

OHIO RULES OF SUPERINTENDENCE
and
LOCAL RULES

for

Court of Common Pleas
Probate Division
Clark County, Ohio

Effective: April 2, 2004

* * * * *

Including:

Local Rules 1 thru 11 and 53.1 thru 78.1

Note: Any local rule which pertains to
a Superintendence Rule is listed below the
Superintendence Rule which it is intended to
supplement and has a corresponding number.

Local Rule 1

No attorney, officer or employee of the court or of the county shall be accepted as principal or agent for the bond or as surety in any cause in this court, nor shall any of them be permitted to become surety on the bond of any executor, administrator, guardian, assignee or trustee. This rule applies to any close member of the family of an attorney, employee or officer.

Local Rule 2

Pursuant to prior Section 2117.16 of the Ohio Revised Code, a Schedule of Claims must be filed in all estates, in which the decedent died prior to January 1, 1971. Said schedule is optional in estates in which the decedent died between January 1, 1971, and October 14, 1983. A Schedule of Claims is not necessary after the latter date unless an insolvency proceeding has been filed.

Local Rule 3

When an attorney resigns or otherwise ceases to be the attorney for the fiduciary in any matter still pending before this court, it shall be the duty of the attorney to notify the court of such action in writing within fourteen (14) days after the attorney ceases to be the attorney for the fiduciary. At the time of the filing of said notice, the attorney shall file an application for compensation for unpaid fees to the date he ceased to be the attorney for the fiduciary, including the time expended in the preparation of the application and any hearing pursuant thereto.

In the event that said attorney has received fees in excess of those allowable at the time of the filing of such application, such excess shall be restored to the estate at the time of the filing of the application. Notice of the filing of such application shall be given by the attorney to the fiduciary at the time and in the manner provided in the Rules of Civil Procedure.

If at the expiration of fourteen (14) days of the date the attorney ceases to be the attorney for the fiduciary the notice and application have not been filed, the newly employed attorney shall prepare and file the same for the fiduciary and shall give notice of such filing to the former attorney in the manner provided by the Rules of Civil Procedure.

Local Rule 4

No warrant will be issued as a result of filing affidavits

pursuant to Section 5122.11 et seq. of the Ohio Revised Code unless the affidavit is accompanied by a medical certificate by a psychiatrist, or licensed clinical psychologist and a licensed physician stating that said person has examined the subject and is of the opinion that said subject is a mentally ill person subject to hospitalization by court order.

Local Rule 5

Upon the filing of a praecipe for subpoena of witnesses there shall be deposited for each witness to be subpoenaed, the sum of Seventeen Dollars (\$17.00), which represents \$5.00 Sheriff fees; and \$12.00 covering the per diem of such witness for one day. If the witness is required to appear for more than one day, an additional like sum shall be made for each day.

Local Rule 6

No automobile(s), watercraft and outboard motor except those taken by affidavits by the surviving spouse may be transferred before the filing of an inventory. (1 automobile DOD 1/1/76) (2 automobiles DOD 3/11/96 - \$40,000 limit) (1 watercraft and 1 outboard motor - DOD 10/20/94).

Local Rule 7 - All motions shall be accompanied by a supporting memorandum.

Local Rule 7.1

Service of all papers shall be made according to the manner set forth in the Rules of Civil Procedure.

Any petition, motion, order and other papers requiring service in any proceeding shall be accompanied by a praecipe containing the names of all parties upon whom service is required, and a copy for each person to be served.

As of August 22, 1980, the Probate Court requires the attorney of an estate to issue all notices for hearings concerning (a) the probate of a will (b) the appointment of fiduciaries (c) the application to relieve an estate from administration, if required.

Forms are available at the court. The attorney shall sign as an officer of the court and should call the court for an assignment date. Service, proof of service, and waiver of notice shall be governed by the Civil Rule 73 (E), (F), (G) and (H). The notice shall indicate the attorney's name, address, and telephone number after his signature.

Local Rule 8

(A) An inventory (and appraisal) in a decedent's estate shall be filed within ninety days from the date of appointment of the fiduciary.

(B) Notice of the filing of an inventory shall be given in accordance with R.C. 2115.16 and shall be published one time, as a group, in a newspaper of general circulation in the county, or advertised separately as the Court elects in each case. The notice required herein shall be deemed notice to each person or class of persons entitled thereto, without specifically naming such person or class of persons.

Local Rule 9

An agency (excluding any public agency), attorney, or party, whichever arranges a minor's adoption, shall file with the court an accounting at the time of filing the adoption petition. If further costs or fees are incurred prior to the time of the finalization of the adoption, the court requires a further accounting to be filed at least 10 days prior to the date of the final hearing. This rule also applies to stepparent adoptions.

Local Rule 10

O.R.C. Sec. 3107.12 requires a pre-finalization assessment (ODHS form 1699) to be filed at least 20 days prior to an adoption hearing. This form is not required in a step parent adoption.

Local Rule 11 - Electronic Transmission Filings

In conformity with Civil Rule 5(E) pleadings and other papers may be filed with the Clerk by facsimile transmission; subject to the following provisions:

(A) A document filed by facsimile transmission shall be accepted as the original consistent with Civil Rule 5(E), if the person sending the document by facsimile transmission files with the Clerk of Courts the original document, together with any fees and costs, by the close of business on the fifth day after the date of transmission. Failure to so file the original and pay the fees and costs shall result in such document being stricken without motion; the document shall thereupon be deemed not filed.

(B) The person filing the document by facsimile shall provide therewith identification information on a cover page, including the caption of the document. The cover page shall indicate the number of pages included in the

transmission.

(C) Subject to paragraph (A) above, all documents filed by facsimile shall be considered filed when the date and time have been stamped thereon by the Clerk of Courts. For the purpose of this section, the date and the time stamp produced by the Clerk's facsimile machine shall constitute the date and time stamp of the Clerk of Courts. All risks of transmission shall be borne by the sender.

(D) Fees for this service are as follows: \$2.00 per transmission plus \$0.25 per page for the first ten (10) pages; additional pages cost \$.50 per page. Each transmission shall be limited to one (1) case. These fees shall not be taxed as costs.

(E) Filing by electronic means should be limited to filings of an emergency or time critical nature. In the event the court determines that papers filed by electronic means are not of such nature, it may, on the motion of the responding party or on its own motion, order such papers stricken.

RULE 51 Standard Probate Forms (Text Available)

RULE 52 Specifications for Printing Probate Forms (Text Available)

RULE 53 Hours of the Court

Each court shall establish hours for the transaction of business.

Local Rule 53.1

The court shall be open from 8:00 A.M. to 4:30 P.M. weekdays except on authorized holidays, unless otherwise changed by posted notice.

RULE 54 Conduct in the Court.

(A) Proper decorum in the court is necessary to the administration of the court's function. Any conduct that interferes or tends to interfere, with the proper administration of the court's business is prohibited.

(B) No radio or television transmission, voice recording device, other than a device used by a court reporter making a record in a proceeding, or the making or taking of pictures shall be permitted without the express consent of the court in advance and pursuant to Sup. R. 12.

Local Rule 54.1

Proper Attire - Proper attire shall be worn in the court by all attorneys and officers of the court and by all other individuals who wish to enter the courtroom.

RULE 55 Examination of Probate Records.

(A) Records shall not be removed from the court, except when approved by the judge. Violation of this rule may result in the issuance of a citation for contempt.

(B) Copies of records may be obtained at a cost per page as authorized by the judge.

(C) Adoption, mental illness, and mental retardation proceedings are confidential. Records of those proceedings, and other records that are confidential by statute, may be accessed as authorized by the judge.

(D) A citation for contempt of court may be issued against anyone who divulges or receives information from confidential records without authorization of the judge.

Local Rule 55.1

No person shall be permitted to take from the court an original will, codicil or bond on file therein. All other papers may be taken from the files only upon good cause shown and with the approval of the court for a period not exceeding five days, upon giving the proper receipt therefor.

RULE 56 Continuances.

(A) Motions for continuance shall be submitted in writing with the proper caption and case number.

(B) Except on motion of the court, no continuance shall be granted in the absence of proof of reasonable notice to, or consent by, the adverse party or the party's counsel. Failure to object to the continuance within a reasonable time after receiving notice shall be considered consent to the continuance.

(C) A proposed entry shall be filed with a motion for continuance, leaving the time and date blank for the court to set a new date.

Local Rule 56.1

The motion for a continuance shall be accompanied by a memorandum in support thereof. This memorandum shall also specifically state the length of the continuance requested.

RULE 57 Filings and Judgment Entries.

(A) All filings, except wills, shall be on eight and one-half by eleven inch paper, without backings, of stock that can be microfilmed.

(B) All filings shall contain the name, address, telephone number, and attorney registration number of the individual counsel representing the fiduciary and, in the absence of counsel, the name, address, and telephone number of the fiduciary. Any filing not containing the above requirements may be refused.

(C) Failure of the fiduciary to notify the court of the fiduciary's current address shall be grounds for removal. Not less than ten days written notice of the hearing to remove shall be given to the fiduciary by regular mail at the last address contained in the case file or by other method of service as the court may direct.

(D) Filings containing partially or wholly illegible signatures of counsel, parties or officers administering oaths may be refused, or, if filed, may be stricken, unless the typewritten or printed name of the person whose signature is purported to appear is clearly indicated on the filing.

(E) All pleadings, motions, or other filings are to be typed or printed in ink and correctly captioned.

(F) Unless the court otherwise directs, counsel for the party in whose favor a judgment is rendered, shall prepare the proposed judgment entry and submit the original to the court with a copy to counsel for the opposing party. The proposed judgment entry shall be submitted within seven days after the judgment is rendered. Counsel for the opposing party shall have seven days to object to the court. If the party in whose favor a judgment is rendered fails to comply with this division, the matter may be dismissed or the court may prepare and file the appropriate entry.

Local Rule 57.1

All proceedings filed in this court must be typewritten and legible.

Each journal entry presented to this court for filing for and on behalf of any fiduciary, acting by virtue of an appointment by this court, shall have endorsed thereon the approval of the attorney-at-law designated by such fiduciary to represent him in matters relating to the trust, in the following form:

APPROVED:

Attorney for Fiduciary

RULE 58 Deposit for Court Costs.

(A) Deposits in the amount set forth in a local rule shall be required upon the filing of any action or proceeding and additional deposits may be required.

(B) The deposit may be applied as filings occur.

Local Rule 58.1

The following cost deposits shall be made upon the filing of the first paper in the case:

(A) Administration of Estate:	
Full Administration/With Will	\$150.00
Full Administration/Without Will	150.00
(B) Release of Estate/under \$25,000	68.00
Release of Estate/over \$25,000	108.00
Supplemental or Amended Release of Estate	50.00
(C) Filing of Estate Tax Only	25.00
(D) Probate of Will Only	48.00
(Add \$10.00 if filing an Estate Tax Return)	
(E) Guardianships:	
Minor Gdnsp/Person Only	89.00
Minor Gdnsp/Estate Only	111.00
Incompetent Gdnsp/Person Only	184.00
Incompetent Gdnsp/Person & Estate	200.00
Emergency Gdnsp	105.00
(F) Minor Settlement	53.00
(G) Adoption	
Minor - One name per petition	201.00
Minor - 2nd child, same family	141.00

Adult	141.00
(H) Placement (for Adoption)	60.00
(I) Conservatorship	150.00
(J) Trusteeship	95.00
(K) Change of Name	89.00
(L) Civil Matters	
All types (except real estate sales)-deposit	120.00
Sale of Real Estate	175.00

LOCAL RULE 58.2

A party who has demanded a trial by jury on any civil action, shall file with the clerk of the Probate Court the sum of \$500.00 no later than 72 hours prior to the scheduled commencement of the jury trial. Failure to file will be deemed a waiver of said jury demand.

Effective February 20, 2006

RULE 59 Wills.

(A) Before an application is made to admit the will to probate, to appoint an estate fiduciary, or to relieve an estate from administration, each applicant or the applicant's attorney shall examine the index of wills deposited pursuant to section 2107.07 of the Revised Code. Wills deposited pursuant to section 2107.07 of the Revised Code previous to the will offered for probate shall be filed in the estate proceedings for record purposes only.

(B) Fiduciaries appointed to administer testate estates shall file a Certificate of Service of Notice of Probate of Will (Standard Probate Form 2.4) within two months of their appointment or be subject to removal proceedings. If required by the court, proof of service shall consist of either waivers of notice of the probate of the will or original certified mail return receipt cards as provided under Civil Rule 73(E)(3), or if necessary, under Civil Rule 73(E)(4) and (5). A waiver of notice may not be signed by any minor, or on behalf of a minor sixteen or seventeen years of age. See Civil Rule 4.2.

Local Rule 59.1

Failure of the fiduciary to timely file this Certificate of Service may also lead to contempt proceedings by the Court.

RULE 60 Application for Letters of Authority to Administer Estate and Notice of Appointment.

(A) Notice of an application for appointment of administrator shall be served at least seven days prior to the date set for hearing. If there is no known surviving spouse or next of kin resident of the state, the notice shall be served upon persons designated by the court.

(B) The administrator shall give notice of the appointment within seven days after the appointment to all persons entitled to inherit, including persons entitled to an allowance for support, unless those persons have been provided notice of the hearing on the appointment or have waived notice.

Local Rule 60.1 - Spousal Citation/ Fiduciary Identification

Unless a waiver is filed, the probate court shall serve by certified mail the spousal citation and summary of rights required by R.C.2106.02 to the surviving spouse within 7 days of the initial appointment of the administrator or executor, unless a different time is established by local court rule.

Local Rule 60.2

The court will require the social security number and date of birth of all fiduciaries, except for the guardian of the person only.

Note: Letters of Appointment will not be issued until the Court has this information. In the case of a release of estate, the Entry Relieving will not be signed until the Court has this information. This information is kept in a separate notebook for the Judge's use and is not included in the public record file. This information should be submitted to the Court on a cover sheet or a post-it note with every new filing.

RULE 61 Appraisers.

(A) Without special application to the court, a fiduciary may allow to the appraiser as compensation for services a reasonable amount agreed upon between the fiduciary and the appraiser, provided the compensation does not exceed the amount allowed by local court rule. If no local court rule exists, the compensation shall be subject to court approval.

(B) If, by reason of the special and unusual character of the property to be appraised, the fiduciary is of the opinion that the appraisal requires the services of persons

qualified in the evaluation of that property, a qualified appraiser may be appointed and allowed compensation as provided in division (A) of this rule.

Local Rule 61.1

A Clark County appraiser is required to appraise all Clark County real estate. An out of county appraiser will not be appointed without prior Court approval unless he or she is appraising out of county real estate.

Without application to the Court, an executor or administrator may allow to each appraiser as compensation for his services a maximum amount to be computed on the value of the property appraised in the estate in accordance with the following schedule:

Value of Assets	Fee
\$25,000 or less	\$75.00
\$25 - \$50,000	\$100.00
\$50 - \$75,000	\$125.00
\$75 - \$150,000	\$150.00

One Dollar (\$1.00) per \$1,000 for all over \$150,000

Additional compensation may be allowed only upon application for extraordinary services.

The schedule also applies to estates released from administration, guardianships, conservatorships and trusts, in which appraisals are required by the Ohio Revised Code.

RULE 62 Claims Against Estate.

(A) When a claim has been filed with the court pursuant to Section 2117.06 of the Revised Code, the fiduciary shall file a copy of any rejection of the claim with the court.

(B) If the court requires a hearing on claims or the fiduciary requests a hearing on claims or insolvency, the fiduciary shall file a schedule of all claims against the estate with the court. The schedule of claims shall be filed with the fiduciary's application for hearing or within ten days after the court notifies the fiduciary of a court-initiated hearing.

RULE 63 Application to Sell Personalty

An application to sell personal property shall include an adequate description of the property. Except for good cause

shown, an order of sale shall not be granted prior to the filing of the inventory.

RULE 64 Accounts.

(A) Verification by vouchers is required in estates, guardianships, conservatorships and trusts and shall be referenced to the account by number, letter or date.

(B) If land has been sold during the accounting period, the account shall show the gross amount of the proceeds and include a copy of the closing statement itemizing all of the disbursements.

(C) Receipts for distributive shares signed by persons holding power of attorney may be accepted, provided the power of attorney is recorded in the county in which the estate is being administered and a copy of the recorded power is attached to the account.

(D) Exhibiting assets.

(1) The court may require that all assets be exhibited at the time of filing a partial account.

(2) Cash balances may be verified by exhibiting a financial institution statement, passbook, or a current letter from the financial institution in which the funds are deposited certifying the amount of funds on deposit to the credit of the fiduciary. Assets held in a safe deposit box of a fiduciary or by a surety company on fiduciary's bond may be exhibited by filing a current inventory of the assets. The inventory shall be certified by the manager of the safe deposit box department of the financial institution leasing the safe deposit box or by a qualified officer of the surety company if the assets are held by a surety. If the assets are held by a bank, trust company, brokerage firm, or other financial institution, exhibition may be made by proper certification as to the assets so held. For good cause shown, the court may designate a deputy clerk of the court to make an examination of the assets located in the county, not physically exhibited to the court, or may appoint a commissioner for that purpose if the assets are located outside the county. The commissioner appointed shall make a written report of his findings to the court.

(E) A final or distributive account shall not be approved until all court costs have been paid.

Local Rule 64.1 TIME ACCOUNTS ARE DUE

(A) (1) Fiduciaries in guardianships, conservatorships and trusts must file their first account one year after the date of appointment and every other year thereafter and consistent with ORC Sec. 2109.302 - .303.

(2) Estate fiduciaries must file, within 6 months of their date of appointment, a final and distributive account, unless a Certificate of Termination is filed prior to said date consistent with O.R.C. 2109.301, or unless one or more of the following circumstances apply:

(a) an Ohio estate tax return must be filed for the estate.

(b) A proceeding contesting the validity of the decedent's will pursuant to section 2107.71 of the Revised Code has been commenced

(c) The surviving spouse has filed an election to take against the will.

(d) The administrator or executor is a party in a civil action.

(e) The estate is insolvent.

(f) For other reasons set forth by the administrator or executor, subject to court approval, demonstrating that it would be detrimental to the estate and its beneficiaries or heirs to file a final and distributive account.

(B) If an estate account is not filed within said 6 month period, the fiduciary or the attorney shall file with the Court an application signed by the fiduciary, requesting the Court to extend the filing deadline as follows:

(1) Not later than thirteen months from the date of appointment under one or more of the following circumstances, as presented on Form 13.10:

(a) An Ohio estate tax return must be filed for the estate.

(b) A proceeding contesting the validity of the decedent's will pursuant to R.C. 2107.71 has been commenced.

(c) The surviving spouse has filed an election to take against the will.

(d) The administrator or executor is a party in a civil action, Case No. _____, in _____ Court.

(e) The estate is insolvent.

(2) To a time requested by the fiduciary for any other reason, on Form 13.8, and with the approval of the Court.

(C) After the initial account is rendered, subsequent estate accounts shall be filed at least once each year reverting to the original due date per Rule 64.1 (A) (2) [6 months] or per Rule 64.1 (A) (2) (a) - [13 months] or upon the direction of the Court.

(1) Also, see Rule 78(C) per the filing of status reports.

Rule 64.2 - Form and Procedure re: Accounts

(A) Every account filed shall be accompanied by vouchers or proofs of all disbursements or distributions made by the fiduciary, referenced by letter, number or date.

.302 and .303 of the Revised Code shall be set for hearing before the probate court. Within one month after an account is filed, the court shall cause notice of the filing of the account and the time and place of the hearing thereon to be published once in some newspaper of general circulation in the county. In addition to or as an alternative to the publication of the account, the fiduciary may give notification by regular or certified mail to those persons entitled to notice. The hearing on the account shall be set not earlier than thirty days after the publication of the notice. The costs of the notice, if more than one account is specified in the same notice, shall be paid in equal proportions by the fiduciaries.

(C) If no assets have been collected and no disbursements made in an estate, guardianship or trusteeship, between accounting periods, the court, for good cause shown, will accept a Statement in Lieu of an Account. The fiduciary must, nevertheless, file a status report with the court each year.

Bank books, certificates of deposit or other assets may be exhibited to the court in lieu of an account when no funds have been expended for the benefit of a ward except for attorney fees, guardian's or trustee's compensation, and bond payments, in addition to said status reports.

(D) Whenever the closing of an estate depends on the happening of an event and the estate has been administered so far as possible pending such event, the court may excuse the fiduciary from further accounting pending the happening of such event, if the fiduciary does not have funds in his hands belonging to said estate. If he is required to hold funds pending such an event, the matter will be considered as a trust, and accounts will be required every two years. The fiduciary must, nevertheless, file a status report with the court each year.

(E) Accounts prepared by a computer shall be in proper accounting form and shall be attached to Fiduciary Account form 13.0 and shall contain a recapitulation.

(F) The accounting of a fiduciary shall include payment of federal, state estate tax or a notation of no tax assessed.

No administrator or executor will be discharged on the filing of a final or distributive account until an application has been filed to determine the estate taxes, if any, chargeable against the estate administered.

A final account may be filed 30 days from the date the estate tax is filed, even though the final determination has not been received from the Tax Department.

(G) A \$10 administrative fee shall be assessed as costs on all accounts returned to the fiduciary for corrections.

(H) When filing a current account in a guardianship or trust, the fiduciary must exhibit the original bankbook, stock certificate, bond or certificate of deposit. An original bank statement with photo copies of the checks reduced in size, or a fax copy faxed directly from the financial institution to the Court and dated the same day the account is submitted is also acceptable. Photocopies will not be accepted. When securities are on deposit in lieu of bond, a verification signed by a bank official is acceptable. A bank or trust company serving as a fiduciary is not required to exhibit securities.

RULE 65 Land Sales--R.C. Chapter 2127

(A) In all land sale proceedings, the plaintiff, prior to the issuance of an order finding the sale necessary, shall file with the court evidence of title showing the record condition of the title to the premises described in the complaint, and prepared by a title company licensed by the state of Ohio, an attorney's certificate, or other evidence of title satisfactory to the Court. Evidence of title shall be to a date subsequent to the date on which the complaint was filed.

(B) The plaintiff shall give notice of the time and place of sale by regular mail at least three weeks prior to the date of a public sale to all defendants at their last known addresses. Prior to the public sale, the plaintiff shall file a certificate stating that the required notice was given to the defendants and the sale was advertised pursuant to section 2127.32 of the Revised Code.

(C) In all private land sale proceedings by civil action, the judgment entry confirming sale, ordering issuance of deed, and ordering distribution shall show the gross amount

of the proceeds and include a copy of the proposed closing statement itemizing all of the proposed disbursements.

(D) The court may appoint a disinterested person, answerable to the court, who shall investigate the circumstances surrounding the proposed transaction, view the property, ascertain whether the proposed sale is justified and report findings in writing. The report shall be a part of the record. The compensation for the person performing these services shall be fixed by the court, according to the circumstances of each case, and shall be taxed as costs.

RULE 66 Guardianships.

(A) All applications for the appointment of a guardian on the grounds of mental incompetency shall be accompanied by either a statement of a physician or clinical psychologist or a statement that the prospective ward has refused to submit to an examination.

(B) An Application for Authority to Expend Funds (Standard Probate Form 15.7) shall not be approved until an Inventory (Standard Probate Form 15.5) has been filed.

(C) An application for allowance of care and support of a minor shall allege, if such is the fact, that the father and mother are financially unable to provide the items for which the amount is sought.

Local Rule 66.1

No payment for the support, maintenance or education of a ward will be approved unless the guardian files a written application separate from an account to have the amount allowed for the support of the ward determined before the account is filed.

Local Rule 66.2

(A) Bond will be required in all guardianships where there is personal property, unless a verification of deposit with restriction on withdrawals is accepted by the Court.

(B) A guardian's report shall be filed every six (6) months in all minor guardianships unless otherwise ordered by the Court.

RULE 67 Estates of Minors of Not More than Ten Thousand Dollars.

(A) Each application relating to a minor shall be submitted by the parent or parents or by the person having custody of

the minor and shall be captioned in the name of the minor.

(B) Each application shall indicate the amount of money or property to which the minor is entitled and to whom such money or property shall be paid or delivered. Unless the court otherwise orders, if no guardian has been appointed for either the receipt of an estate of a minor or the receipt of a settlement for injury to a minor, the attorney representing the interests of the minor shall prepare an entry that orders all of the following:

(1) The deposit of the funds in a financial institution in the name of the minor;

(2) Impounding the principal and interest;

(3) Releasing the funds only upon an order of the court or to the minor at the age of majority.

(C) The entry shall be presented at the time the entry dispensing with appointment of a guardian or approving settlement is approved. The attorney shall be responsible for depositing the funds and for providing the financial institution with a copy of the entry. The attorney shall obtain a Verification of Receipt and Deposit (Standard Probate Form 22.3) from the financial institution and file the form with the court within seven days from the issuance of the entry.

RULE 68 Settlement of Injury Claims of Minors.

(A) An application for settlement of a minor's claim shall be brought by the guardian of the estate. If there is no guardian appointed and the court dispenses with the need for a guardian, the application shall be brought by the parents of the child or the parent or other individual having custody of the child. The non-custodial parent or parents shall be entitled to seven days' notice of the application to settle the minor's claim which notice may be waived. The application shall be captioned in the name of the minor.

(B) The application shall be accompanied by a current statement of an examining physician in respect to the injuries sustained, the extent of recovery, and the permanency of any injuries. The application shall state what additional consideration, if any, is being paid to persons other than the minor as a result of the incident causing the injury to the minor. The application shall state what arrangement, if any, has been made with respect to counsel fees. Counsel fees shall be subject to approval by the court.

(C) The injured minor and the applicant shall be present at the hearing.

RULE 69 Settlement of Claims of or Against Adult Wards.

(A) An application for settlement of a claim in favor of or against an adult ward shall be brought by the guardian of the estate. Notice of the hearing on the application shall be given to all persons who are interested parties to the proposed settlement, as determined by the court. The court may authorize or direct the guardian of the ward's estate to compromise and settle claims as the court considers to be in the best interest of the ward. The court may dispense with notice of hearing.

(B) The application for settlement of an injury claim shall be accompanied by a current statement of an examining physician describing the injuries sustained, the extent of recovery from those injuries, and permanency of any injuries. The application shall state what additional consideration, if any, is being paid to persons other than the ward as a result of the incident causing the injury to the ward. The application shall state what arrangement, if any, has been made with respect to counsel fees. Counsel fees shall be subject to approval by the court.

RULE 70 Settlement of Wrongful Death and Survival Claims.

(A) An application to approve settlement and Distribution of Wrongful Death and Survival Claims (Standard Probate Form 14.0) shall contain a statement of facts, including the amount to be allocated to the settlement of the claim and the amount, if any, to be allocated to the settlement of the survival claim. The application shall include the proposed distribution of the net proceeds allocated to the wrongful death claim.

(B) The fiduciary shall give written notice of the hearing and a copy of the application to all interested persons who have not waived notice of the hearing. Notwithstanding the waivers and consents of the interested persons, the court shall retain jurisdiction over the settlement, allocation, and distribution of the claims.

(C) The application shall state what arrangements, if any, have been made with respect to counsel fees. Counsel fees shall be subject to approval by the court.

RULE 71 Counsel Fees.

(A) Attorney fees in all matters shall be governed by DR-2-

106 of the Code of Professional Responsibility.

(B) Attorney fees for the administration of estates shall not be paid until the final account is prepared for filing unless otherwise approved by the court upon application and for good cause shown.

(C) Attorney fees may be allowed if there is a written application which sets forth the amount requested and will be awarded only after proper hearing, unless otherwise modified by local rule.

(D) The court may set a hearing on any application for allowance of attorney fees regardless of the fact that the required consents of the beneficiaries have been given.

(E) Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing the accounts required by section 2109.30 of the Revised Code.

(F) If a hearing is scheduled on an application for the allowance of attorney fees, notice shall be given to all parties affected by the payment of fees, unless otherwise ordered by the court.

(G) An application shall be filed for the allowance of counsel fees for services rendered to a guardian, trustee, or other fiduciary. The application may be filed by the fiduciary or attorney. The application shall set forth a statement of the services rendered and the amount claimed in conformity with division (A) of this rule.

(H) There shall be no minimum or maximum fees that automatically will be approved by the court.

(I) Prior to a fiduciary entering into a contingent fee contract with an attorney for services, an application for authority to enter into the fee contract shall be filed with the court, unless otherwise ordered by local court rule. The contingent fee on the amount obtained shall be subject to approval by the court.

Local Rule 71.1 - Attorney Fee Guidelines

(A) Compensation for an attorney rendering services to a guardianship (conservatorship), trust or estate shall be considered prima facie reasonable, if computed in accordance with the following schedule:

(1) Guardianships and Trusts

Compensation of up to \$500.00 to an attorney for a guardian of the estate or testamentary trustee for services performed in establishing said guardianship or trust and in filing the initial inventory will normally be approved without application. Compensation of up to \$250.00 to an attorney for establishing a guardianship of the person only will normally be approved without application.

Thereafter:

(a) 5% of gross income plus an additional 5% of gross income attributable to real estate rentals where the attorney is managing such real estate, plus

(b) \$2.00 per \$1,000 on the first \$200,000 of the fair principal value and \$1.00 per \$1,000 on the fair principal value in excess of \$200,000, plus

(c) 2% of the amount paid to satisfy debts and expenses, excluding fees paid to an attorney, guardian or trustee during said accounting period, plus,

(d) 1% of the amount distributed to or for the benefit of the ward or beneficiary on a periodic or discretionary basis or on final distribution terminating the trust.

(e) If the trustee is a corporate organization, such as a bank, the attorney compensation shall be based on an hourly rate for services performed.

(f) Fair principal value for purposes herein shall be (i) the fair market value of assets whose value is readily ascertainable by market quotations or listing or equivalent services; or (ii) as determined by the fiduciary on an annual basis for those assets sufficiently unique so as to have no readily ascertainable fair market value. It is recommended that the fiduciary obtain an independent appraisal of the latter assets at least every five years. Calculations of total fair principal value shall be made on the fiscal year utilized by the trust or guardianship.

(g) If an attorney serves as counsel to a conservator and does not have a written agreement reflecting compensation, said person may file an application with the court for payment in accordance with the above schedule.

(2) Estates

Compensation for an attorney employed in any proceeding before the court for the transfer of a decedent's interest in property (a full administration or a release of administration), or for the payment of Ohio estate tax with respect to any such interest (a "tax-only" proceeding):

- (a) 4% of the first \$100,000 of assets;
- (b) 3% of the next \$100,000 of such assets;
- (c) 2% of the value of such assets in excess of \$200,000.
- (d) In any estate proceeding in which the total assets are \$25,000 or less, compensation for the attorney shall be considered prima facie reasonable if it does not exceed \$1,000.
- (e) In proceedings, particularly those in which a substantial portion of the assets are titled in joint and survivorship form between spouses, POD accounts, etc., the above guidelines may indicate a fee that is excessive. In such cases, the attorney is expected to disregard the guidelines, and to charge a fee that is reasonable, given the time expended in performing the services.

(3) Land Sale Proceedings

Compensation for an attorney in a land sale proceeding, either in a decedent's estate, guardianship or trust.

- (a) 5% on first \$100,000;
- (b) 4% on next \$100,000;
- (c) 2% on value of such assets in excess of \$200,000.
- (d) No further fee shall be allowed on such real property.
- (e) This shall also apply to a proceeding to sell real estate to the surviving spouse at the appraised value.

(4) General Rules as to Attorney Fees

- (a) The above rate computations are merely guides for determining attorney fees in probate matters in accordance with the laws of Ohio and shall not be considered either a minimum or maximum fee schedule.

(b) No application to the court shall be necessary for determination and allowance of compensation computed if not more than the above guidelines, but computation for such shall be furnished with the account, the tax return, the Application to Relieve Estate or the Certificate of Termination. Additional or special compensation for extraordinary services may be allowed on application.

(c) In cases in which the attorney is acting as fiduciary, compensation as such attorney, in addition to compensation as fiduciary, may be allowed on application.

(d) The Court reserves the right to exercise discretion in all hardship cases and to conform to all statutory laws and rules of governmental agencies in approving and allowing compensation.

(e) In any estate where an application is filed by an attorney to fix the amount of extraordinary compensation for services rendered to an executor or administrator, notice shall be given to such executor or administrator in the manner provided by Rule 73 of the Ohio Rules of Civil Procedure. Such notice may be waived in writing by an executor or administrator.

(f) This rule shall apply to all existing trusts and guardianships and to estates of decedents dying after October 1, 1997.

RULE 72 Executor's and Administrator's Commissions.

(A) Additional compensation for extraordinary services may be allowed upon an application setting forth an itemized statement of the services rendered and the amount of compensation requested. The court may require the application to be set for hearing with notice given to interested persons in accordance with Civil Rule 73(E).

(B) The court may deny or reduce commissions if there is a delinquency in the filing of an inventory or an account, or if, after hearing, the court finds that the executor or administrator has not faithfully discharged the duties of the office.

(C) The commissions of co-executors or co-administrators in the aggregate shall not exceed the commissions that would have been allowed to one executor or administrator acting alone, except where the instrument under which the co-executors serve provides otherwise.

(D) Where counsel fees have been awarded for services to the estate that normally would have been performed by the executor or administrator, the executor's or administrator's commission, except for good cause shown, shall be reduced by the amount awarded to counsel for those services.

RULE 73 Guardian's Compensation.

(A) Guardian's compensation shall be set by local rule.

(B) Additional compensation for extraordinary services, reimbursement for expenses incurred and compensation of a guardian of a person only may be allowed upon an application setting forth an itemized statement of the services rendered and expenses incurred and the amount for which compensation is applied. The court may require the application to be set for hearing with notice given to interested persons in accordance with Civil Rule 73(E).

(C) The compensation of co-guardians in the aggregate shall not exceed the compensation that would have been allowed to one guardian acting alone.

(D) The court may deny or reduce compensation if there is a delinquency in the filing of an inventory or account, or after hearing, the court finds the guardian has not faithfully discharged the duties of the office

Local Rule 73.1 - Guardian's Compensation

(A) Compensation for a guardian of the person only shall be fixed by the Court upon application.

(B) If the guardian of an estate is a corporation, authorized to do business in the State of Ohio in accordance with Ohio Revised Code Chapter 1109, the Court shall permit compensation as set forth in said corporation's public fee schedule for trusts, previously filed with the Court.

(C) If the guardian is other than one described in (A) and (B) above, the Court will allow compensation in accordance with the following schedule:

(1) 5% of the gross income, plus an additional 5% gross income, attributable to real estate rentals, if the fiduciary is managing said real estate; plus

(2) \$3.00 per \$1,000 on the first \$200,000 of the fair principal value and \$2.00 per \$1,000 on the next \$300,000 and \$1.00 per thousand on the excess of \$500,000; plus

(3) 2% of the amount distributed in the payment of debts or expenses, excluding fees paid to an attorney, guardian, trustee or investment broker; plus

(4) 1% of the amount distributed to the ward on a periodic or discretionary basis or on final distribution, terminating the guardianship.

(D) If an individual is appointed by the Court as a conservator and does not have a written agreement reflecting compensation, said person may file an application with the Court for payment in accordance with the above schedule.

(E) If income to the guardianship is attributable to benefits paid to the ward by the Veteran's Administration, compensation shall be allowed in accordance with Ohio Revised Code 5905 as to said income. The above schedule may be used in conjunction therewith, concerning the income from other sources.

(F) The Court reserves the right to determine whether or not the fee is reasonable.

(G) Fair Principal Value, as used in this Local Rule, shall be defined as in Local Rule 71.1.

RULE 74 Trustee's Compensation.

(A) Trustee's compensation shall be set by local rule.

(B) Additional compensation for extraordinary services may be allowed upon application setting forth an itemized statement of the services rendered and the amount of compensation requested. The court may require that the application be set for hearing with notice given to interested parties in accordance with Civil Rule 73(E).

(C) The compensation of co-trustees in the aggregate shall not exceed the compensation that would have been allowed to one trustee acting alone, except where the instrument under which the co-trustees are acting provides otherwise.

(D) Except for good cause shown, neither compensation for a trustee nor fees to counsel representing the trustee shall be allowed while the trustee is delinquent in the filing of an account.

(E) The court may deny or reduce compensation if there is a delinquency in the filing of an inventory or account, or after hearing, the court finds that trustee has not

faithfully discharged other duties of the office.

Local Rule 74.1 - Trustee's Compensation

(A) If the instrument creating the trust makes provision for compensation of the trustee, the Court shall follow the terms set forth therein.

(B) If the trustee is a corporation, authorized to do business in the state of Ohio in accordance with Ohio Revised Code Chapter 1109, the Court shall permit compensation as set forth in said trustee's public fee schedule, previously filed with the Court.

(C) If the trustee is other than a corporate institution, the Court will allow compensation for ordinary services in accordance with the following schedule:

(1) 5% of gross income, plus an additional 5% of gross income attributable to real estate rentals, if the fiduciary is managing said real estate; plus

(2) \$4.00 per \$1,000 on the first \$200,000 of the fair principal value and \$3.00 per \$1,000 on the next \$300,000 and \$2.00 per \$1,000 on the excess of \$500,000; plus

(3) 2% of the amount distributed in the payment of debts or expenses, excluding fees paid to an attorney, trustee, guardian or investment broker.

(4) 1% of the amount distributed to the beneficiaries of the trust on a periodic and/or discretionary basis or on final distribution, excluding fees paid to the trustee or attorney.

(D) The Court reserves the right to determine whether or not the fee is reasonable.

(E) Fair principal value for purposes herein shall be (i) the fair market value of assets whose value is readily ascertainable by market quotations or listing or equivalent services; or (ii) as determined by the fiduciary on an annual basis for those assets sufficiently unique so as to have no readily ascertainable fair market value. It is recommended that the fiduciary obtain an independent appraisal of the latter assets at least every five years. Calculations of total fair principal value shall be made on the fiscal year utilized by the trust or guardianship.

RULE 76 Exception to the Rules.

Upon application, and for good cause shown, the Probate Division of the Court of Common Pleas may grant exception to Sup. R. 53 to 79.

RULE 77 Compliance.

Failure to comply with these rules may result in sanctions as the court may direct.

Rule 77.1 Enforcement

(A) If inventories, accounts, reports, proof of bonds or other necessary proceedings are not timely filed, the Court, in addition to other remedies at law or rule, and at its discretion, will follow the following procedure:

- (1) A Notice shall issue to the attorney of record requesting a reply within twenty-one (21) days. A \$10 administrative fee will be assessed as court costs.
- (2) If there is no timely response, a Notice shall issue to the fiduciary ordering compliance within ten (10) days. A \$10 administrative fee will be assessed as court costs.
- (3) If there is no timely response, a contempt citation shall issue to the fiduciary with a hearing scheduled. A \$10 administrative fee shall be assessed as court costs.

RULE 78 Probate Division of the Court of Common Pleas - Case Management in Decedent's Estates, Guardianships, and Trusts

(A) Each fiduciary shall adhere to the statutory or court-ordered time period for filing the inventory, account, and, if applicable, guardian's report. The citation process set forth in section 2109.31 of the Revised Code shall be utilized to ensure compliance. The attorney of record and the fiduciary shall be subject to the citation process. The court may modify or deny fiduciary commissions or attorney fees, or both, to enforce adherence to the filing time periods.

(B) (1) If a decedent's estate must remain open more than six months pursuant to R.C. 2109.301(B)(1), the fiduciary shall file an application to extend administration (Standard Probate form 13.8).

(2) An application to extend the time for filing an inventory, account or guardian's report, shall not be granted unless the fiduciary has signed the application.

(C) The fiduciary and the attorney shall prepare, sign, and file a written status report with the court in all decedent's estates that remain open after a period of thirteen months from the date of the appointment of the

fiduciary and annually thereafter. At the court's discretion, the fiduciary and the attorney shall appear for a status review.

(D) The court may issue a citation to the attorney of record for a fiduciary who is delinquent in the filing of an inventory, account, or guardian's report to show cause why the attorney should not be barred from being appointed in any new proceeding before the court or serving as attorney of record in any new estate, guardianship or trust until all of the delinquent pleadings are filed.

(E) Upon filing of the exceptions to an inventory or to an account, the exceptor shall cause the exceptions to be set for a pretrial within thirty days. The attorneys and their clients, or individuals, if not represented by an attorney, shall appear at the pretrial. The trial shall be set as soon as practical after pretrial. The court may dispense with the pretrial and proceed directly to trial.

Local Rule 78.1 - Case Management Rules

(A) Civil Action

(1) A pre-trial conference shall be conducted in all contested civil cases prior to being scheduled for trial, except in land sale proceedings.

(2) Within thirty (30) days after the answer day the case shall be set by the Court for a pre-trial conference.

(3) Notice of the pre-trial conference shall be given to all counsel of record by mail and/or telephone by the Court not less than fourteen (14) days prior to the conference. Any application for continuance of the conference shall be in writing and filed with the Court in a timely manner.

(4) The following decisions shall be made at the pre-trial conference and all counsel attending must have full authority to enter into a binding pre-trial order.

(a) A definite discovery schedule shall be agreed upon by all parties for the completion of all discovery.

(b) A definite date for exchange for expert witness reports shall be determined.

(c) A definite date for filing of all motions which date shall not be later than seven (7) days before the final pre-trial. The date for the final pre-trial shall be set by the Court and shall be held

approximately one week prior to the trial, if necessary.

(5) The following decisions shall be made at the final pre-trial and all counsel attending must have full authority to enter into a binding final pre-trial order:

- (a) The Court will rule on all pre-trial motions.
- (b) Briefs on any legal issues shall be submitted.
- (c) Proposed jury instructions shall be submitted.
- (d) Proposed jury interrogatories shall be submitted.
- (e) Clients shall be present.
- (f) No motions shall be heard after the final pre-trial without leave of Court and after the showing of good cause.

(B) Land Sales.

All land sales which have not been concluded within six (6) months from the date of filing shall be set for pre-trial conference within twenty-one (21) days following the expiration of the six month period.

(1) The following decisions shall be made at the pre-trial conference and all counsel attending must have full authority to enter into a binding pre-trial order.

- (a) The attorney of record and the fiduciary must attend the pre-trial conference.
- (b) A written status report shall be filed with the Court no later than seven (7) days prior to the pre-trial conference.
- (c) The status report shall address the issues as to the efforts being made to sell the real estate and when the case will be closed.

(C) Decedent's Estates, Trusts, Guardianships and Conservatorships

(1) Certificate of Service of Notice O.R.C. 2107.19

- (a) If the fiduciary or the other person required to do so fails to file the certificate after sixty (60) days from the admission of the will to probate, a notice will be sent to the fiduciary and/or attorney of record.

(b) If the certificate is not filed within an additional thirty (30) days, a citation will be issued to the fiduciary and/or the attorney of record.

(2) Notice to File Inventory in Estates, Trusts, Guardianships and Conservatorships

(a) Local Rule 8 requires the filing of an inventory in an estate within 60 days after the appointment. The statutory time for filing an inventory in a guardianship or trust (O.R.C. 2111.14) is within three months after appointment. The statutory time for filing an inventory in a conservatorship, if governed by guardianship law, is three months after appointment.

(1) A notice will be sent to the fiduciary and/or attorney if the inventory is not timely filed.

(2) The Court reserves the right, if necessary, to issue a citation for the appearance of the fiduciary and the attorney to show cause for the delay in filing of the inventory.

(3) Objections to Inventory

(a) Objections are scheduled for pre-trial conference within thirty (30) days after filing. At the pre-trial conference the issues are narrowed, a time table for discovery is agreed upon and the hearing date is scheduled.

(4) Guardian's Report

(a) The first Guardian's Report is due one year from date of appointment and, thereafter, every two years to coincide with the filing of accounts per our local Court Rules.

(1) A Guardian's Report filed by Advocacy and Protective Services, Inc. will be filed yearly in conformance with their rules and policy.

(5) Accounts

(a) The statutory time for filing an account in an estate O.R.C.2109.301 (A) and (B) shall be followed. Subsequent accounts are due yearly thereafter. In a guardianship, trusteeship and conservatorship (when the conservatorship is governed by guardianship law) the first account is due one year from date of appointment

and, thereafter, every two years. (Local Court Rule)

(6) Objections to Accounts

(a) Objections are scheduled for pre-trial conference within 30 days after filing. At the pre-trial conference the issues are narrowed, a time table for discovery is agreed upon and the hearing date is scheduled.

(Rules 79 thru 98 are reserved for future use)

RULE 99. Effective Date.

(A) Except as otherwise provided in this rule, the Rules of Superintendence, adopted by the Supreme Court of Ohio on April 15, 1997, shall take effect on July 1, 1997. The rules govern all proceedings in actions brought on or after the effective date and to further proceedings in actions then pending, except to the extent that application in a particular pending action would not be feasible or would work an injustice, in which case the former procedure applies. Sup. R. 37(A)(4)(b) and (c) and 43(B)(2) shall take effect January 1, 1998.

(B) The amendments to Sup. R. 51 to 78, adopted by the Supreme Court of Ohio on July 7, 1997, shall take effect on October 1, 1997.

(C) As amended April 2, 2004.

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