

ADAMS COUNTY COURT OF COMMON PLEAS
RULES OF ORPHANS' COURT DIVISION

Rule 1. Local Rules

The local rule of the Orphans' Court Division of the Adams County Court of Common Pleas shall be known as Adams County Orphans' Court Rules and may be cited as either Adams C.O.C.R. (number), or Local O.C. Rule (number). These rules should be read in conformity with Supreme Court Orphans' Court Rules. Except as otherwise provided in these rules, or by Supreme Court Rules, local Rules of Civil Procedure shall apply to proceedings in the Orphans' Court Division of this Court.

Comment: These rules should be read in conformity with not only state, but also local, rules. For example, Adams County Rules of Judicial Administration No. 13.0 governs procedure in cases involving extended hearings. In light of extensive rule changes in the area of appearances and withdrawals of counsel, no need exists for special rules applicable to the Orphans' Court Division.

CONSTRUCTION AND APPLICATION OF RULES

Rule 2.3. Definitions

The following words when used in these rules, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this section.

A. "*Auditor*" and "*master*," are generally used interchangeably, without regard to technical distinctions, in these rules. The terms may be similarly used in orders, unless the scope of duties or context indicates otherwise. Notwithstanding technical differences between the two terms, an auditor shall have all the powers and duties of a master, and vice versa, unless the order of appointment or scope of duties make this inappropriate.

B. "*Exception*" means a formal disagreement with an appraisal, with a report of an auditor or master, or with an adjudication, opinion, or decree of the Court. The term includes "*objection*," and the two terms may be used interchangeably.

C. "*Objection*" is included in the definition of "*exception*."

D. "*Code*" means the "Probate, Estates and Fiduciaries Code," 20 Pa.C.S.A. § 101 et seq.

E. "*Master*" may be used interchangeably with "*auditor*," subject to the discussion relating to the definition of "*auditor*."

Comment: The distinction between objection and exception is too esoteric to be of significance and is potentially confusing, since many people use the terms interchangeably. The prior rule's requirement that objections and exceptions be in writing conflicts with other rules allowing oral objections in certain instances. The terms, "*auditor*" and "*master*", are used interchangeably to avoid disputes about the authority or

scope of duties of a person designated as one or the other.

PLEADING AND PRACTICE

Rule 3.4. Form of Petition

A. A proposed order or decree, bearing the caption of the case, shall be attached to the face of the petition.

B. Copies of documents essential to proper relief shall be attached to the petition as exhibits.

Rule 3.6. Depositions Etc.

Any party seeking a special order relating to depositions, discovery, production of documents and/or perpetuation of testimony shall give all interested parties, or their counsel, at least ten days advance notice before presenting the request. Otherwise, the party shall proceed in accordance with Rules of Civil procedure.

COMPUTATION OF TIME

Rule 4. Reserved

NOTICE

Rule 5.1. Legal Periodical and Advertisement

Whenever publication in a legal periodical is required by Act of Assembly or by Rule or Order of Court, see Adams County Rule of Judicial Administration No. 11.

When advertisement is directed in these rules, unless otherwise provided, it shall be in accordance with publication requirements of Supreme Court Rule 5.1(c).

Comment: Attention is invited to the requirement in Supreme Court Rule 5.1(c) that publications occur once a week for three consecutive weeks, as contrasted with once under Pa.R.C.P. 430. Attention is also invited to the provisions of 20 Pa.C.S.A. § 745(b), which establish specific requirements for advertising accounts.

Rule 5.2. Method; Person under Incapacity

A. *When No Fiduciary.* Whenever notice is to be given to a person who is not sui juris for whom there is no guardian, trustee, or committee, notice shall be given by serving it upon him/her, if he/she is over (14) years of age, and, in all cases, upon the following persons:

(1) his/her next of kin; and/or

(2) his/her spouse; and/or

(3) the person with whom he/she resides or by whom he/she is maintained; and/or

(4) the superintendent or other official of the institution having custody of him/her; and/or

(5) in such manner as the Court, by Special Order, may direct.

B. Presumed Decedents and Unascertained Persons. Whenever notice is to be given to an absentee, a presumed decedent, or to an unknown or unascertained person, it shall be given in the manner provided by Act of Assembly or, in absence thereof, in such manner as the Court, by Special Order, shall direct.

Rule 5.4. Return of Notice--Requirements

A. Return of service shall in all cases show the date and manner of service and be attached to a copy of the notice served.

B. Return of service by registered or certified mail shall also have attached the return receipt, or a photocopy thereof, or an adequate explanation of the failure to so attach.

C. Registered or Certified Mail. Return of notice by registered or certified mail shall state the date and place of mailing and shall include the return receipt, or photocopy thereof. When the person who gives notice by registered or certified mail has personal knowledge, or has cause to believe, that such notice was not received by the person to be notified, he/she shall so state in the return. When the address of the person to be served by registered or certified mail is in a country other than the United States of America, a statement that the notice was so mailed to that person at the designated address shall be sufficient unless otherwise ordered.

D. Return of notice by publication shall consist of proofs of publication, together with affidavits of publication by the publisher or his/her agent.

ACCOUNTS AND DISTRIBUTION

Rule 6.1. Form--Local Requirements

A. Accounts will be typed on 8 1/2" by 11" paper fastened together at the top and numbered consecutively at the bottom.

B. All accounts shall begin with a caption which shall set forth the nature of the account, the name and capacity of the fiduciary, and the name of the estate.

C. The first account of a personal representative shall contain, immediately following the caption, the date of death of the decedent and the dates when letters of the estate were advertised in each of the publications for that purpose. A copy of each of the proofs of publication shall be attached to the account.

D. Principal of personal estate and principal of converted real estate shall be stated separately.

E. Every account filed with the Register or Clerk shall be signed by each accountant, unless special leave of Court is obtained, and shall be verified by at least one accountant.

F. If the account incorporates by reference the contents of the inventory, a true and correct copy of the inventory shall be attached for review by the Court; said true and correct copy of the inventory need not be filed of record in the Office of the Clerk of Courts.

Comment: Present Supreme Court Rule 6.1 gives an accountant an option as to which form is followed. Thus, this rule should be properly captioned "local" rather than "additional" requirements, as was previously done.

Rule 6.3. Notice to Parties in Interest

A. *Notice*--No account presented by the Register or by the Clerk of the Orphans' Court shall be confirmed, nor any decree of distribution made, unless it be made to appear by the certificate of the accountant or his/her attorney, that written notice of the time of presentation of the account and proposed statement of distribution and the character thereof has been given for at least twenty-eight (28) days prior to the date fixed to every unpaid creditor who has given written notice of his/her claim to the accountant and to every other person of whom the accountant has notice or knowledge who claims an interest in the estate as beneficiary or next of kin. Acceptance of such notice may be in writing by the party in interest or by his/her attorney.

B. *Presentation of Account Objections*--All accounts shall be presented for confirmation at a regular confirmation date and must be filed not later than forty (40) days prior thereto. Although written objections are not required, if objections are made in open court at the time of presentment, the Court may require that the objector file a written objection within ten days. The Court may also require the objector to state, in writing, the specific grounds upon which objections are based. Failure to comply within ten (10) days, or such other time set by the Court, may be considered a withdrawal of any objection made only orally.

Rule 6.9. Statement of Proposed Distribution

A. *Filing*--Accounts and any accompanying statements of proposed distribution filed in the office of the Register of Wills shall be marked "filed," a notation of the date of said filing made on the decedent's index of the estate, and then transmitted to the Clerk of the Orphans' Court on the next succeeding business day for audit and confirmation by the Court after proper advertising.

The statement of proposed distribution shall be filed at the same time and in the same office with the account it accompanies.

B. *Form*--A statement of proposed distribution shall be on a paper separate from the account which it accompanies. It shall contain the names of the persons to whom it is proposed to award the balance for distribution, the amount or share awarded to each and a brief statement of the nature and reasons for the proposed awards, and a copy of the will, if any.

C. *Signature*--All statements of proposed distribution shall be signed by each accountant unless special leave of Court is obtained, and all statements of fact therein shall be verified by at least one (1) accountant.

D. *No Proposed Statement*--A fiduciary who, upon the filing of an account which reveals a balance for distribution, is unable for any reason to file therewith a statement of proposed distribution in accordance with the requirements of the Pennsylvania Supreme Court Orphans' Court Rules, shall in lieu thereof, file with the account a statement of the reasons why distribution cannot be proposed which shall conclude with a request for the appointment of an auditor to make distribution.

E. *Advertisement*--The Clerk shall give notice by advertisement of the time when statements of proposed distribution filed with him/her and with the Register will be presented to the Court for approval. The notice shall be given in conjunction with the notice of the account which it accompanies.

F. *Distribution To Minor Without Guardian*--If distribution is to be made to a minor for whom no guardian has been appointed, the accountant may request distribution in accordance with either subsection 5101 or 5103 of the Code. If distribution is requested in accordance with 5103, there shall be a statement that the distribution will not exceed the amount to which accounts are insured and the following wording:

"As to the interest of the minor(s) above named, it is proposed that his/her (their) share(s) be deposited in a separate savings account in the _____ Bank at _____, Pennsylvania, with the following notation: (Name of Minor) and _____ his/her motherfather- person having custody--not to be withdrawn until the minor, _____, becomes of age or in compliance with an Order of the Orphans' Court Division of the Adams County Court of Common Pleas during his/her minority."

G. *Real Estate*--Where real estate is distributed, the real estate in the statement of proposed distribution shall be described by metes and bounds when such description is available.

Rule 6.10(a) Objections to Accounts and Statements of Proposed Distribution

A. *Objections*--Objections to accounts and/or to statements of proposed distribution shall be governed by Local O.C. Rules 6.3 and 7.1 et seq. A copy of objections shall be served on the accountant or his/her attorney.

B. Disposition—

1. Objections by the Register of Wills to deductions in an account or in the statement of proposed distribution shall be considered solely to determine the clear taxable value of the estate. Objections to the amount of such deduction will be disposed of by the Court after hearing and/or argument, but the account may be confirmed and distribution awarded subject to sufficient funds being withheld to pay inheritance tax.

2. Any party in interest or the accountant may seek adjudication of a dispute concerning deductions disallowed by the Register prior to filing an account. Issues may be resolved after hearing by the Court, an auditor may be appointed, in the discretion of the judge assigned the case.

*C. Request for Hearing--*Objections filed by anyone other than the Register of Wills may be determined after determination of facts and/or argument. Any party may request that a judge conduct a hearing to determine disputed facts, or that the matter may be referred to an auditor. Notwithstanding a request for a hearing by the Court, an auditor may be appointed, in the discretion of the judge assigned the case.

Rule 6.11. Confirmation of Accounts

If no objections are filed to either the account or the statement of proposed distribution, the Court may, on the day fixed for the presentation thereof, make a final decree confirming the account absolutely and directing distribution in accordance with the statement.

**EXCEPTIONS OR OBJECTIONS OTHER THAN
THOSE MADE IN OPEN COURT**

Rule 7.1. General Rule

A. Exceptions or objections other than those made in open court, when the case is being considered by the court, shall be in writing and copies thereof shall be served on all interested parties or their attorneys.

B. All exceptions shall be filed with the Clerk. The Clerk shall transmit exceptions to an auditor's decision for initial consideration and ruling.

C. The grounds of each exception must be clearly set forth.

D. Exceptions shall be heard by a judge who shall sustain or dismiss them in whole or in part or enter any appropriate order.

AUDITORS AND MASTERS

Article I. Rule 8.1--Notice of Hearing and Hearing Procedure

A. The Clerk shall provide a certificate of appointment to auditors and masters

expeditiously after appointment. Auditors and masters shall schedule hearings without undue delay, and give notice thereof in accordance with Supreme Court Rule 5.1.

B. Auditors and masters shall call for appearances at the beginning of each hearing. Persons failing to enter a formal appearance shall not be entitled to notice of any further proceedings, or the completion and filing of the report, unless such rights are specially granted by the auditor.

C. Procedure followed shall be in accordance with good order, but may be less formal than court proceedings. Auditors shall initially determine what claims have been presented for resolution. In addition to claims to which specific objection has previously been made, interested parties or counsel may orally object to claims to which prior general objection has been made. Claims to which no objection has been made shall be allowed without further proof. Any claimant surprised by objection may request and be given an opportunity to support the claim.

D. Hearings, continuances and adjournments, shall generally be in accordance with practice and procedures governing proceedings by masters in divorce cases. After the closing of the evidence has been announced and noted, any party may submit requests for findings of fact and conclusions of law within time limits set by the auditor or master.

Rule 8.2. Filing of Report

Reports of auditors and masters shall be filed with the Clerk.

Rule 8.3. Form of Report

In addition to requirements in Supreme Court Rules 8.3. and 8.4, reports shall contain an appendix which shall:

1. Recite the person's commission,
2. Contain notices given, with a description of how delivered or given,
3. Contain written waivers of notice,
4. Contain exceptions to the report and requests for findings submitted by counsel,
5. Contain exhibits, unless they accompany the report. Accounts and documents filed independently with the Court or belonging to its archives, and original documents reserved by the owner or custodian thereof, shall not be incorporated in the appendix. Copies, however, may be,
6. Recite the chronological summary of proceedings before the auditor,
7. Contain a bill of costs as taxed by the auditor, in the manner in which bills of costs are taxed in the Prothonotary's office.

Rule 8.4. Reserved

Rule 8.5. Reserved

Rule 8.6. Notice of Filing Report

A. Upon the completion of the reports, the auditor shall lodge it in the Clerk's office for inspection purposes only. The report shall not be filed by the Clerk, but shall be made available for inspection. Auditors shall give notice in writing to all parties or attorneys entitled to notice that:

1. the report is available for examination in the Clerk's office, and
2. exceptions thereto must be filed with the Clerk within ten (10) days.

B. If exceptions are filed, the Clerk shall return the report and exceptions to the auditor or master. If no exceptions are filed, the Clerk shall mark the report as filed, and transmit it to the Court for entry of an order.

C. Service of notice shall be sufficient if mailed first class mail, addressed to the person entitled to receive it.

Rule 8.7. Confirmation of Report

A. *Exceptions*--Other than in unusual circumstances and by leave of court, no exceptions shall be permitted after the ten-day period established by Local O.C. Rule 8.6.

B. *Reserved.*

C. *Disposition of Exceptions. Filing*--The auditor or master shall expeditiously rule upon and dispose of exceptions. Rulings, modifications and amendments shall then be filed, and the Clerk will mark the report, with rulings, modifications and amendments as filed. The Clerk shall then transmit the report, rulings, amendments and modifications to the Court for entry of a decree nisi. The auditor or master shall provide notice of filing to interested parties or counsel, and advise them that objections or exceptions to the decree nisi, or request for resubmission to the auditor or master, must be made within ten (10) days.

D. *Decree*--The decree nisi shall be confirmed absolute, unless prior exceptions are renewed, new exceptions are filed, or a request is made for resubmission to the auditor or master, within ten (10) days. Any party may at any time after the ten-day period list exceptions or requests for argument.

OFFICIAL EXAMINERS

Rule 9. Reserved

REGISTER OF WILLS

Rule 10.1. Reserved

Rule 10.2. Appeal from the Register of Wills

Appeals from judicial acts or proceedings of the Register of Wills, and the practice and procedure with respect thereto shall be governed by rules of civil procedure. However, the order directing that a rule issue shall also direct the Register to certify the record to the Court. The petition shall include the following information:

- (a) the nature of the proceedings before the Register;
- (b) the basis for the certification, requested certification or appeal; and
- (c) the names of all parties in interest, including those not a party to the record.

Comment: Uniformity is served by making appeals subject to the procedure utilized with petitions and rules. Since the new rule applies to all appeals, no need exists for references to special appeals, such as from imposition of inheritance tax. State Rule 11.1 and 11.2, regarding jury trials, do not require supplementing.

SPECIAL PETITIONS

Rule 12.1. Family Exemption

A. *Content of Petition*--In addition to the requirements of the Supreme Court Orphans' Court Rules, a petition for the family exemption also shall set forth in separate paragraphs and in substantially the following order:

- (1) the name, residence and date of death of decedent;
- (2) the name, address, and relationship of the petitioner to the decedent, and whether the petitioner was a member of the same household as the decedent at the date of his/her death;
- (3) if petitioner is the surviving spouse, the date and place of the marriage; and, if a common law marriage is asserted, all averments of facts necessary to establish the validity of the marriage;
- (4) whether the decedent died testate or intestate; whether, where, when, and to whom letters were granted; if decedent died intestate, the names, relationship, and addresses of those interested as next of kin;
- (5) the location, description, and valuation of property claimed; and

(6) that ten (10) days prior notice of the filing of the petition has been given to the personal representative, or when no letters have been granted, to the parties adversely affected, with a copy of such notice attached as an exhibit.

B. Appraisal--No appraisal shall be required when the exemption is claimed from cash, bank savings and loan deposits, listed securities and well-known local securities. When the exemption is claimed from other items of personalty, the petitioner shall attach a sworn appraisal of one qualified, disinterested person. The Court may accept the appraisal of the attorney filing the petition for frequently traded items having an established price such as automobiles.

Where the exemption is claimed in personalty, no notice or advertisement of the appraisal shall be required unless directed by the Court on special order.

C. Exemption From Real Estate--If the petition requests the exemption from real estate, the practice and procedure shall be as provided in Supreme Court Rule 12.2(b) unless all parties in interest agree in writing to a valuation at which it is to be awarded.

D. Voluntary Distribution--When the personal representative, at his/her own risk, delivers assets of the estate in satisfaction or on account of exemption, he/she shall set forth the same as a credit in the account. The same may be the subject of objection by any claimant or party in interest.

E. When Petition Filed--When the procedure is by petition, questions as to the appraisement or allowance, or both, may be raised only by objection made in open court at the time fixed for presentation of the petition.

F. Higher Bid--Objections which relate only to the amount of the appraisement will be dismissed unless a definite and bona fide higher bid for the property is made, or facts appear warranting consideration by the Court.

Rule 12.2. Allowance to Surviving Spouse of Intestate

A. Content of Petition--In addition to the requirements of the Supreme Court Orphans' Court Rules, a petition for the allowance to the surviving spouse of an intestate shall also set forth in separate paragraphs:

(1) the information required in a petition for family exemption under Supreme Court and Local O.C. Rule 12.1(a), as far as appropriate; and

(2) the death of decedent, intestate, without issue or adopted children; the names, addresses, and the relationship of those interested as next of kin; and

(3) that ten (10) days prior written notice of the intended presentation of the petition has been given to the personal representative or, if no personal representative has been appointed, to those interested as next of kin; and, if there be no next of kin, to the Attorney General, with a copy of such notice attached as an exhibit; and

(4) shall have attached thereto a copy of the inventory and appraisal.

B. Filing of Appraisal--Appraisers appointed pursuant to Supreme Court Rule 12.2(a)(3) shall, within thirty (30) days after their appointment, file with the Clerk an appraisal of the property claimed.

C. Notice of Appraisal--Upon filing of the appraisal, the Clerk shall give notice thereof to the personal representative, and to the next of kin; and, if there is neither personal representative nor next of kin, to the Attorney General, Notice to the Attorney General shall contain a copy of the petition and the appraisal. All notices shall state that:

1. Confirmation of the appraisal and an award of the property to the surviving spouse will be considered by the Court at a stated open court date that is at least ten (10) days later than the date notice is given.

2. The person to whom notice is given shall have the right to appear at the stated time and object.

3. If no objections are made, the property shall be awarded to the surviving spouse at the appraised value. If the address or whereabouts of any of the next of kin is unknown, notice of the filing of such appraisal shall be given in accordance with Supreme Court Rule 5.1.

Comment: No authority exists for reducing advertisement below that required in state rule 5.1, other than by special order of court.

Rule 12.3. Extension of Time For Filing of Surviving Spouse's Election

The petitioner shall file the petition with the Clerk and thereafter give ten (10) days written notice of intention to request the extension in open Court to all persons adversely affected thereby who do not join in the prayer of the petition.

If no objection is made, the Court may enter an appropriate decree upon the filing of a verified return of notice.

Rule 12.4. Appointment and Discharge of Fiduciaries

In every case where a guardian ad litem or trustee ad litem is appointed, the estate shall be liable for the compensation of the guardian ad litem or trustee ad litem in an amount to be set by the Court upon receipt by the Court of a written report of said guardian ad litem or trustee ad litem prior to the final hearing in the particular case.

Rule 12.5. Appointment of a Guardian for the Estate or Person of a Minor

A. Reserved.

B. Reserved.

C. *Consent of Guardian*--The petition shall have attached thereto the consent of the guardian to act as such.

1. The consent of an individual guardian shall also contain the following statements:

a. his/her business and domicile;

b. that he/she is a citizen of the United States, able to speak, read, and write the English language;

c. that he/she is not the fiduciary or an officer or employee of the corporate fiduciary of an estate in which the minor has an interest nor the surety of such a fiduciary; that he/she has no interest adverse to the minor; and,

d. if the minor and proposed guardian reside in the same household, whether it is the intention of the guardian to apply for an allowance for the support or education of the minor during minority.

2. When the proposed guardian is a corporate fiduciary, its written consent to act as such shall contain a statement that it is not the fiduciary of an estate in which the minor has an interest nor the surety of such a fiduciary; and, that it has no interest adverse to the minor.

D. *Reserved.*

E. *Minor Over the Age of Fourteen*--If the minor is over the age of fourteen (14) years, he/she shall appear in person at the presentation of the petition for the appointment of a guardian unless the petition contains his/her written joinder in the request for the designation of the given guardian.

F. *Small Estates to Minors*

1. Any petition to have the estate of a minor awarded without the appointment of a guardian or the entity of security shall contain, inter alia, the following:

a. A statement that the net value of the entire real and personal estate of the minor does not exceed the statutory limitations; and

b. The name of bank or insured savings and loan association in Adams County as a suggested depository.

2. The Court may require that said fund be deposited in an interest bearing deposit in said bank or be invested in said insured savings and loan association in the name of the minor and in the name of the natural guardian of the minor, subject to the express restriction, to be noted on the records of the depository, that no withdrawals shall be

made therefrom during minority without Order of Court, with a further requirement that evidence of the deposit or investment marked to indicate the restriction, be promptly exhibited to the Court.

3. When the Court authorizes the parent or other person maintaining the minor to execute a receipt, deed, mortgage, or other instrument affecting property, real or personal, of the minor it shall be conditioned on the deposit of the proceeds in an account restricted as in 2 above.

G. Allowance from Minor's Estate--When a petition is necessary for an allowance from a minor's estate, the petition shall set forth:

1. The manner of the guardian's appointment and qualification and the dates thereof;

2. The age and residence of the minor, whether his/her parents are living, the name of the person with whom he/she resides, the name and age of his/her spouse and children, if any;

3. The value of the minor's estate, real and personal, and the net annual income;

4. Circumstances of the minor, whether employed or attending school; if the minor's parent(s), or other persons(s) charged with the duty of supporting him/her is/are living, the financial condition and income of such person and why he/she is/are not discharging his/her duty to support the minor; and, whether there is adequate provision for the support and education of the minor;

5. Date and amount of any previous allowance by the Court; and,

6. The financial requirements of the minor and his/her family unit, in detail, and the circumstances making such allowance necessary.

Rule 12.6. Appointment of a Trustee

A. Exhibit--The following exhibits shall be attached to the petition:

1. A copy of the trust instrument; and,

2. A written consent of the proposed trustee to act as such.

Rule 12.7(a). Discharge of a Fiduciary And Surety

A. Additional Provisions

1. The petition shall contain the averment that all parties interested in the estate as distributees have signed releases or aver a satisfactory explanation of the failure to procure releases. If such releases are not obtained, notice of intended presentation of petition for discharge shall be advertised once in a newspaper of general circulation

published in Adams County and in the Adams County Legal Journal at least ten (10) days prior to the time specified in the notice for asking the order of final discharge.

2. In the case of minor's estate not exceeding the statutory limit (currently \$25,000.00) where the account accompanies the petition, the petition shall aver that there are no unpaid creditors and the former minor has consented to the petition, or aver a satisfactory explanation of the failure of the minor to consent.

B. Discharge Under § 3531--A petition for discharge of a personal representative and/or his/her surety under § 3531 of the Probate, Estates and Fiduciaries Code (20 Pa.C.S.A.) shall conform as far as practicable to the requirements of a petition under Rule 12.5(f) (Small Estate).

Rule 12.8. Reserved

Rule 12.9. Public Sale of Real Property

A. Content of Petition--Additional Requirements

(1) *Personal Representative*.--A petition by a personal representative to sell real property at public sale under § 3353 of the Code shall also set forth in separate paragraphs;

a. the name, residence, and date of death of the decedent; whether he/she died testate or intestate; and the date of the grant of letters;

b. that the personal representative is not otherwise authorized to sell by the Act; or, is not authorized 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;

c. whether an inventory and appraisal have been filed; the total value of the property shown therein; and, the value at which the real property to be sold was included therein;

d. if the personal representative entered bond with the Register, the name of the surety and the amount of such bond;

e. the names and relationships of all parties in interest; a brief description of their respective interest; whether any of them are minors, incompetents or deceased, and, if so, the names and the record of the appointment of their fiduciaries;

f. a full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current tax assessment; and,

g. sufficient facts to enable the Court to determine that the sale is desirable for the proper administration and distribution of the estate.

h. A copy of the will, deed, or decree by which the fiduciary was appointed shall be attached to a petition by a personal representative, trustee, or guardian, to sell real property at public sale.

(2) *Payment of Debts.*--A petition by a personal representative to sell real property at public sale for payment of debts, under § 3353 of the Code, shall also set forth in separate paragraphs;

a. the information required to be set forth under subparagraph 1, as far as appropriate;

b. a statement that the personal estate and the rents of real property are insufficient for payment of debts;

c. a statement of all real property owned by decedent, wherever situated, which has come to petitioner's knowledge;

d. a full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current tax assessment;

e. that the trustee is not otherwise authorized to sell by the Act, or is denied the power by the trust instrument; or, that it is advisable that the sale have the effect of a judicial sale, stating the reasons; and,

f. sufficient facts to enable the Court to determine that the proposed sale is for the best interests of the trust.

g. If the sale is for payment of debts, a copy of the inventory and appraisal of decedent's personal estate filed with the Register shall also be attached to the petition.

(3) *Guardian.*--A petition by a guardian to sell real property at public sale, under § 3353 of the Code, shall also set forth in separate paragraphs:

a. the age of minor;

b. the names of his/her next of kin and the notice given them of the presentation of the petition;

c. how title was acquired, stating the date and place of probate of the will or recording of the deed;

d. a recital of the provisions of the will or deed relating to the real property to be sold;

e. that the guardian is not otherwise authorized to sell by the Act, or is denied the power by the trust instrument; or, that it is advisable that the sale have the effect of a

judicial sale, stating the reasons;

f. a full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value, and current tax assessment; and,

g. sufficient facts to enable the Court to determine that the proposed sale will be for the best interests of the minor.

B. Method--Pursuant to Court Order.

Notice of the public sale of real property shall be given:

(a) by advertisement in approved form;

(b) by handbills, one of which shall be posted at a conspicuous place on the real property to be sold and at least three (3) of which shall be posted in three (3) public places in the vicinity of such real property; and

(c) by personal notice or registered or certified mail to all known parties in interest, of the time and place of the proposed sale, at least ten (10) days prior thereto.

C. Notice--Confirmation.

(1) *Notice.* After the allowance of a petition for public sale, notice in approved form shall be given in the manner provided by Rule 12.9(b) above.

(2) *Return of Public Sale.* Return of public sale of real property for the purpose of approval or confirmation by the Court shall be in the form of an affidavit, which shall set forth:

(a) the notice given as provided by Rule 12.9(b) above;

(b) the price obtained; and,

(c) the name and address of the purchaser and an averment that he/she was the highest bidder.

(3) *Confirmation.* If no objection is filed, the Court may enter a decree confirming the sale upon submission of the return of sale.

Rule 12.10. Private Sale of Real Property or Options

A. Content of Petition--Additional Requirements. A petition by a personal representative, trustee, or guardian to sell real property at private sale shall also conform as closely as practicable to the requirements of those rules with regard to a petition to sell real property at public sale by the same fiduciary.

B. Exhibits.

(1) Personal Representative. Trustee. Guardian.

The following exhibits shall be attached to the petition by a personal representative, trustee, or guardian, to sell real property at private sale:

(a) a copy of the will, deed, or decree by which the fiduciary was appointed;

(b) consents to the sale signed by those parties in interest who do not join in the petition, and the names and a copy of the notice which has been given to those parties who do not join or consent, except in a petition to sell at private sale for the payment of debts;

(c) a copy of the agreement of sale;

(d) affidavits, in approved form, to two competent persons approved by the Court; and

(e) if the sale is for payment of debts, a copy of the inventory and appraisal of decedent's personal estate filed with the Register shall also be attached to the petition.

C. Payment of Debts--Notice--Confirmation.

1. *Notice.* A petition for private sale of real property to pay the debts of a decedent shall be presented in open court and a date fixed for hearing. Notice of such hearing shall be given in the manner provided by Supreme Court Rule 5.6.

2. *Confirmation.* If no exception is filed, the Court may enter a decree confirming the sale at the hearing. If a substantially higher offer is received at the hearing, the Court will make such order as it deems advisable under the circumstances.

D. Higher Offer.

Any person desiring to make a substantially higher offer for real property offered at private sale may do so at the time the petition of the fiduciary for leave to make such private sale is presented to the Court, or at any hearing fixed thereon, whereupon the Court will make such order as it deems advisable under the circumstances.

E. Security.

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

F. Petition to Fix or Waive Additional Security--Personal Representative.

1. *Form of Petition.* In a sale, whether public or private, of real estate by a personal representative without benefit of an order directing or authorizing such sale, where he/she was required to give bond as such personal representative, he/she shall present his/her petition to the Court before the proceeds of the sale are paid to him/her by the purchaser, setting forth:

- a. the death of the decedent;
- b. the date of the grant of letters to the petitioner;
- c. the amount of bond or bonds filed by him/her and the date of such filing and the name or names of his/her surety;
- d. the total valuation of the personal estate as shown in the inventory and appraisal, if any; the total proceeds of any real estate sold previously;
- e. a short description of the real property sold, the name of the purchaser, and the amount of the consideration to be paid; and
- f. a prayer for an order fixing the amount of additional bond except for cause shown shall be the same as on the original bond.

2. *Surety on Additional Bond.* The surety on any additional bond except for cause shown shall be the same as on the original bond.

C. Purchase by Personal Representative.

Petitions for approval of private sales of real estate to personal representatives shall be accompanied by an appropriate order. If all parties in interest join in the petition, the order may be in final form. Otherwise, it shall set a time for consideration, which will be a Business and Orphans' Court day at least thirty (30) days later than dates on which notice is given. The petitioner shall promptly serve a copy of the petition and order on parties who have not joined. The order shall recite that leave will be granted unless objections are made on or prior to the time set for consideration. The petition shall identify any party in interest who is not sui juris and request the appointment of a guardian ad litem.

Rule 12.11. Mortgage, Lease or Exchange of Real Property

A. Petition--Additional Requirements.

1. *Contents of Petition.* A petition to mortgage real property by a personal representative, trustee, or guardian shall conform as closely as practicable to the requirements of these rules with regard to a petition to sell real property at public sale by the same fiduciary; shall set forth the amount and terms of the proposed mortgage loan; and, shall set forth sufficient facts to enable the Court to determine whether the proposed

mortgage should be approved.

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

(a) a copy of the will, deed, or decree by which the fiduciary was appointed;

(b) consents to the mortgage signed by those parties in interest who do not join in the petition, and the names and a copy of the notice which has been given to those parties who do not consent.

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

4. The practice and procedure governing petitions by a personal representative, trustee, or guardian to pledge, lease, or exchange or to grant an option for the pledge, lease, or exchange of property, under the Code, shall be governed by the appropriate provisions of these Rules governing the private sale or mortgage by such fiduciary.

Rules 12.12 to 12.15. Reserved

Rule 12.16. Settlement of Small Estates (§ 3102 of the Code)

A. *Content of Petition*--A petition under § 3102 of the Code for the settlement of a small estate shall be set forth in substantially the following order:

1. name, date of death, and residence of the decedent at time of death;
2. the name and address of the petitioner, his/her relationship to the decedent and whether or not he/she formed a part of decedent's household at the date of his/her death;
3. if petitioner is the surviving spouse, the date and place of the marriage;
4. whether decedent died testate or intestate; whether, where, when and to whom letters were granted, and the amount of bond given by the personal representative;
5. the names, relationships, and a brief description of the interest of all persons entitled to share in the decedent's estate under the will or intestate laws, stating which are minors, incompetents, or deceased, with the names of their fiduciaries, and whether any of them has received or retained any property of the decedent by payment of wages or pension under § 3103 of the Code, or otherwise;
6. the person entitled to the family exemption, and the facts on which the claim is based;
7. an itemized statement of the property of the decedent and its value together with a sworn or verified appraisal of one qualified, disinterested person appraising items

other than cash, bank and savings and loan deposits, listed securities, and well-known local securities. The Court will accept the appraisal of the attorney filing the petition for frequently traded items having an established price such as automobiles;

8. the disbursements made prior to the filing of the petition; the date and name of the person to whom paid and, the nature and amount of each payment;

9. the names of all unpaid claimants of whom the petitioner has notice or knowledge, the nature and amount of each claim, and whether such claims as admitted;

10. that a schedule of assets and deductions for inheritance tax purposes has been filed with the Register; the amount of any inheritance tax assessed; and, the date of payment thereof;

11. that ten (10) days written notice of intention to present the petition has been given to every unpaid beneficiary, heir, or claimant who has not joined in the petition, or to the Attorney General, if the decedent heirs are unknown; and,

12. a prayer for distribution of the property, setting forth the persons entitled and their distributive shares and requesting the discharge of the personal representative and the release of his/her surety, if letters have been granted and advertised.

Rules 13.1 to 13.3. Reserved

GUARDIANSHIP OF INCAPACITATED PERSONS

Rule 14.1. Guardianship

A. *Guardians*--Except in the case of an adult child living with his/her natural parent(s), preference in appointments shall normally be given to banking institutions and suitable persons who do not, reside with the alleged incapacitated person, are not related to the person and who reside or have a regular place of business in Adams County.

B. *Estate*--Consent of Proposed Guardian - The written consent of the proposed guardian to act as guardian shall be attached to the petition.

C. *Estate--Proof of Service*--Proof of service shall be presented at the hearing. The affidavit of service shall, in all cases, recite that the petition and citation and notice were read and explained to the alleged incapacitated person.

D. *Sale of Personal Property*--Court approval for sale of personal property shall not be required.

Rule 14.3 to 14.5. Reserved

Rule 15. Adoptions

Rule 15.1. Investigations

A. Adams County Children and Youth Services is designated as the agency to perform investigations required by the Court in accordance with the Adoption Act.

B. Fees for investigations by the agency shall be periodically set by the administrative order. Until changed, the fee shall be \$75.00. Fees for obtaining child abuse clearances and criminal histories shall be in addition to the investigation fee.

C. Petitioners and/or persons filing notices of intention to adopt shall, unless excused from an investigation, pay the investigation fee within two (2) weeks of filing a petition or notice of intention to adopt, whichever is filed first.

D. Petitioners shall, within the two (2) week period, provide the agency with a description of petitioners' home and detailed directions to it.

E. Persons who are otherwise subject to investigation and who request a waiver thereof shall include, with the application for waiver, either:

1. an affidavit setting forth in detail that person's criminal history and all indicated reports of child abuse that are known to the person, or

2. original or certified copies of the person's criminal history and child abuse clearance forms.

F. Upon receipt of the material described in (e), the Clerk shall promptly provide the agency with copies thereof.

Rule 15.2. Voluntary Relinquishment to Agency

The caption for all pleadings and the docket entry shall carry the given name of the child.

Rule 15.3. Voluntary Relinquishment to Adult Intending to Adopt Child

A. The caption for all pleadings and docket entry shall carry the given name of the child.

B. In addition to other information required by Supreme Court Rule 15.3, the petition shall describe any agreement between petitioner and natural parents regarding fees, costs, payments, or future rights of visitation and/or custody.

Rule 15.4. Involuntary Termination of Parental Rights

A. The caption for all pleadings and the docket entry shall carry the given name of the child.

B. Information required by Local Rule 15.3 (3) shall be provided.

Rule 15.5. Adoption

A. Petition.

1. The caption for all pleadings and the docket entry regarding an adoption shall be in the name to be taken by the proposed adoptee. Where there was a prior relinquishment or termination proceeding known to the adopting parents, there shall be a reference thereto by number and year in the petition for adoption.

2. The petition shall contain the information required by Supreme Court Rule 15.3(b).

B. Adult--Change of Name. An adult to be adopted who desires to assume the surname of adopting parent or parents shall advertise such desire in accordance with Pa.R.C.P. 430(b)(1).

C. Intermediary. When a report is filed by an intermediary and the prior relinquishment or termination proceeding is not known to the adopting parents, the report of the intermediary shall refer to the prior relinquishment or termination proceeding by number and year. Where the prior relinquishment or termination proceeding is not referred to in the Adoption Petition or in the report of the intermediary, but is known to the clerk, the Clerk shall place a memorandum in the adoption packet showing the reference to the prior relinquishment or termination proceeding.

Rule 15.6. Notice--Method and Time

A. If personal service is not obtainable and the registered or certified mail is returned undelivered, then:

1. Notice shall be sent by regular mail to the last known address of the parent and an affidavit of mailing shall be filed of record.

2. Further notice by publication shall be given in accordance with Supreme Court Rule 5.1(c).

3. The notice by publication shall appear in substantially the following form:

**IN THE COURT OF COMMON PLEAS, ADAMS COUNTY,
PENNSYLVANIA
COMMONWEALTH OF PENNSYLVANIA ORPHANS' COURT
DIVISION**

NOTICE

TO: (Party to Whom Notice is Given)

You are hereby notified that a Petition for (Adoption/Involuntary Termination of Parental Rights to Child) has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for _____ at ____ o'clock, __ .M., prevailing time, at the Courthouse at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the (Adoption/Involuntary Termination of Your Parental Rights) with respect to your child.

You should contact your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get help.

**Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, Pennsylvania 17325
Telephone Number: 717-337-9846, or 1-888-337-9846**

(d) Proof of notice by publication shall be presented to the Court at the time of the hearing.

Rule 15.7. Impounding--Docket Entries--Reports--Privacy

The docket maintained by the Clerk shall carry only the name and date of each paper filed and shall also carry the date in reference to final action, which entry shall consist of a notation either that the decree was entered or that the petition was dismissed. Adoptions shall be indexed on an annual basis rather than to a term and number. An alphabetical index will be maintained for the convenience of the Clerk.

Rule 16. Abortion Control Act Proceedings

Rule 16.1 through 16.5 Reserved

Rule 16.6 Dockets. Docket Maintenance

In addition to the requirements of Supreme Court Rule 16.6, all docket entries shall be referenced under an "AC" number, with the appropriate year, and not under an "OC" number.

Rule 16.7 through 16.12 Reserved

MISCELLANEOUS LOCAL RULES

Rule 18. Notices Required by the Clerk

The Clerk of the Orphans' Court shall give the Register of Wills written notice of the appointment of masters and auditors, the filing of their reports, the filing of the

surviving spouses' elections to take against or under the will of any decedent and of any other Orders of the Court awarding the family exemption, awarding the allowance to the surviving spouse of an intestate or settling a small estate.

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[current as of 12/9/08]