

**LANCASTER COUNTY**

**RULES OF ORPHANS' COURT**

## **RULE 1. Judges - Local Rules**

### **RULE 1.2. Title and Citation of Rules**

These rules shall be known as the Lancaster County Rules of Orphans' Court and may be cited as "L.C.R.O.C. No. ".

## **RULE 3. Pleadings and Practice**

### **RULE 3.2. Pleadings**

Pleadings shall be limited to a petition, an answer, new matter, a reply to new matter, preliminary objections and an answer to preliminary objections.

### **RULE 3.6. Depositions, Discovery, Production of Documents and Perpetuation of Testimony**

No discovery or perpetuation of testimony is permitted except by petition for leave of Court or by agreement of the parties.

A. A petition shall set forth the nature of the discovery sought, the reasons why the discovery is necessary and the time period within which discovery is to be completed. Upon receipt of a petition, any other party seeking discovery shall file a petition within five days unless all parties agree to proceed under 3.6B.

B. Parties may request leave of court to conduct discovery by agreement. The agreement shall be signed by counsel and shall describe the proposed discovery and shall state the time for completion.

### **RULE 3.7. Pre-trial Conferences**

The Court, sua sponte or on motion of any party, may order a pre-trial conference to consider:

A. The simplification of issues.

- B. The necessity or desirability of amendments to the pleadings.
- C. Stipulations or admissions of facts or documents.
- D. Such other matters as may aid in the disposition of the action.

**RULE 3.8. Trust Inter Vivos**

Any party requesting the Court to exercise jurisdiction over an inter vivos trust first shall file with the Clerk of the Orphans Court the original of the trust instrument and any amendments thereto or a copy certified by counsel to be true and correct.

**RULE 6. Account and Distribution**

**RULE 6.1. Accounts**

Accounts shall be prepared in substantial conformity to accounting forms approved by the Supreme Court of Pennsylvania.

**RULE 6.3. Notice of Audit of Account**

Notice shall be given at least twenty days prior to the audit, and a copy of the form of notice shall be filed before or at the audit. In addition to the requirements of Pa. O.C. Rule 6.3, notice shall include the following:

- A. Except as to legatees or claimants whose legacies or claims have been or will be paid in full, either that a copy of the account and a copy of the will or trust instrument will be sent upon request or the location where a copy of the same is available for inspection, and that any persons who object to the transactions shown in the account must either (1) file written objections in conformity to Rule 6.10 prior to audit or (2) appear in person or by counsel at the audit under penalty that the Court

may otherwise conclude that no objection exists; and

B. The accountant's interpretation of any dispute, or fairly disputable question, which will be presented to the Court; a copy of the instrument or material parts relevant to the dispute; and a statement that, if the person notified does not agree with the accountant's interpretation, the person must appear at the audit or by counsel to present the contention, under penalty for failure to appear that the Court will conclude that the persons agrees with the accountant's interpretation; and

C. Notice to a claimant shall include: the accountant's understanding of the nature of the claim; whether the claim is admitted or contested; if admitted, whether it will be paid in full or in part, or, if contested, that failure by the claimant to appear at the audit in person or by counsel may result in the court concluding the claimant has elected not to press the claim.

#### **RULE 6.4. Time of Filing Account and Call of Audit List**

A. Accounts to appear on a particular audit list must be filed not later than noon of the third Wednesday preceding the session of court when that audit list will be called. When that Wednesday falls on a holiday, accounts must be filed not later than noon of the preceding business day.

B. The audit list will be called on the first Tuesday of every month except July, August and September. In September, the audit list will be called on the third Tuesday.

#### **RULE 6.6. Compliance with Local Rules**

Accounts received by the Court for audit found to violate any provisions of these

rules may be returned unaudited to the Clerk of the Orphans Court pursuant to Court order.

**RULE 6.9. Petition for Adjudication**

A petition for adjudication shall be filed and served no later than seven days prior to the audit, using forms supplied by the Clerk of the Orphans Court or reproductions thereof. The petition shall include a schedule of proposed distribution in sufficient detail to provide the basis for the Court's decree of distribution. The petition shall be signed and sworn or affirmed to by at least one accountant. Any accountant objecting shall comply with Rule 6.10.

**RULE 6.10. Written Objections to Accounts**

A. Form. Written objections to accounts shall be numbered consecutively and signed by the objector or his attorney. Each objection shall:

1. Be specific as to description and amount.
2. Contain as far as practicable only one material allegation.
3. Set forth briefly the reason or reasons in support thereof.

B. Time of Filing. Objections may be filed with the Clerk of the Orphans Court on any day prior to the day when the account objected to is listed for audit, or at, but not later than, such audit.

C. Service. A copy of the objections shall be served without delay after filing on accountant's attorney or on the accountant promptly.

D. Continuance of Audit. When objections to an account have been filed, the audit of the account will be continued, upon call of the audit list, to a day fixed by

the Court for auditing the account and hearing the objections.

**RULE 6.13. Memorandum for Audit**

Amendments to the account, such as additional receipts and disbursements, and any other pertinent information may be brought before the Court by a memorandum for audit. Where appropriate, the memorandum for audit shall be in accounting form and contain a revised computation of the balance for distribution.

**RULE 6.14. Tax Certificate**

A form pertaining to Pennsylvania inheritance tax liability is available in the office of the Clerk of the Orphans Court and shall be completed, signed by counsel for the accountant or the accountant and filed prior to the closing of the audit.

**RULE 10. Register of Wills**

**RULE 10.2. Appeal**

A. Anyone desiring to appeal from a judicial act or proceeding of the Register of Wills shall file with the Register a Notice of Intention to Appeal using the form supplied by the Register.

B. After the Notice of Intention to Appeal has been filed with the Register, the Register shall certify the record to the Court.

C. Within thirty days after the filing of the Notice of Intention to Appeal, appellant shall file a Petition for Citation Sur Appeal with the Clerk of the Orphans Court. The petition shall set forth the grounds for the appeal, the names and

addresses of all interested parties and the necessary jurisdictional facts. If the petition sets forth a prima facie case, the Court shall award a citation directed to all parties in interest to show cause why the appeal should not be sustained and the act or proceeding of the Register set aside. If the petition is not filed within thirty days after the filing of the Notice of Intention to Appeal, the appeal shall be deemed abandoned without prejudice to the right of any party to file another appeal within the statutory period for taking an appeal.

**RULE 12. Special Petitions**

**RULE 12.2. Allowance to Surviving Spouse of Intestate Appraisal of Property**

Where the allowance is claimed from property at valuations agreed upon by all parties in interest, no formal appraisal is required. If an appraisal is needed, the manner of appraising, or of filing and confirming the appraisal, and of advertising or giving notice thereof shall be by special order in each case.

**RULE 12.5. Appointment of a Guardian for the Estate or Person of a Minor Appearance in Court**

Unless required by the Court, the appearance of the minor in Court for the appointment of a guardian of his estate is not required.

**RULE 12.9A. Public Sale of Property. Contents of Petition - Additional Requirements**

A. Personal Representative. The petition of a personal representative to sell real or personal property at public sale (in addition to the requirements of Pa. O.C. Rule 12.9) shall set forth in separate paragraphs:

1. The name, residence and date of death of the decedent; whether the decedent died intestate or testate; and the date of the grant of Letters.

2. That the personal representative is not otherwise authorized to sell by statute, or is denied the power to do so by the will or that it is desirable that the sale have the effect of a judicial sale, stating the reasons.

3. Whether an inventory and appraisalment has been filed; the total value of the property shown therein; and the value at which the property to be sold was included therein.

4. If the personal representative posted bond, the name of the surety and the amount of such bond.

5. The names and relationships of all parties in interest; a brief description of their respective interests; and whether any of them are minors, incapacitated persons or deceased, and, if so, the names of their fiduciaries, if any;

6. For real property, any improvements, by whom it is occupied, its rental value and current tax assessment.

7. Sufficient facts to enable the Court to determine that the

sale is desirable for the proper administration and distribution of the estate.

B. Trustee. The petition of a trustee to sell real or personal property at public sale (in addition to the requirements of Pa. O.C. Rule 12.9) shall set forth in separate paragraphs:

1. How title was acquired, stating the date and place of probate of the will or recording of the deed.

2. A recital of the relevant provisions of the will or deed pertaining to the property to be sold.

3. The names and relationships of all parties in interest; a brief description of their respective interests; whether any of them are minors, incapacitated persons or deceased, and, if so, the names of their fiduciaries, if any;

4. For real property, any improvements, by whom it is occupied, its rental value and the current tax assessment;

5. That the trustee is not otherwise authorized to sell by statute, or is denied the power by the trust instrument or that it is desirable that the sale have the effect of a judicial sale, stating the reason; and

6. Sufficient facts to enable the Court to determine that the proposed sale is for the best interests of the trust,

C. Guardian of a Minor or an Incapacitated Person. The petition of a guardian to sell real or personal property at public sale (in addition to the requirements of Pa. O.C. Rule 12.9) shall set forth in separate paragraphs:

1. The age of the minor or incapacitated person.

2. The names of those who would be entitled to take under the intestate laws and the notice given them of the presentation of the petition.

3. How title was acquired, stating the date and place of probate of the will or recording of the deed.

4. A recital of the relevant provisions of the will or deed pertaining to the property to be sold.

5. The nature and extent of the interest of the minor or incapacitated person, and of other persons in the real property.

6. For real property, any improvements on the property, by whom it is occupied, its rental value and current tax assessment; and

7. Sufficient facts to enable the Court to determine that the sale will be for the best interests of the minor or incapacitated person.

**RULE 12.9B. Public Sale of Real Property. Notice. Return**

A. Notice. After the allowance of a petition for the public sale of real property, notice shall be by personal service or certified mail to such parties in interest as the Court may direct in its decree.

B. Return. Returns of public sales of real property for the purpose of approval or confirmation by the Court shall be on the form provided by the Register of Wills.

C. Security. On the return day of the sale, the Court, in the decree approving or confirming the sale, shall fix the amount of bond or additional security which the personal representative, trustee or guardian shall be required to enter or will excuse the fiduciary from entering additional security.

**RULE 12.10A. Private Sale of Real Property or Options Therefor. Contents of Petition - Additional Requirements. Exhibits**

A. Additional Requirements. When it is required that a personal representative, trustee or guardian petition the Court to sell real property at private sale, the petition shall conform as closely as practicable to the requirements of these Rules with regard to a petition to sell real property at public sale.

B. Exhibits. The following exhibits must be attached to the petition by a personal representative, trustee or guardian:

1. A copy of the will, deed or decree by which the fiduciary was appointed.
2. Any consents or joinders of parties in interest, and the names and a copy of the notice which has been given to those parties who do not consent or join.
3. A copy of the agreement of sale.
4. Affidavits as to value by two real estate appraisers in the form prescribed by Pa. O.C. Rule 12.10(b).

**RULE 12.11. Mortgage or Lease of Real Property. Additional Requirements**

A. Contents of Petition. A petition to mortgage or lease real property shall: conform as closely as practicable to the requirements of these Rules with regard to a petition to sell real property at public sale; set forth the amount and terms of the proposed mortgage loan or lease; and set forth facts to enable the Court to determine whether the mortgage should be approved.

B. Exhibits. The following exhibits shall be attached to the petition:

1. A copy of the will, deed or decree by which the fiduciary was appointed.

2. Any consents or joinders of parties in interest, and the names and a copy of the notice which has been given to those parties who do not consent or join.

C. Security. The amount of the bond or additional security required to be entered, or the waiver thereof, will be determined by the Court in its decree approving the mortgage.

**RULE 12.16. Settlement of Small Estates on Petition**

A. Contents of Petition. In addition to any requirements set forth under Section 3102 of the Probate, Estates and Fiduciaries Code, as amended, or any subsequent legislation relating thereto, petitions presented to the Court for the settlement of small estates shall contain the following averments:

1. The standing of the petitioner.

2. The date and place of death as well as the residency of the decedent.

3. Whether or not the decedent died testate, and

(i) the names, addresses, ages and relationships of the decedent's heirs under Pennsylvania intestate laws or beneficiaries under decedent's last will and testament.

4. The nature and value of the assets comprising the decedent's gross probate estate.

5. A statement of all known liabilities of the estate and the source

of their payment.

6. A schedule of proposed distribution.

B. Exhibits.

1. If the decedent died testate, the original will must be attached to the petition as an exhibit.

2. A death certificate must be attached as an exhibit.

C. Notice. Notice of intention to present the petition shall be furnished to all parties in interest as provided under Pa. O.C. Rule 5.3.

#### **RULE 12.17. Change of Situs of Trust**

A petition for transfer of situs of any testamentary or inter vivos trust filed by a trustee or any party in interest shall set forth the following:

A. The name of the decedent or settlor and the date of the creation of the trust estate.

B. The names and addresses of all parties in interest and whether they are sui juris and join in the prayer of the petition.

C. The names and addresses of all fiduciaries.

D. A statement whether all taxes due the Commonwealth of Pennsylvania and its political subdivisions have been paid or provided for.

E. The reasons why the change of situs is necessary or desirable.

F. The name and address of a successor trustee, if appropriate, and the court which will have jurisdiction over the trust.

G. The place where the trust instrument is recorded.

H. A statement of what actions will be taken in the other jurisdiction causing

the appropriate court to accept jurisdiction of the trust.

**RULE 12.18. Allowance from Minor's Estate. Contents of Petition**

A petition for allowance from a minor's estate shall set forth:

- A. The manner of the guardian's appointment and the date thereof.
- B. The age and residence of the minor, whether the minor's parents are living, with whom the minor resides and the name and age of the minor's spouse and children, if any.
- C. The value of the minor's estate, real and personal, and the net annual income.
- D. The circumstances of the minor: whether employed or attending school; the name and address of the person charged with the duty to support the minor and, if that person is living, the financial condition and income of such person and why he is not discharging the duty to support the minor; and whether there is adequate provision for the support and education of the minor, his spouse and children.
- E. The date and amount of any previous allowance by the Court.
- F. The financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary.

**RULE 13. Distribution - Special Situations**

**RULE 13.1. Representation by Counsel**

At the time of counsel's entry of appearance for a foreign distributee or claimant, a valid, duly authenticated power of attorney executed by the foreign distributee or claimant in favor of counsel shall be filed with the Clerk of the Orphans Court.

## **RULE 13.2. Report by Fiduciary**

If it appears that the existence, identity or whereabouts of a distributee is unknown, the report required under Rule 13.3 of the Pa. O.C. Rules shall be filed at or before the audit of the account. Upon examination of such report, the Court may:

- A. Require the fiduciary to make further investigation.
- B. Appoint a master
- C. Direct distribution pursuant to 20 Pa.C.S.A. §3540.
- D. Take other action appropriate under the circumstances.

## **RULE 15. Adoptions**

### **RULE 15.1. Local Rules**

A. These Rules are adopted under the option given by Rule 15.1 of the Pa. O.C. Rules to adopt local rules. These Rules may be modified in a particular case by a special order of the Court.

B. Petitions which require a hearing shall have a preliminary decree attached for the purpose of setting a hearing date, specifying persons to whom and the manner in which notice is to be given and, in the case of an adoption petition, indicating which agency is to make the required investigation. Petitions shall be signed by the petitioners and by counsel and shall be verified.

C. In every proceeding where the Pa. O.C. Rules or the Adoption Act require the adoptee's birth certificate to be exhibited to the Court, the birth certificate shall show the names of the mother and father if that information is recorded. If the name of the father is not recorded, but there is a claim of paternity under Section 8303 of the Adoption Act, such information shall be provided to the Court.

D. In all proceedings under the Adoption Act, counsel for petitioners shall present at the time of the hearing a proposed decree. In any proceeding for voluntary relinquishment of parental rights, confirmation of consent or involuntary termination of parental rights, at the time of the hearing, counsel shall present the notices to the birth parents concerning their right to place information on file with the Court and with the Department of Public Welfare or the Division of Vital Records, together with a stamped envelope addressed to each birth parent.

E. At the time of the hearing the return of notice shall be by affidavit of the person serving, mailing, publishing or delivering such notice.

F. In any proceeding for voluntary relinquishment of parental rights, confirmation of consent, involuntary termination of parental rights or adoption in which a parent whose parental rights are to be relinquished or terminated is a minor, is incarcerated or is in military service, counsel for petitioner shall provide in the preliminary decree for the appointment of counsel to represent such parent.

G. Special requests for scheduling shall be submitted to the Court.

H. If the person to be adopted is an adult, no investigation by an agency shall be required. The preliminary decree shall provide for notice of the proposed adoption to the biological parents unless the Court waives this requirement for good cause.

**RULE 15.2. Voluntary Relinquishment to Agency**

A. Representatives of agencies who have acted as intermediaries shall appear at the hearing unless excused by the Court.

B. The Court may allow a relinquishment or termination of parental rights by one parent to be conditioned upon relinquishment or termination of parental rights of

the other parent of the child intended to be adopted.

**RULE 15.3. Voluntary Relinquishment to Adult Intending to Adopt Child**

A. Individuals who have acted as intermediaries shall appear at the hearing unless excused by the Court.

B. The Court may allow a relinquishment or termination of parental rights by one parent to be conditioned upon relinquishment or termination of parental rights of the other parent of the child intended to be adopted.

**RULE 15.4. Involuntary Termination of Parental Rights**

A. When the Court appoints counsel to represent a child in an involuntary termination proceeding, the cost shall be paid in such manner as the Court directs.

B. In any proceeding where a petition for involuntary termination of parental rights is either granted or denied, the Clerk shall promptly, by first class, mail a certified copy of the decree to all parties at their last known addresses and to their attorneys of record.

**RULE 15.5. Adoption**

A. The original and one copy of a petition for adoption shall be filed with the Clerk with the required fee.

B. All necessary exhibits such as birth certificates and consents to adoption shall be attached to the petition for adoption unless previously filed with the Report of Intermediary.

C. All consents to adoption shall be in the form required by the Adoption Act and shall be completed with exactitude.

D. The certificate of adoption form furnished by the Bureau of Vital Statistics of the Pennsylvania Department of Health shall be submitted to the Court at the adoption hearing.

E. The report concerning disclosure of fees and costs required by Pa. O.C. Rule 15.5(d) shall be submitted to the Court at the adoption hearing.

F. The statements set forth in the petition for adoption shall be investigated by an agency designated by the Court. The fee for the report of investigation shall be taxed as costs to the adopting parent or parents and is payable directly to the agency.

G. Notice of the adoption hearing shall be given to each person whose consent to the adoption is required and to such other persons directed by the Court.

H. If the person to be adopted is an adult and a change of name is desired, the petitioner shall present evidence of compliance with the law relating to change of name. The petition shall be captioned Petition for Adoption and Change of Name.

**RULE 15.6. Notice; Method and Time**

A. If the identity of any person whose parental rights are to be terminated is unknown or cannot be determined, the petition shall include an affidavit setting forth in detail the basis for such allegations. The Court may require further testimony.

B. In any proceeding in which notice is to be given to one or more persons by publication, a separate petition shall be submitted to the Court setting forth in detail the efforts made to determine the address of the person to be notified and the results of such efforts.

The decree authorizing service by publication in the location of the last known address of the person to be notified shall include the name of the newspaper of general

circulation and the name of the legal periodical, if any, in which such notice is to be published. Publication shall be made by advertising once each week for two successive weeks in the newspaper of general circulation and in the legal periodical, if any.