) raise one issue of law or fact, but if there are several objections relating to the same issue, all such objections shall be included in the same paragraph as subparts; and
 - (3) briefly set forth the reason or reasons in support thereof.
- (d) The court may extend the time for filing objections.

Note: Although substantially modified, Rule 2.7 is derived from former Rule 6.10.

Explanatory Comment: If the notice received by the objector has a service list appended to it setting forth the name and address of each interested party who received the notice under Rule 2.5, the objector must mail his or her objections to every name and address appearing on the service list.

Rule 2.8. Pleadings Allowed After Objections are Filed.

(a) Answers to objections, preliminary objections to objections, and answers to preliminary objections are permitted, but a party does not waive any rights by failing to file any of the foregoing. If an answer to objections is filed, no responsive pleading to the answer is permitted.

(b) Preliminary objections to objections shall be limited to lack of jurisdiction over the subject matter and lack of standing.

(c) If filed, answers to objections, preliminary objections to objections, and answers to preliminary objections must be filed within 20 days after service of the applicable preceding pleading, with a copy served upon the accountant, if applicable, and to each interested party and claimant who received the notice pursuant to Rule 2.5, or to his or her counsel, if represented.

(d) The court may summarily decide preliminary objections to objections and may do so prior to the filing of an answer to the preliminary objections.

Note: Rule 2.8 has no counterpart in former Orphans' Court Rules.

Explanatory Comment: Preliminary objections to objections are limited in the grounds that may be raised. Insufficient specificity, failure to conform to law, and the inclusion of scandalous or impertinent matter, *inter alia*, are not properly raised as preliminary objections to objections. (*Cf.* Rule 3.9 and Pa.R.C.P. No. 1028).

Rule 2.9. Confirmation of Accounts; Awards.

(a) An Account shall be confirmed or petition for adjudication/statement of proposed distribution approved when an adjudication or a decree of distribution is issued by the court and docketed by the clerk, expressly confirming the Account or approving the petition for adjudication/statement of proposed distribution and specifying, or indicating by reference to the petition for adjudication/statement of proposed distribution, the names of those to whom the balance available for distribution is awarded and the amount or share awarded to each.

(b) An adjudication confirming an Account discharges the fiduciaries as to those transactions set forth in the Account.

(c) The practice related to Schedules of Distribution shall be prescribed by local rule.

Note: Rule 2.9 is substantively similar to former Rule 6.11(a). Former Rule 6.11(b) has been deleted.

Rule 2.10. Foreign Heirs and Unknown Distributees.

(a) If it appears that the decedent may have heirs in a foreign country but their location, existence or identity is unknown, the accountant or his or her counsel shall notify the consulate of the country, prior to audit, of the facts indicating that the decedent may have had heirs in that country.

(b) Whenever the existence, identity or whereabouts of a distributee is unknown, or it appears that a distributee may not have the actual benefit, use, enjoyment or control of the money or other property if awarded to him or her, or the court is requested to withhold distribution or to make an award other than to the distributee or his or her nominee, the accountant or his or her counsel shall submit to the court or auditor, as the case may be, a written report outlining the investigation made and the facts relevant thereto. The report shall be in such form and may be filed at such place and time as shall be prescribed by local rule or order of the court.

Note: With only minor modifications, Rule 2.10 is substantively similar to former Rules 13.2 and 13.3. Former Rule 13.1 has been deleted.

Rule 2.11. Appointment of Official Examiners.

The court, by local rule or order in a particular matter, may appoint an official examiner who shall examine the assets held by or the transactions of any fiduciary.

Note: Rule 2.11 is substantively identical to former Rule 9.1. The appointment and conduct of Auditors and Masters is provided for in Chapter IX.

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