

RULES OF THE COURT OF COMMON PLEAS OF LEBANON COUNTY
ORPHANS' COURT DIVISION

CHAPTER 1. LOCAL RULES OF ORPHANS' COURT DIVISION

1.1 Short Title and Citation.

These rules adopted by the Court of Common Pleas – Orphans' Court Division of Lebanon County, Pennsylvania, as amended or supplemented, shall be known as the Lebanon County Orphans' Court Rules and may be cited as "Leb.Co.O.C.R. No. ."

1.7 Attorneys: Members of the Bar and Practice.

No person, other than attorneys who have been admitted to the Bar of the Supreme Court of Pennsylvania, shall be permitted to enter an appearance on behalf of any party. The entry of appearance by counsel shall be in accordance with Leb.Co.C.C.P. Rule 52-1012.

CHAPTER 2. ACCOUNTS, OBJECTIONS and DISTRIBUTIONS

2.9 Confirmation of Accounts. Awards.

Unless the Court directs otherwise all accounts and statements of proposed distribution shall be presented to the proper Court for confirmation Nisi on the first Monday of each month, except during the month of July. If no objections are filed thereto, the Clerk of the proper Court shall confirm said accounts twenty (20) days thereafter, which confirmation shall constitute an adjudication of such accounts, and a final decree approving the statements of proposed distribution and directing distribution in accordance therewith, shall thereupon be made and entered by the Clerk of the respective Court. In the event the first Monday of the month falls on a holiday or if the dates of confirmation fall on a holiday the accounts and statements of proposed distribution shall be confirmed the following day. In the case of the request for the appointment of an Auditor, the auditor shall not be appointed until twenty (20) days after the account or statement of proposed distribution would have been confirmed had no objections been filed.

2.11 Appointment of Official Examiners.

The Court, by Special Order, may appoint an official examiner or examiners who shall examine the assets held by any fiduciary in his fiduciary capacity.

CHAPTER 3. RESPONSIVE PLEADINGS

3.5 Rule to Show Cause

(A) A rule to show cause shall be issued as of course upon the filing of a contested petition. The rule shall direct that an answer be filed to the petition within twenty (20) days after service of the petition on Respondent.

(B) The Court may grant a stay of proceedings.

(C) The Petitioner shall attach to the petition a proposed order substantially in the following form:

(CAPTION)

ORDER OF COURT

AND NOW, this _____ day of _____, 20____, upon

consideration of the foregoing petition, it is HEREBY ORDERED as follows:

1. A Rule is issued upon the Respondent to show cause why the Petitioner is not entitled to the relief requested;
2. The Respondent shall file an answer to the petition within twenty (20) days of service upon the Respondent;
3. The petition shall be decided under P.A.R.C.P. No. 206.7;
4. Depositions shall be completed within _____ days of this date;
5. Argument shall be held on _____, 20____ in Courtroom _____ of the Lebanon County Courthouse; and

6. Notice of the entry of this order shall be provided to all parties by the
Petitioner.

BY THE COURT:

_____J.

(D) If an answer is not filed, all averments of fact in the petition may be deemed admitted for the purposes of this subdivision and the Court may enter an appropriate order upon request of the Petitioner.

(E) If an answer is filed raising no disputed issues of material fact, the Court upon filing of a praecipe for disposition shall decide the petition on the petition and answer.

(F) If an answer is filed raising disputed issues of material fact, the Petitioner may take depositions on those issues, or such other discovery as the Court allows, within the time set forth in the order of the Court or the Court may schedule a hearing on the disputed facts. If the Court does not schedule a hearing and the Petitioner does not take depositions or conduct such other discovery, the petition shall be decided, upon the filing of a praecipe for disposition, on the petition and answer and all averments of fact responsive to the petition and properly pleaded in the answer shall be deemed admitted for the purpose of this subdivision.

(G) The Respondent may take depositions, or such other discovery as the Court allows.

CHAPTER 5. RULES GOVERNING SPECIFIC TYPES OF PETITIONS

5.2 Family Exemption.

A. Time for Filing. Unless the Court extends the time for so doing, all claims for the family exemption shall be made within one (1) year after the death of the decedent or within one (1) year after letters have been first advertised if a personal representative is appointed. A personal representative may petition the Court for a rule upon any person prima facie entitled to the family exemption to show cause why the said claim should not be made prior to the expiration of the aforesaid one year period.

B. Personal Property.

1. Any person or persons who are entitled to retain or claim any personal property for or on account of the family exemption under Chapter 31, Section 3121 of the Decedents, Estates and Fiduciaries, P.L. 508 (20 Pa.C.S.A. §3121) and its amendments may retain or claim cash and such other property as may qualify for said exemption at the values fixed by the inventory and appraisal, by mailing or delivering written notice of such retention or claim to the personal representative or representatives of the estate; to the attorney for the estate, if any; to the person having possession of said property if the possessor is other than the claimant or personal representative; and to all interested parties.

2. If no inventory and appraisal has been filed or if said articles claimed do not appear on the inventory and appraisal, any adult person or persons who desire to retain or claim personal property for or on account of said family exemption shall file a petition to the Court which shall set forth sufficient facts establishing a prima facie right of the Petitioner or Petitioners to the exemption and the articles claimed and the values of all articles claimed which have indefinite values and the manner by which the said value were ascertained. The Petitioner may attach an affidavit of one or more qualified persons as to the values of said articles.

3. Notice of the filing of any such petition shall be mailed or delivered to the personal representative or representatives of the decedent's estate, if any; to the attorney for the estate, if any; to the person having possession of the personal property claimed if the possessor is other than the Petitioner or the personal representative; and to all interested parties in said estate as surviving spouse, beneficiary or next of kin. A copy of said notice shall be attached to said petition. Such notice need not be given to any person whose waiver of said notice is attached to the petition.

4. If no objection or answer containing objections to the allowance of said claim is filed with said Court within twenty (20) days after the filing of said petition, the Court may grant the prayer of the petition and fix a time and place for a hearing on said petition and thereafter proceed to determine the matter, with or without the appointment of appraisers to determine the value of said articles.

5. A form of order of Court or decree corresponding with the prayer of the petition shall be attached to any petition presented to the Court.

6. Any person or persons who desire to object to the retention of any personal property, or to the claiming of any personal property, for or on account of the family exemption by any person or persons, shall file a petition with the Court pursuant to the provisions of Section 3122, Chapter 31 of the Decedents, Estates and Fiduciaries (20 Pa.C.S.A. §3122) and its amendments, within twenty (20) days after receipt of said notice of retention or claim, and shall serve a copy of said petition upon the personal representative or representatives of the estate of decedent; upon the attorney representing the estate of said decedent; and upon the person or persons making said retention or claim of said property, or the attorney for said person or persons.

7. A claim for personal property for or on account of the family exemption may be made in a petition filed under Chapter 31, Section 3102 of the Decedents, Estates and Fiduciaries (20 Pa.C.S.A. §3102) and its amendments.

C. Real Estate.

1. Any person who desires to claim the family exemption provided for under Chapter 31, Section 3121 of the Decedents, Estates and Fiduciaries, and its amendments, in whole or in part out of real estate, shall present a petition to the Court which shall set forth:

(a) The name and address of the Petitioner and his relationship with the decedent;

(b) The name, domicile and date of death of the decedent and whether decedent died testate or intestate.

(c) Whether or not letters on the estate have been granted and the date of issuance of said letters, if granted.

(d) The name and address of the personal representative, if any.

(e) The name, address, relationship, and interest of all beneficiaries or heirs at law of decedent.

(f) The name and address of the person in possession of the real property claimed by the Petitioner.

(g) Facts establishing a prima facie right of the Petitioner to claim said family exemption.

(h) A description of the real property claimed and its location.

(i) The names, addresses and respective interests of all other owners of said real property, if any.

(j) A list of all costs of administration and a statement as to the status thereof.

(k) Whether the Petitioner requests the allowance prior to the confirmation of the account filed in said estate or to the audit thereof.

(l) An averment as to the capacity of all other known interested parties either as spouse, devisee or heir at law and the existence of a fiduciary or the necessity of an appointment of a fiduciary for any such other party.

(m) Averments of such other additional facts as Petitioner deems appropriate to aid the Court in passing upon the petition.

(n) A request to the Court to appoint two appraisers to appraise the value of the real property claimed for or on account of the family exemption and to set apart said real property to the Petitioner for or on account of said exemption.

2. Upon the presentation of any petition for the family exemption in whole or in part out of real estate, the Court shall direct the petition to be filed and shall fix the time and place for a hearing of said petition. Written notice of the filing of said petition and of the time and place of hearing thereof shall be given to the personal representative of the estate, or his attorney, and to all interested parties in accordance with Pa.O.C. Rule 3.5(b).

3. At the hearing of said petition, the Court, if it deems proper, shall appoint two appraisers to appraise the value of the real property claimed for or on account of the family exemption, who shall then proceed, with due diligence to appraise the value of

said real property and thereafter file a written report, under oath, with the Court.

4. The appraisers shall notify the claimant or his attorney of the place, time and date of said appraisal not less than fifteen (15) days prior to said appraisal and the said claimant or his attorney shall then give written notice thereof in such manner and to such persons as the Court shall direct.

5. If the appraisers cannot agree upon a value of said real property or if they fail to perform their duties with due diligence, the claimant shall report such facts in writing to the Court and the Court shall then appoint two other appraisers.

6. The appraisers shall notify the claimant, or his attorney of their value of said real property, and the claimant, or his attorney shall then proceed to prepare and file a report of said appraisal for said appraisers, which report shall set forth:

- (a) the names and addresses of the appraisers;
- (b) the place, time and date of said appraisal;
- (c) the description of the property appraised;
- (d) the approximate time consumed by the appraisers to perform all their duties pertaining to said appraisal;
- (e) such additional facts as may be necessary to acquaint the Court with all information and data necessary for the Court to act upon said report.

7. The claimant or his attorney shall give not less than five (5) days' written notice of the time the appraiser's report will be filed for confirmation, which notice shall contain a statement that if no objections are filed to said report within twenty (20) days after the filing thereof, the report will be confirmed Absolutely by the Court and the said real estate set apart to the claimant. Said notice shall be given in such manner and to such persons as the Court shall direct.

8. If objections are filed to said report prior to the confirmation thereof, the Court shall fix a time and place for the hearing of said objections and then either dismiss said objections and set apart said real estate or sustain the objections and appoint

two other appraisers or take such action as the Court may deem just and appropriate.

9. If no objections are filed to said report within twenty (20) days after the filing thereof, the Court shall, on motion of the claimant or his attorney, confirm said report and set apart said real estate to the claimant.

10. Upon confirmation of the report of appraisers of real estate claimed in whole or in part for or on account of the family exemption, the Court shall determine and fix the compensation of said appraisers and direct the payment thereof out of the estate of the decedent as general administration expenses.

11. A certified copy of the decree confirming an appraisal of real property and setting it apart for or on account of the family exemption shall be recorded and registered in accordance with Chapter 31, Section 312 of the Decedents, Estates and Fiduciaries (20 Pa.C.S.A. §3123) and its amendments.

5.3. Intestate Share to Surviving Spouse

If an appraisal of property is needed, the manner of appraising the property, of filing and confirming the appraisal, and of advertising or giving notice thereof, shall be by Special Order in each case.

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

Written consent of the parents or surviving parent of the minor to the appointment of a guardian for his estate or person shall be attached to the petition unless a reason is set forth in the petition why the said consent is not attached. If none of the parents have given their written consent, the consent of the adult or adults who stand in loco parentis shall be attached. If none of the aforesaid consents are obtained, the Petitioner shall set for the reasons therefore and shall give such prior notice of the presentation of the petition as the Court shall direct.

CHAPTER 7. RULES RELATING TO PRE-HEARING AND HEARING PROCEDURE

7.1 Depositions, Discovery and Production of Documents.

The Rules pertaining to Depositions, Discovery and Production of Documents as contained in the Pennsylvania Rules of Civil Procedure shall be

applicable to the Orphans' Court Division of the Court of Common Pleas of Lebanon County.

7.2 Motion for Judgment on the Pleadings

In order to obtain a decision from the Court on any contested legal issue, a party must file a Praeceptum for Disposition accordance with Leb.Co.C.C.P. Rule 52-205.4.

7.3 Motion for Summary Judgment

In order to obtain a decision from the Court on any contested legal issue, a party must file a Praeceptum for Disposition accordance with Leb.Co.C.C.P. Rule 52-205.4.

CHAPTER 9. AUDITORS AND MASTERS.

9.0 Appointment and Compensation of Auditors and Masters.

A. The Court may, on its own motion, or upon petition of the accountant or his attorney, or of any other interested party, appoint an Auditor or Master, who shall be, in the absence of special circumstances to be determined solely by the Court, a member of the Bar of Lebanon County, Pennsylvania. However, the Court may, in its sole discretion, at any time after the appointment of an Auditor or Master, recall the matter for attention by the Court.

B. The Petition for the Appointment of an Auditor or Master shall contain the following information when applicable:

1. The identity and residence of the Petitioner;
2. The relationship if any of the Petitioner to the decedent;
3. In the event the decedent left a Will, a copy of the Will or deed of trust is to be attached as an exhibit to the petition;
4. In the case of intestacy, the identity and address of all of the heirs of the decedent entitled to share in the estate;
5. A statement disclosing the gross amount of the estate and the net amount available for distribution;

6. A brief statement as to the legal or factual issues to be determined by the Auditor or Master; and

7. The identity of all local counsel as attorney for any interested parties.

C. No suggestion, stipulation, motion or agreement by the parties or their counsel as to the identity of the person to be appointed Auditor will be considered under any circumstances.

D. Any person appointed by the Court as an Auditor or Master under these rules shall be compensated by reasonable and customary fees as are agreed upon by the attorneys of all interested parties, or as fixed by the Court and paid from such sources as the Auditor or Master shall direct.

E. The Auditor's or Master's hearing shall be held at a time and place indicated by the Auditor or Master not later than forty-five (45) days after the Auditor's or Master's appointment, unless such time be extended by stipulation of all counsel of record or by Order of Court. The Auditor's or Master's hearing shall be held in the room or place assigned by the Court Administrator.

F. The report of the Auditor or Master shall be returnable within ninety (90) days after his appointment. The return date shall be extended only upon application to the Court and for good and sufficient cause shown.

9.1 Notice of Hearing.

Twenty (20) days prior written notice of the time and place of the Auditor's or Master's hearing shall be given by the Auditor or Master to all counsel of record and all interested parties not represented by counsel, known to the Auditor or Master; and in addition thereto, by advertising the time and place of hearing once a week for two (2) consecutive weeks, within a period of one (1) month immediately prior to the hearing, in a newspaper of general circulation in Lebanon County and in the Lebanon County Legal Journal. The Auditor or Master shall give evidence of such advertisement by attaching proofs of such publication to the Auditor's or Master's Report and making them a part thereof.

9.5 Transcript of Testimony.

A. The Auditor's or Master's hearing shall be held continuously from day to day for a full Court day or its equivalent, where possible, during each day in which it is held, and shall not finally be adjourned by the Auditor or Master until the testimony of all the witnesses and parties to the

case shall have been fully and completely presented and the reception of evidence closed.

B. Testimony given at an Auditor's hearing shall be stenographically recorded.

C. The transcript of testimony taken before an Auditor or Master shall be filed with his report.

D. The Auditor or Master shall, in the first instance, pass on questions of evidence. If the Auditor or Master is of the opinion that the testimony is clearly frivolous and irrelevant, or that the witness is clearly incompetent, he need not take the testimony, but the Record shall show the offer and the purpose of it, the objection and the ground of it, as well as the decision of the Auditor or Master, so that if objection be taken to the report of the Auditor or Master on this ground his decision may be properly reviewed by the Court. However, if the Auditor or Master is in doubt, the testimony shall be taken subject to exception and the question may be raised upon exception to his Report.

9.6 Notice of Filing Report.

A. Notice of Filing Report. The Auditor or Master shall give three (3) days' prior written notice of his intention to file the report and to apply to the Court for confirmation thereof to each attorney of record and to all parties not represented by counsel, and shall make a copy of his report available for their inspection during such notice period.

B. Objection. Any interested party shall have the right to file objections to the report of an Auditor or Master within twenty (20) days after the filing and confirmation thereof. If objections are filed, the issue shall be referred to the Court for placement on the argument list. In order to obtain a decision from the Court on any contested legal issue, a party must file a Praecipe for Disposition accordance with Leb.Co.C.C.P. Rule 52-205.4.

C. Re-Examination by Auditor or Master. In the event that objections are filed, the Auditor or Master shall have a period of twenty (20) days prior to argument to re-examine the subject of the objections and to amend the report if, in the Auditor's or Master's opinion, the objections are in whole or in part well-founded.

D. Argument. Argument before the Court shall be confined to the objections filed to the Auditor's or Master's report, either as originally submitted or amended; and the Court may, in its sole discretion, remand the report of the Auditor or Master for further hearing.

9.7 Confirmation of Report.

The report of an Auditor or Master shall be confirmed as of course, unless objections have been filed thereto pursuant to these rules.

CHAPTER 10. REGISTER OF WILLS.

10.4 Appeals from the Register of Wills.

A. Filing. Appeals taken from the judicial acts or proceedings of the Register shall be addressed to the Orphans' Court but filed with the Register.

B. Petition sur Appeal. After an appeal has been taken to the Orphans' Court from any judicial act, proceeding or decree of the Register, the appellant shall present a petition to the said Court within thirty (30) days after filing such appeal and shall allege that an appeal has been filed and bond approved by the Register and filed in his office within ten (10) days thereafter.

C. Upon the filing of a petition, the Court will award a Citation to all interested parties, including the Register, to show cause why the appeal should not be sustained and the decision complained of set aside, and in cases where issues of fact exist, why the disputed issues of fact should not be submitted to a jury. The Citation, with a copy of the appeal, shall be served in the manner provided by the Orphans' Court Act of 1951. Such Citation will be made returnable to a day certain but not less than twenty (20) days after issuance.

D. Appeals from the appraisal of the property of a resident decedent for Transfer Inheritance Tax purposes shall be taken pursuant to the provisions of the Act of June 20, 1919, P.L. 921, Section 23, as amended, by filing such appeal, together with specifications of objections and together with security approved by the Orphans' Court in the offices of the Clerk of the Orphans' Court.

CHAPTER 15. ADOPTION.

15.1 Hearings.

A. At the hearing on a petition for voluntary relinquishment or abandonment, the presence of the Petitioners is required, and they shall be

examined under oath to ascertain the truth of the facts set forth in the petition. The presence of the minor shall not be required.

B. Hearings on a petition for adoption, voluntary relinquishment and/or abandonment shall be private and not in open Court, unless otherwise ordered by the Court.

C. At the hearing on a petition for adoption, the presence of the following is required except by special order:

1. The Petitioners.
2. The person whose adoption is sought.
3. All persons whose consent is necessary under the adoption laws, except the natural parent or parents who have executed a proper legal consent and specifically waive their right to be present.
4. Such other persons as the Court may direct by special order.

D. Those required to be present at an adoption hearing shall be examined under oath to ascertain the truth of the facts set forth in the petition and a record made of their testimony. The record shall not be transcribed unless ordered by the Court.

CHAPTER 18. MARRIAGE.

18.1 Waiver of Waiting Period.

The presence of the Petitioners shall be required at the hearing on a petition to waive the three day waiting period, unless excused by the Court.

18.2 Minors Under the Age of Sixteen.

No petition for issuance of a license to marry to a person under the age of sixteen (16) years shall be presented without the written consent of the parents or surviving parent or legally appointed guardian, without leave of Court for cause shown. The minor, the intended spouse and a parent, surviving parent or guardian of all parties under the age of 16 years shall be present at the time of the presentation of the petition for examination by the Court, other than such parties as may be excused by the Court.

CHAPTER 19. PROMPT DISPOSITION OF MATTERS AND TERMINATION
OF INACTIVE CASES.

19.1 The Clerk of Court-Orphans' Court Division, shall list for general call at the first civil argument court held in September of each year, all Orphans' Court matters in which no steps or proceedings have been taken for two years or more. Prior thereto, they shall give notice thereof to counsel of record and to the parties for whom no appearance has been entered as provided by Pa.R.J.A. 1901(c). If no action is taken or written objection is filed in such matter prior to the commencement of the general call, the Clerk of Court – Orphans' Court Division, shall strike the matter from the list and enter an order as of course, dismissing the matter with prejudice for failure to prosecute under the provisions of this Rule. If no good cause for continuing the matter is shown at the general call, an order shall be entered forthwith by the Clerk for dismissal.