

Final Edition September 1, 2016

LANCASTER COUNTY

RULES OF ORPHANS' COURT

Rule 1.1 Short Title and Citation

These Rules shall be known as the Lancaster County Rules of Orphans' Court and may be cited as "L.C.R.O.C."

Rule 1.3 Definitions

"Lancaster County Orphans' Court Business Court"- Lancaster County Orphans' Court shall hold Orphans' Court Business Court weekly in the Lancaster County Courthouse at 50 North Duke Street, Lancaster, Pennsylvania. The District Court Administrator shall publish notice of the location, dates and times of Orphans' Court Business Court in the weekly courtroom schedule. See also L.C.R.O.C. 1.9.

Rule 1.6 Mediation by Agreement, Local Rule or Court Order

All interested parties in a matter may use mediation to resolve issues pending before the Court, and, upon either partial or complete resolution, may petition the Court to approve the agreement of all interested parties as an order or decree of the Court.

(a) The interested parties may engage the services of a mediator, either prior to or after any interested party has filed a pleading before the Court, including an Account filed by a fiduciary for audit.

(b) Upon the filing of a pleading before the Court, including an Account filed by a fiduciary for audit, the Clerk may provide the filing party with generic information, regarding availability of mediation for the resolution of disputes prior to adjudication by the Court.

(c) The filing party may provide such information to other interested parties. The information, which does not bind the Court, and which may be in the form of a standard brochure or reliable Internet resources, should include:

1. A brief description of the mediation process;
2. The anticipated benefits of mediation for litigants and associated professionals; and
3. Contact information to initiate mediation.

(d) All the interested parties in a matter docketed before the Court may request to engage in mediation at any time during the pendency of the matter.

(e) In such request for mediation, all interested parties shall identify:

1. The proposed mediator, the qualifications of the mediator and the proposed source of payment of fees and costs of the mediator;
2. Names and contact information of all interested parties and any counsel who shall participate in the mediation;
3. Names and information regarding any interested parties having diminished capacity or a legal disability, whose interests must be adequately protected; and

4. The scheduled date for the initial mediation conference.

(f) All interested parties shall execute an agreement for confidential mediation, which is not inconsistent with this local rule, and which shall remain confidential.

(g) Mediation shall not delay the required filing of any pleading or ordered return dates, or the scheduling of Court hearings, unless specifically requested by joinder of the interested parties and so ordered by the Court.

(h) The Court will respect the confidentiality of the mediation process and of the mediator's obligation of confidentiality.

(i) Upon completion of mediation, all interested parties shall sign a memorandum of principal terms, which either shall acknowledge that no resolution was reached, or shall embody the resolutions attained. This memorandum of principal terms shall clearly state partial resolutions or complete resolution attained. The memorandum of principal terms shall include a list of unresolved issues to be determined by the Court. Where appropriate, the principal terms could provide for future review in light of changed circumstances or a change in the operative facts. The memorandum of principal terms agreed upon, or the statement of no resolution, shall be filed with the Court.

(j) In no event shall the terms agreed upon depart from or violate any provisions of applicable law, specifically including the Older Adults Protective Services Act, the Act of Dec. 18, 1996, P.L. 1125, No.169 (34 P.S. §§ 10225.101-10225.5102), as may be amended.

(k) The interested parties may request that the Court approve the final mediated agreement, which embodies the principal terms agreed upon in the memorandum referenced above. The Court may grant approval in an order or decree. Alternatively, the Court may recommend any changes that the Court deems appropriate for approval. The parties to the mediation may accept the Court's recommendations, in which event the terms agreed upon, as modified, shall be approved, or the parties may decline to accept the Court's recommendations, in which event the matter is deemed not to have resulted in an agreement.

Rule 1.9 Orphans' Court Business Court

(a) Purpose of Rule. It is the intention of this Rule that Orphans' Court practice utilize Orphans' Court Business Court to ensure the expedited and streamlined management of all cases.

(b) Orphans' Court Business Court shall be held weekly. Matters not resolved at a particular Orphans' Court Business Court may be continued to another Orphans' Court Business Court date or other event to be scheduled by the Court.

Rule 2.5 (d) Notice of Account Filing

- (1) All accounts shall be listed on the Audit List by the Clerk.
- (2) The Audit List will be called for audit in accordance with Local Orphans' Court Rule 2.6.

Rule 2.6 Filing with the Clerk

All Accounts shall be filed with the clerk.

(a) The Audit List will be called on the first Tuesday of every month. When that Tuesday falls on a holiday, the Audit List will be called on the first Wednesday of that month.

(b) 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.

Rule 3.5 (b) (1) Notice Practice

The notice to plead shall also include the following:

This matter is returnable to Orphans' Court Business Court on the ___ day of _____, 201_ in Courtroom__ of the Lancaster County Courthouse, 50 North Duke Street, Lancaster, Pennsylvania. All counsel or unrepresented parties must appear.

Rule 3.5 (d) Rule to Show Cause Practice

(1) In all cases where personal jurisdiction is not required or had been previously obtained, or conferred by statute, and not addressed by any Pa.O.C. Rules or L.C.R.O.C., the petitioner may seek the entry of a rule to show cause.

(2) The issuance of a rule to show cause shall be discretionary with the Court.

(3) The petition shall be filed with the Clerk or presented in Orphans' Court Business Court and petitioner shall affix to the petition a proposed order substantially in the following form:

Rule

Upon consideration of the attached petition, it is hereby ordered that:

1. A rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested.
2. The matter shall be returnable to Orphans' Court Business Court, Courtroom ____, Lancaster County Courthouse at 9:00 a.m. on the ____ day of _____, 201__. The respondent shall file an answer to the petition on or before that date.
3. The petitioner shall provide notice of the entry of this Order to all parties, at least 20 (twenty) days prior to _____, pursuant to Pa. O.C. Rule 4.2.

(4) A certificate of service, listing the names and addresses of those individuals receiving notice of the entry of the rule shall be filed by the petitioner.

(5) If any interested party (whether *sui juris* or not) is represented by another (including but not limited to attorneys, guardians or agents), the rule and petition shall be served upon the interested party's representative(s) pursuant to Pa. O.C. Rule 4.2.

(6) After the issuance of the rule, the disposition of the matter shall be in accordance with Pennsylvania Rule of Civil Procedure 206.7.

Explanatory note: Orphans' Court Business Court is utilized by Lancaster County to manage all pending matters. See L.C.R.O.C. 1.9(a). The Notice and Rule Practices of the County is to return matters to Orphans' Court Business Court for consideration. The dates provided in said Notice and Rules shall be set to be consistent with Pa. O.C. Rule 3.5.

Rule 4.2 (e) Citation or Notice to Individuals and Entities

The procedure of Pa. O.C. Rule 4.2 (Citation of Notice to Individuals and Entities) shall include Rules to Show Cause under L.C.R.O.C. 3.5(d).

Rule 7.1 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 L.C.R.O.C. 7.1(b).

(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.

(The following local rules were enacted prior to September 1, 2016 but still in effect after September 1, 2016.)

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 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 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 attorney 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.