

APPELLATE & NONPROFIT ORGANIZATIONS

A L E R T

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2012NEW PENNSYLVANIA RULES REQUIRE IMMEDIATE
APPEALS IN MATTERS INVOLVING TRUSTS,
CHARITIES, AND OTHER PROCEEDINGS HEARD BY
PENNSYLVANIA ORPHANS' COURTS*By Carl A. Solano*

On February 13, 2012, new amendments to the Pennsylvania Rules of Appellate Procedure took effect and made substantial changes to the right to appeal from orders entered by Pennsylvania's Orphans' Courts. The Orphans' Court Divisions of the Pennsylvania Courts of Common Pleas have jurisdiction in a wide variety of domestic relations matters, including adoptions, custody of minors, and guardianships. They also have broad jurisdiction over matters involving nonprofit corporations, public charities, trusts, and decedents' estates. Rules regarding appeals from decisions of Orphans' Courts therefore are important to both individuals and businesses throughout the Commonwealth. In particular, anyone who receives a distribution as a beneficiary of a public charity (such as a hospital or educational institution named in a charitable trust established by a decedent's will) is subject to the amended rules. Similarly, anyone who administers a trust or nonprofit corporation (a financial institution serving as an institutional fiduciary, for example) is bound by these changes.

Under the prior rules, appeals could be taken from most Orphans' Court decisions only if the Orphans' Court itself determined that its decision was final and, therefore, appealable. That rule afforded a certain measure of flexibility and an increased degree of notice to the parties involved. But according to the Appellate Court Procedural Rules Committee appointed by the Pennsylvania Supreme Court to review such matters, this provision was applied so inconsistently by the various Orphans' Courts around the State that it had to be abandoned. In its place, the Supreme Court promulgated a substantially revised Appellate Rule 342, which contains a list of Orphans' Court orders as to which there is a right of immediate appeal. Under this amended rule, all orders on this list **must** be appealed within the Appellate Rules' deadlines (usually, within 30 days after entry of the order), and an affected party's failure

to file such an appeal "shall constitute a waiver of all objections to such order and such objections may not be raised in any subsequent appeal."

The orders listed in Rule 342 include those authorizing or directing a distribution from an estate or trust. Therefore, any beneficiary of a trust who objects to a distribution must file an immediate appeal from an order approving it, or the beneficiary will be held to have waived objections to the order in all future proceedings.

In an expansion of prior law, the amended rule also makes immediately appealable any order confirming an account. The Appellate Rules Committee points out that this provision deliberately applies to **any** account, even if it is an interim or partial account, explaining that a prior rule limiting appeals just to orders confirming final accounts turned out to be "unworkable for estate administration taking years and trusts established for generations during which interim and partial accounts may be adjudicated and confirmed." It appears that this provision applies not to just accounts filed by trusts, but also those filed by nonprofit corporations; although the amendments excluded nonprofit corporations when they were initially proposed, the version that went into effect on February 13, 2012, does not contain that exception. A related provision in amended Rule 342 requires an immediate appeal of any order concerning an inheritance tax appraisal, assessment, allowance, or disallowance, even when the order is not issued in conjunction with adjudication of an account.

Other orders on the immediately appealable list include those "interpreting a will or a document that forms the basis of a claim against an estate or trust" and those "interpreting, modifying, reforming or terminating a trust." The

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breadth of this language will probably give rise to litigation. As written, the new rule suggests that *any* Orphans' Court decision that interprets a will or trust document must be appealed immediately to avoid any claim of waiver — even a decision containing an interpretation that is subject to revision in further proceedings.

Also immediately appealable are orders “determining the status of fiduciaries, beneficiaries, or creditors in an estate, trust, or guardianship.” A Rules Committee note explains that this provision clarifies earlier law and includes orders determining whether an alleged creditor has a valid claim against an estate and orders removing or refusing to remove a fiduciary.

In explaining these amendments, the Appellate Rules Committee commented: “Administration of a trust or an estate continues over a period of time. Litigation in Orphans' Court may arise at some point during the administration, and when it does arise, the dispute needs to be determined promptly and with finality so that the guardianship or the estate or trust administration can then continue properly and orderly. Thus, the traditional notions of finality that are applicable in the context of ongoing civil adversarial proceedings do not correspond to litigation in Orphans' Court.” All of that may be true, but by making sweeping changes that suddenly declare a host of Orphans' Court orders immediately appealable and deem any objections to the orders waived if such an appeal is not taken, the amendments risk catching counsel in this sensitive area unaware. Under the amendments, counsel must be vigilant

to examine any Orphans' Court order in light of the new list in Rule 342 and to file an appeal if there is any question that rights might otherwise be forfeited. ♦

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