

IN THE SUPREME COURT OF PENNSYLVANIA

IN RE:	:	NO. 261
	:	
ORDER ADOPTING NEW ORPHANS'	:	
COURT RULE 7.2 AND	:	SUPREME COURT RULES
AMENDMENTS TO ORPHANS'	:	
COURT RULE 7.1	:	DOCKET NO. 1

ORDER

PER CURIAM:

NOW, this 20th day of December, 2000, upon the recommendation of the Appellate Court Procedural Rules Committee and the Orphans' Court Procedural Rules Committee, the proposal having been published before adoption at 29 *Pa.B.* 1709-1712 (April 3, 1999); 29 *Pa.B.* 2766 (May 29, 1999); 29 *Pa.B.* 6325-6327 (December 18, 1999); and 30 *Pa.B.* 1476-1477 (March 18, 2000):

IT IS ORDERED pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Orphans' Court Rule 7.2 is adopted and Orphans' Court Rule 7.1 is amended as attached hereto.

This **ORDER** shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2001.

Note: Material to be deleted is in brackets.
Material to be added has been underlined.

RULE 7. EXCEPTIONS

RULE 7.1 EXCEPTIONS

[Exceptions shall be filed at such place and time, shall be in such form, copies thereof served and disposition made thereof as local rules shall prescribe.]

(a) General Rule. Except as provided in Subdivision (e), no later than twenty (20) days after entry of an order, decree or adjudication, a party may file exceptions to any order, decree or adjudication which would become a final appealable order under Pa.R.A.P. 341(b) or Pa.R.A.P. 342 following disposition of the exceptions. If exceptions are filed, no appeal shall be filed until the disposition of exceptions except as provided in Subdivision (d) (Multiple Aggrieved Parties). Failure to file exceptions shall not result in waiver if the grounds for appeal are otherwise properly preserved.

(b) Waiver. Exceptions may not be sustained unless the grounds are specified in the exceptions and were raised by petition, motion, answer, claim, objection, offer of proof or other appropriate method.

(c) Time for Filing Exceptions. If a party files timely exceptions, any other party may file cross exceptions within ten (10) days after the filing of exceptions.

(d) Multiple Aggrieved Parties. Where more than one party is aggrieved by a final appealable order under Pa.R.A.P. 341(b) or Pa.R.A.P. 342, a timely appeal filed by any party renders exceptions a nullity by any other party and the order shall be submitted directly to the appellate court.

(e) Adoptions and Involuntary Terminations. No exceptions shall be filed to any order in involuntary termination or adoption matters under the Adoption Act, 23 Pa.C.S. Section 2501, et seq.

(f) Time Limits for Decision on Exceptions. The Orphans' Court shall decide exceptions including supplemental exceptions and cross exceptions within one hundred and twenty (120) days of the filing of the initial exceptions. If the Orphans' Court fails to decide the exceptions within one hundred and twenty (120) days, the exceptions shall be deemed denied by operation of law on the one hundred and twenty first (121st) day and the clerk is directed to enter the deemed denial on the docket as of that date. The appeal period shall begin to run as of the one hundred and twenty first (121st) day.

(g) Exceptions. Exceptions shall be the exclusive procedure for review by the Orphans' Court of a final order, decree or adjudication. A party may not file a motion for reconsideration of a final order.

Note

The 2000 amendment discontinues the prior practice permitting local rules to govern whether exceptions are required after entry of an order, decree or adjudication. The 2000 amendment limits the filing of exceptions to order, decree or adjudication which are final appealable orders after disposition of exceptions under Pa.R.A.P. 341(b) or amended Pa.R.A.P. 342. If an aggrieved party appeals from such order, that appeal shall not affect proceedings with regard to other aspects of the case.

It is understood that failure to appeal shall constitute a waiver of any issues in the order which the Orphans' Court has determined as final.

The 30 day appeal period pursuant to Pa.R.A.P. 903 from such final orders begins to run from the date of entry of an order disposing of exceptions or on the date of a deemed denial pursuant to Subdivision (f) of this rule. Where no exceptions are filed, the 30 day appeal period runs from entry of the final appealable order.

If an order would not become final within the definition of Pa.R.A.P. 341(b) or Pa.R.A.P. 342, then no exceptions may be filed until subsequent entry of a final order within the definition of Pa.R.A.P. 341(b) or Pa.R.A.P. 342. This will eliminate the practice in some counties of permitting issues to be raised by exception following entry of an otherwise interlocutory order and raising the same issues in exceptions to a final order, decree or adjudication. See, e.g., *Estate of McCutcheon*, 699 A.2d 746 (Pa.Super. 1997).

Rule 7.1 permits but does not require exceptions to orders pursuant to Pa.R.A.P. 341(b) and Pa.R.A.P. 342. The election of an aggrieved party not to file exceptions will not result in waiver of issues on appeal. However, nothing in this rule is intended to abrogate the requirement of decisional law or court rule mandating that issues on appeal be preserved by a timely petition, answer, claim, objection, offer of proof or other appropriate vehicle.

The 2000 amendments to Rule 7.1 resolve the dilemma that the judiciary and litigants have faced in determining whether exceptions are required under local practice and whether issues have been preserved for appeal in accordance with the disparate rules throughout the Commonwealth. The prior practice also made it difficult to draw conclusions as to whether an appellate decision constituted controlling authority on a statewide basis or whether the holding was based in whole or part on the vagaries of a local rule. Making exceptions optional with an aggrieved party will expedite the appeals process where the issues have been fully litigated and the reasons for the trial court's decision are clear and

the aggrieved party reasonably believes the trial court cannot be convinced that its decision is in error.

Parties frequently overlook the requirement that the order from which a party seeks to appeal and notice of that order from the prothonotary be entered on the docket before an appeal can be taken. See Pa.R.A.P. 301(c), Pa.R.C.P. 236 and Orphans' Court Rules 1.2 and 3.1. See also *Frazier v. City of Philadelphia*, 735 A.2d 113 (Pa. 1999). This requirement applies to Orphans' Court orders. See *Estate of Keefauver*, 518 A.2d 1263 (Pa.Super. 1986).

Local practice shall continue to govern with respect to place of filing, briefs, oral argument, courts en banc, etc. Neither Pa.R.C.P. 227.1 nor Pa.R.C.P. 1517 shall apply to Orphans' Court matters.

Subdivision (d) provides that where there are multiple aggrieved parties to a final order, any aggrieved party may file an appeal without filing exceptions. If any other party has filed exceptions prior to a timely appeal by any other party, those exceptions are nullified by the appeal. Once any aggrieved party has filed a timely appeal, no other party may file exceptions even if the time period for filing exceptions has not otherwise expired. Any exceptions filed after an appeal has been taken will be deemed a nullity. See also Pa.R.A.P. 1701(b).

In order to avoid delay of final determination of adoption and termination matters, see *In Re A.L.A.*, 719 A.2d 363 (Pa.Super. 1998), Subdivision (e) eliminates post-trial practice in such cases.

Rule 7.2 TRANSCRIPT OF TESTIMONY

All exceptions shall contain a request designating a portion of the record to be transcribed in order to enable the court to dispose of the exceptions. Within ten days after the filing of the exceptions, any other party may file an objection requesting that an additional, lesser or different portion of the record be transcribed. If no portion is indicated, the transcription of the record shall be deemed unnecessary to the disposition of the exceptions. The trial judge shall promptly decide the objection to the portion of the record to be transcribed.