RULE 5. [Reserved]

Rule
5.1—5.4. [Reserved].
5.5. [Reserved].
5.6. [Reserved].
5.7. [Reserved].

Rules 5.1—5.4. [Reserved].

Source

The provisions of these Rules 5.1—5.4 reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial page (323245).

Rule 5.5. [Reserved].

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; reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial pages (323245) to (323247).

Rule 5.6. [Reserved].

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; reserved December 1, 2015, effective September 1, 2016, 45 Pa.B. 7098. Immediately preceding text appears at serial pages (323247) to (323248).

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 Rule 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 (323249).

CHAPTER V. RULES GOVERNING SPECIFIC TYPES OF PETITIONS

Rule
5.1. Declaratory Judgment.
5.2. Family Exemption.
5.3. Intestate Share to Surviving Spouse from Real Estate.
5.4. Revocation, Vacating or Extension of Time for Filing of Surviving Spouse's Election.

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5.7. Appointment of a Trustee.
5.8. Discharge of Fiduciary and Surety.
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5.11. Private Sale of Real Property or Options Therefor.
5.12. Mortgage or Lease of Real Property.
5.13. Inalienable Property.
5.14. Designation of a Successor Custodian.
5.15. Confirmation of Trustee Appointment.

Source

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

Rule 5.1. Declaratory Judgment.

(a) *Commencement of Action.* An action for declaratory judgment shall be commenced by petition and citation directed to the interested parties.

(b) *Contents of Petition.* In addition to the requirements provided by the Rules in Chapter III, the petition shall contain sufficient averments to entitle petitioner to the declaratory relief requested under the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. § 7531 *et seq.*, including:

(1) a concise statement of the facts relied upon to justify a declaratory judgment proceeding;

(2) the question of law, if any, with respect to which declaratory relief is requested;

(3) identity of all interested parties; and

(4) a prayer for the relief desired.

(c) *Exhibits.* A copy of the will, trust, other governing instrument, or any other document to be construed shall be attached to the petition as an exhibit.

Note: Rule 5.1 has no counterpart in former Orphans' Court Rules, but is based upon Philadelphia Local Rule 1.2.P.

Rule 5.2. Family Exemption.

(a) *Contents of Petition.* In addition to the requirements provided by the Rules in Chapter III, a petition for a family exemption shall set forth the following:

(1) facts establishing a *prima facie* right of the petitioner to the exemption;

(2) whether allowance of the claim is being requested prior to the confirmation or audit of the Account;

(3) a description of the property claimed; and

(4) if the exemption is claimed from real estate and a valuation has not been agreed upon by all interested parties, the nomination of two appraisers for appointment by the court to appraise the same.

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(b) *Exhibits.* A copy of the qualifications and credentials of the two appraisers nominated in the petition for appointment by the court shall be attached to the petition as exhibits.

(c) *Award by Consent.* The court may, at the request of the petitioner, award in distribution specific real estate included in the Account in satisfaction of, or on account of, the family exemption without compliance with the procedure outlined in subparagraphs (a) and (b) of this Rule if all interested parties agree in writing that the petitioner is entitled to the family exemption and to the valuation at which such real estate is to be awarded.

Note: Rule 5.2 is based upon former Rule 12.1.

Rule 5.3. Intestate Share to Surviving Spouse from Real Estate.

(a) *Contents of Petition.* When no Account is filed and all or part of the spouse's intestate share under 20 Pa.C.S. § 2102 is claimed from real estate, the claim shall be presented by petition, which shall conform to the requirements provided by the Rules in Chapter III, and shall set forth the following:

(1) facts establishing a *prima facie* right of the spouse to the statutory intestate share;

(2) a description of the property claimed; and

(3) if the exemption is claimed from real estate and a valuation has not been agreed upon by all interested parties, the nomination of two appraisers for appointment by the court to appraise the same.

(b) *Exhibits.* A copy of the qualifications and credentials of the two appraisers nominated in the petition for appointment by the court shall be attached to the petition as exhibits.

(c) *Award by Consent.* The court may, at the request of the surviving spouse, award specific real estate in satisfaction of, or on account of, the spouse's statutory intestate share without compliance with the procedure outlined in subparagraphs (a) and (b) of this Rule if all interested parties agree in writing that the surviving spouse is entitled to the statutory share and to the valuation at which such real estate is to be awarded.

Note: Rule 5.3 is based upon former Rule 12.2.

Explanatory Comment: Deletion of specific reference to the former statutory allowance of $10,000.00 increased to $30,000.00 allows greater flexibility. The Rule would not need to be amended in the future if the statutory amount should be further increased. With the broader language employed there is no longer any need to refer to the specific statutory provisions. As amended, the Rule recognizes the present practice of making the award of real estate in satisfaction of the spouse's allowance a part of the distribution decree when a court accounting is filed. While this Rule will be employed only in a minimum of instances for the foregoing reason and also because of the availability of § 3546 of Title 20, it, nevertheless, is considered advisable to preserve it in its altered form as a guide when it is to be employed.

Rule 5.4. Revocation, Vacating or Extension of Time for Filing of Surviving Spouse's Election.

(a) *Contents of Petition.* In addition to the requirements provided by the Rules in Chapter III, a petition to revoke or vacate an election of a surviving spouse to take against the will and other conveyances of the decedent shall set forth the following:

(1) the date of the decedent's death, whether a will has been probated and, if so, a reference to the place and date of probate;

(2) the name and capacity of the fiduciary of the decedent's estate, if any, and a reference to the record of his appointment;

(3) the name, address and relationship, if known, of the other interested parties and the nature and the extent of each of their interests;

(4) the names of the interested parties who have consented to the revocation or vacating of the election and the names of those who have not consented;

(5) a description and valuation of the decedent's real and personal property affected by the election;

(6) the date and manner of executing the election desired to be revoked or vacated and whether the same has been recorded, registered or filed, and if so, the date and place thereof;

(7) whether the surviving spouse has made or executed and delivered at any place an election contrary to that desired to be revoked or vacated, and whether that election has been recorded, registered or filed, and if so, the date and place thereof;

(8) the facts relied upon to justify the revocation or vacating of the election; and

(9) a request for a citation upon the interested parties who have not joined in the petition or who have not consented thereto to show cause why the election should not be revoked or vacated.

(b) A petition for the extension of the time in which the surviving spouse may file an election to take against the will and other conveyances shall be filed prior to the expiration of six months as provided in 20 Pa.C.S. § 2210 with the clerk of the county where decedent's will was probated.

(c) Notice of the filing of any petition under this Rule shall be provided to the personal representative of decedent's estate in accordance with Rule 3.5(b)(1).

Note: Rule 5.4 is based upon former Rule 12.3.

Rule 5.5. Appointment of a Guardian *ad litem* or a Trustee *ad litem*.

(a) On petition of the accountant or any interested party, or upon its own motion, the court may appoint one or both of the following if the court considers that the interests of the non-*sui juris* individuals are not adequately represented:

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(1) a guardian *ad litem* to represent a minor or a person believed to be incapacitated under the provisions of Chapter 55 of Title 20, but for whom no guardian of the estate is known to have been appointed by a Pennsylvania court or by the court of any other jurisdiction; and

(2) a trustee *ad litem* to represent an absentee, a presumed decedent, or unborn or unascertained persons not already represented by a fiduciary.

(b) The same person may be appointed as guardian *ad litem* and trustee *ad litem* and may be appointed for more than one non-*sui juris* individual when the interests to be represented are not conflicting.

(c) *Contents of Petition.* The request for the appointment of guardian *ad litem* and trustee *ad litem* may be made in one petition. In addition to the requirements provided by the Rules in Chapter III, the petition shall set forth the following:

(1) the name, age and address of the minor or person believed to be incapacitated under the provisions of Chapter 55 of Title 20, but for whom no guardian of the estate is known to have been appointed;

(2) the relationship, if any, of such non-*sui juris* individual to any interested party and to the decedent or settlor;

(3) the interest of such non-*sui juris* individual in the property or in the matter at issue;

(4) the provisions of any instrument creating such interests;

(5) the necessity for such interests to be represented by a guardian *ad litem* or a trustee *ad litem*; and

(6) the proceeding in which such non-*sui juris* individual is to be represented.

(d) A decree appointing a guardian *ad litem* or trustee *ad litem* shall specify the period or proceeding during which the guardian *ad litem* or trustee *ad litem* shall act as such.

Note: Rule 5.5 is based upon former Rule 12.4, with some modifications to provide for a person believed to be incapacitated under the provisions of Chapter 55 of Title 20, but not yet adjudicated as such or for whom no guardian is known to have been appointed.

Rule 5.6. Appointment of a Guardian for the Estate or Person of a Minor.

(a) *Contents of Petition.* Separate petitions for each minor must be filed requesting the appointment of a guardian of the estate or person of each such minor. In addition to the requirements provided by the Rules in Chapter III, the petition shall set forth the following:

(1) the name, address and relationship of the petitioner to the minor;

(2) the name, address and age of the minor;

(3) the names and addresses of his or her parents, if living, and whether the minor's parents consent to the petition if the petition is not being filed by the minor's parents;

(4) the need for the appointment of a guardian;

(5) if the petition is filed due to the death of the minor's parent or legal guardian, or if the minor is to receive property under a will, deed or other written instrument conveying property whether the petitioner knows if the parent, legal guardian or decedent appointed a guardian for the minor in his or her will, deed or any other written instrument, and if so, the name of such proposed guardian;

(6) that the minor has no guardian presently appointed or that a guardian already appointed has died or has been discharged or removed by the court, together with the date of such death, discharge or removal and a reference to the court order discharging or removing the previously appointed guardian;

(7) the name, address and age of the proposed guardian and his or her relationship to the minor, if any;

(8) the nature of any interest of the proposed guardian adverse to that of the minor including, *inter alia*, a reference to any estate in which the minor is interested and in which the proposed guardian is a fiduciary or surety or employee of a fiduciary or surety therein;

(9) if the minor is fourteen years of age or older, the preference of the minor, if any, as to who should be appointed as guardian;

(10) if the petition is for the appointment of a guardian of the person, the religious persuasion of the minor's parents and the religious persuasion of the proposed guardian;

(11) if the petition is for the appointment of a guardian of the estate of the minor, an itemization of the assets of such estate, their location, approximate value and income, if any;

(12) if the minor is entitled to receive any property as a party to any court action or proceeding, a reference to the court record and the amount of the property to which the minor is entitled; and

(13) that notice has been given to the United States Veterans' Administration or its successor, if the minor is the child of a veteran and insurance or other gratuity is payable to him or her by the United States Veterans' Administration, or its successor.

(b) *Exhibits.* The following shall be attached to the petition:

(1) the proposed guardian's written consent to the appointment;

(2) the written consents of the minor's parents to the petition if they are not the petitioners and if they consent to the petition; and

(3) a copy of decedent's will, deed, or other written instrument referenced in subparagraph (a)(5) of this Rule that appoints a guardian.

(c) If the minor is fourteen years of age or older, the minor shall appear in court at the time of the hearing, if any.

Note: Rule 5.6 is derived from former Rule 12.5.

Explanatory Comment: In a change from former Rule 12.5, Rule 5.6 requires separate petitions for each minor even if the same person is proposed as the guardian of the estates or

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persons of several minors. Separate Accounts must be filed for the estate of each minor. *See* Rule 2.3. Additionally, petitioner must attach a copy of any known written instrument that appoints a guardian to receive property or proceeds on behalf of a minor. *See* 20 Pa.C.S. § 5115. As used in (a)(5) and (a)(12) of this Rule, "property" includes cash and cash proceeds.

Rule 5.7. Appointment of a Trustee.

(a) *Contents of Petition.* A petition for the appointment of a trustee may be filed by a resigning trustee, the current trustee or any trust beneficiary and shall conform to the requirements provided by the Rules in Chapter III and set forth the following:

(1) the situs of the trust and if any court previously has exercised jurisdiction over the trust;

(2) the provisions of the instrument creating the trust;

(3) the general character, location, and value of the trust property;

(4) the reasons why any individual or corporation named in the trust instrument as trustee or successor trustee is unable or unwilling to serve;

(5) the names, addresses and relationships of all interested parties and whether those who have not joined in or consented to the petition have been given notice of the filing of the petition, or the reason for failing to give any interested party notice;

(6) the name and address of the proposed trustee and his or her relationship, if any, to any interested party; and

(7) whether the proposed trustee has any interest in the trust.

(b) *Exhibits.* The following shall be attached to the petition:

(1) a copy of the trust instrument;

(2) the proposed trustee's written consent to the appointment;

(3) the signed written consents of all interested parties who have not signed or joined in the petition, but who consent to the appointment of the proposed trustee; and

(4) if issued, the consent or letter of acquiescence from the Office of the Attorney General if required under 20 Pa.C.S. § 7764(d)(2).

Note: Rule 5.7 is based upon former Rule 12.6.

Explanatory Comment: *See* 20 Pa.C.S. § 7764.

Rule 5.8. Discharge of Fiduciary and Surety.

(a) *Account Previously Filed.* A petition for the discharge of a fiduciary and his or her surety, or of the surety alone, subsequent to an Account having been filed and confirmed, shall conform to the requirements provided by the Rules in Chapter III and set forth the following:

(1) the nature of the fiduciary capacity;

(2) the date and a reference to the record of the fiduciary's appointment;

(3) the date of filing the fiduciary's Account and the date of the court's adjudication or order confirming the Account; and

(4) that the entire estate has been distributed to the creditors and parties entitled thereto and that no other property belonging to the estate has been received or remains to be accounted for by the fiduciary.

(b) *Account Annexed.* In lieu of filing and advertising an Account, a personal representative who is distributing an estate under the provisions of 20 Pa.C.S. § 3531, or the guardian of the estate of a minor who has attained majority and whose gross estate does not exceed the statutory limitation of an administration without appointment of a guardian, may annex an Account to the petition for discharge with the information required above, modified to indicate any previous distribution, and suggesting the proper distribution of any balance on hand.

Note: Rule 5.8 is based upon former Rule 12.7.

Explanatory Comment: Pursuant to Rule 2.9(b), an adjudication of an Account discharges the fiduciaries as to the transactions set forth in the adjudicated Account.

Rule 5.9. Partition.

In addition to the requirements provided by the Rules in Chapter III, a petition for partition shall set forth the following:

(a) the date of the decedent's death and whether he or she died testate or intestate, in whole or in part;

(b) a description, giving the size and location, of the property to be partitioned, the liens and charges to which it is subject and the rents due from tenants thereof, and that the property has not been partitioned or valued for partition;

(c) the name, address and relationship of those interested in the land to be partitioned, the extent of the interest of each of such persons, and, if such interest is created by a recorded deed or will, a reference to such record; and

(d) a request for a citation upon the interested parties who have not joined in or consented to the petition to appear and show cause why an inquest in partition should not be granted.

Note: Rule 5.9 is substantively identical to former Rule 12.8.

Rule 5.10. Public Sale of Real Property.

(a) In addition to the requirements provided by the Rules in Chapter III, a petition for the public sale of real property shall set forth the reason for filing the petition, a description, stating the size and location of the property to be sold, and the liens and charges to which it is subject.

(b) Public notice of the sale shall be given as required by law and as may be further required by local rule or as the court may order in a particular matter.

Note: Rule 5.10 is substantively identical to former Rule 12.9.

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Rule 5.11. Private Sale of Real Property or Options Therefor.

(a) *Contents of Petition.* In addition to the requirements provided by the Rules in Chapter III, a petition for the private sale or exchange of real property, or for the grant of an option for any such sale or exchange shall set forth the following:

(1) the information required in a petition for the public sale of real property under Rule 5.10(a); and

(2) the name and address of the proposed purchaser and the terms of the proposed sale, exchange or option, the consideration therefor, and that this consideration is more than can be obtained at public sale.

(b) *Exhibits.* The petition shall be supported by the affidavits of at least two competent persons setting forth that they have inspected the real property to be sold, exchanged or optioned, that they are not personally interested in the proposed sale, exchange or option, that they are acquainted with the value of real estate in the area, that in their opinion the proposed consideration is more than can be obtained at public sale, and in the case of an exchange, that they are acquainted with the value of real estate in the locality of the property to be received.

Note: Rule 5.11 is substantively identical to former Rule 12.10.

Rule 5.12. Mortgage or Lease of Real Property.

In addition to the requirements provided by the Rules in Chapter III, a petition to mortgage or lease real property shall set forth the following:

(a) the information required in a petition for the public sale of real property under Rule 5.10(a), as far as practicable; and

(b) the name of the proposed mortgagee or lessee and the terms of the proposed mortgage or lease.

Note: Rule 5.12 is substantively identical to former Rule 12.11.

Rule 5.13. Inalienable Property.

In addition to the requirements provided by the Rules in Chapter III, a petition under Chapter 83 of Title 20 shall set forth the facts required by 20 Pa.C.S. § 8301, as applicable, and the following:

(a) the names of all interested parties who have not joined in or consented to the petition, and their addresses, if known; and

(b) if the petition is for the public or private sale of real property subject to a life estate with remainder over and the real property is not held in trust, the petition shall request the appointment of a named trustee to make the sale and hold the proceeds in trust.

Note: Rule 5.13 is substantively identical to former Rule 12.12.

Rule 5.14. Designation of a Successor Custodian.

A petition for the designation of a successor custodian under the Pennsylvania Uniform Gifts to Minors Act shall conform to the requirements provided by the Rules in Chapter III and set forth as far as practicable the information required in a petition for the appointment of a guardian of the estate of a minor.

Note: Rule 5.14 is substantively identical to former Rule 12.13.

Rule 5.15. Confirmation of Trustee Appointment.

(a) *Contents of Petition.* Where an initial or successor trustee is appointed pursuant to a trust instrument or by the unanimous agreement of all qualified beneficiaries (as defined in 20 Pa.C.S. § 7703) pursuant to 20 Pa.C.S. § 7764, a petition for the court to confirm such appointment shall conform to the requirements provided by the Rules in Chapter III and shall set forth the following:

(1) the reason for filing the petition; and

(2) the pertinent provisions of the instrument creating the trust and providing for the appointment of the trustee.

(b) *Exhibits.* The following shall be attached to the petition:

(1) a copy of the trust instrument duly certified by counsel to be a true and correct copy; and

(2) the designated trustee's written consent to serve.

Note: Rule 5.15 is substantively identical to former Rule 12.14.

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