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PROBATE/JUVENILE COURT
KNOX COUNTY, OHIO

KNOX COUNTY
RULES OF PRACTICE AND PROCEDURE OF THE
COURT OF COMMON PLEAS
PROBATE DIVISION

Jay W. Nixon, Judge

Introduction

It is ordered that the following rules be and are hereby adopted for the governance of the practice and procedures in the Court of Common Pleas, Probate Division, Knox County, Ohio, until otherwise provided pursuant to: Article IV, Section (5) of the Ohio Constitution; Section 2101.04 of the Ohio Revised Code; and the Rules of Superintendence promulgated by the Supreme Court of Ohio.

Adoption, Scope and Construction of Rules

- A. The Probate Division of the Common Pleas Court for Knox County, Ohio, adopts the following Rules for the management of proceedings and other functions of the Court. The Court may amend the Rules from time to time as needed or required by law.
- B. These Rules are intended to supplement and complement the Ohio Rules of Civil Procedure, the Superintendence Rules of the Supreme Court of Ohio, and controlling statutes.
- C. These Rules shall be applied, construed, and enforced so as to avoid inconsistency with other rules of Court and statutes governing proceedings of this Court. In their application, they shall be construed so as to provide fairness and to secure just and expeditious determination of all proceedings.
- D. These Rules shall be cited as “Prob.Ct.R. __. __.”
- E. These Rules shall be effective as of September 18, 2019.

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SUP. R. 8 COURT APPOINTMENTS

RULE 8.1 COURT APPOINTMENTS

Persons appointed by the Court to serve as fiduciaries, attorneys, magistrates in involuntary appointment proceedings, investigators, guardians ad litem, commissioners and trustees for suit shall be selected from lists maintained by the Court.

Appointments will be made from such lists taking into consideration the qualifications, skills, expertise and caseload of the appointee in addition to the type, complexity and requirements of the case.

Court appointees will be paid a reasonable fee with consideration given to the factors contained in Professional Conduct Rule (Prof.Cond.R.) 1.5, the Ohio Revised Code, and the Local Rules of Court relating to fees.

By accepting a Court appointment, an attorney is representing and affirming that the attorney is competent to provide the necessary services and committing that those services will be performed with reasonable diligence and promptness as required by Prof.Cond.R. 1.1 and 1.3.

Furthermore, an attorney accepting a Court appointment is representing to the Court that at all times during the appointment the attorney shall maintain professional liability insurance in the minimum limits set forth in Prof.Cond.R. 1.4(c) and upon request of the Court will provide to the Court satisfactory evidence of the existence of such coverage. No attorney shall be appointed, shall accept an appointment, or shall continue an appointment if the attorney is not registered as active and in good standing with the Supreme Court of Ohio.

The performance of any appointee may be reviewed by the Judge at any time or upon a complaint being filed by an interested party. The Judge shall review the facts and make a determination of whether the current appointment shall be in any way modified or terminated. If appropriate, the Court may determine that further appointments of the appointee should be limited or not made.

The Court will review Court appointment lists periodically to ensure the equitable distribution of appointments.

SUP. R. 9 SECURITY PLAN

On 10/4/95 the Court adopted the Court Security Policy and Procedures Plan filed in Case No. 957037 in the Probate Division of the Knox County Court of Common Pleas. The entire Security Plan previously submitted to the Supreme Court of Ohio, or as hereafter amended, is to be maintained as confidential and not as a matter of public record.

SUP. R. 11
RECORDING OF PROCEEDINGS

The Court will make an audio recording of the proceedings as the record of the Court unless a stenographic record is requested. Parties who desire to have a stenographic record of the proceedings must notify the Court in writing and the requesting party shall pay the costs of the stenographic record unless otherwise ordered by the Court.

The Court will allow an interested person to listen to a copy of the electronic recording upon request made not less than forty-eight (48) hours in advance. Tapes may not be removed from the Court.

Any interested person may request a stenographer approved by the Court transcribe an electronic recording. Any interested person may request a copy of the electronic recording. A person making the request shall pay the cost of the transcription and must make a deposit in advance for such transcript as set forth in the Local Rules of Court relating to costs.

SUP. R. 26
COURT RECORDS MANAGEMENT AND RETENTION

RULE 26.1 COURT RECORDS MANAGEMENT AND RETENTION

The Court has a Schedule of Records Retention and Disposition filed under Case No. 026772 that will be followed in conjunction with the Rules of Superintendence for the Court of Ohio.

SUP. R. 51
STANDARD PROBATE FORMS

RULE 51.1 STANDARD PROBATE FORMS

Standard probate forms shall be used where applicable. Where a standard form has not been prescribed by this Rule, the form used shall be that required by the Civil Rules or prescribed or permitted by the Probate Division of the Court of Common Pleas. Use of the newest approved forms is required.

SUP. R. 52
SPECIFICATIONS FOR PRINTING PROBATE FORMS

RULE 52.1 COMPUTERIZED FORMS

Computer generated forms must comply with the specifications and format outlined by the Rules of Superintendence. The signature of the applicant or attorney constitutes a certificate that the computer generated forms comply with the rules. All computer forms

presented for filing must be generated with the exact wording as well as blank lines as they appear in the uniform forms.

**SUP. R. 53
HOURS OF THE COURT**

RULE 53.1 HOURS OF THE COURT

The Probate Court shall be open for the transaction of business from 8:00 A.M. to 4:00 P.M. Monday through Friday except holidays.

**SUP. R 54
CONDUCT IN THE COURT**

RULE 54.1 CONDUCT IN THE COURT

- A. Proper decorum in the Court is necessary to the administration of the Court's function. Conduct that interferes or tends to interfere with the proper administration of justice or the Court's business is prohibited.
- B. No radio or television transmission, telephone 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 C.P. Sup R. 11.

**SUP. R. 55
EXAMINATION OF PROBATE RECORDS**

RULE 55.1 WITHDRAWAL OF FILES

The Court prohibits withdrawal of files. On premise inspection of files, records, papers and documents shall be as follows:

- A. The general records of the Court shall be subject to inspection or shall be open to inspection by all members of the public during regular office hours of the Court.
- B. Files of adoption, mental illness and Ohio Estate Tax returns are confidential. The Judge may authorize access to such files. In order to obtain the Judge's authorization, the person seeking inspection of the Court's confidential records must first apply to the Court and receive its approval.
- C. Copies of public records shall be provided at a cost of \$.05 per page. If a request is received to send copies by regular U.S. Mail, such copies will be mailed only if the cost of the copies, postage and any other mailing expenses are pre-paid. (R.C. 149.43)

SUP. R. 57
FILINGS AND JUDGMENT ENTRIES

RULE 57.1 ELECTRONIC FILINGS

Pursuant to the authority extended the Court by Civil Rule 5(E), the Court adopts the following procedures for the acceptance of filings by electronic means (facsimile or email), subsequent to the original complaint, of pleadings and other papers not longer than ten (10) pages in length by attorneys admitted to practice in Ohio. No document longer than ten (10) pages in length shall be filed in this manner without prior approval of the Court.

- A. The Court shall: maintain an independent private telephone line (for facsimile filing) and an email account (for email filing); publish the telephone number and email address; and maintain a facsimile machine and email account for utilization by members of the bar authorized to practice law in Ohio in filing documents with the Court and its Clerk as provided herein. The facsimile telephone number is (740) 393-6832. The email address is probatejuvenile@co.knox.oh.us.
- B. The filing of pleadings or other papers, subsequent to the original complaint and not requiring a security deposit pursuant to Local Rule, may be filed with the Clerk by facsimile or email copy. Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the Court shall order the filing stricken. The original document bearing an original signature need not be filed with the Court. The Clerk shall docket any electronically transmitted documents when received. In the event any electronic copy is received by the Clerk after 4:00 p.m. on a regular business day or anytime on a weekend or holiday, the electronic copy shall be considered filed on the next ensuing regular business day the Court is in session.
- C. Any electronically transmitted document filed pursuant to this rule shall conform to the requirements of applicable Civil Rules and Local Rules.

RULE 57.2 COMPLETE STREET ADDRESS

When required on a court document, an attorney or fiduciary's address must be a street address and, if applicable, any post office box numbers used as a mailing address. The address of the fiduciary who is not an attorney at law must be the fiduciary's legal residence. Reasonable diligence shall be exercised to obtain the complete street addresses of the surviving spouse, next of kin, legatees and devisees. Any change of address shall be filed in writing with the Court within thirty days of the date of the change.

RULE 57.3 CASE NUMBER

All filings, including attachments must have the case number on each page.

RULE 57.4 ORIGINAL SIGNATURES

All filings must contain original signatures, except as authorized by Prob.Ct.R. 57.1 regarding electronically transmitted documents. In all matters with multiple fiduciaries, the signature of all fiduciaries is required on all documents including fiduciary checks. Persons who are not an attorney may not sign on behalf of an attorney.

RULE 57.5 FIDUCIARY SIGNATURE

Any pleading, filing or other document, which by law or rule requires the fiduciary's signature, shall have the original signature of the fiduciary. The attorney for the fiduciary may not sign for the fiduciary. When co-fiduciaries have been appointed, each fiduciary must sign the filing or the filing must explain the reason for the absence of a co-fiduciary's signature and the efforts made to obtain it.

RULE 57.6 COURT FILINGS

All filings, except original Wills and death certificates, must be legible and on 8-1/2 x 11 paper. The Court retains the right to accept handwritten forms and pleadings at its discretion.

RULE 57.7 FORWARDING COPIES

The Court will return file-stamped copies by mail only if: the filing is accompanied by a written request for return; the filer submits an exact copy of the original filing to be returned; and the filing is submitted with a return self-addressed, stamped envelope.

RULE 57.8 ISSUANCE OF SUMMONS

A request for Issuance of Summons shall be filed with all original and amended complaints or petitions in civil actions.

RULE 57.9 DISPOSITION OF EXHIBITS

All exhibits offered for admission during a hearing or trial shall be labeled by party name and item identification. In a proceeding recorded by a Court stenographer, custody of exhibits offered or proffered shall be given to the stenographer, unless otherwise ordered by the Court. If the proceeding is electronically recorded, exhibits shall be retained in the case file, unless otherwise ordered by the Court.

Upon agreement of the parties or by order of the Court, copies may be substituted for the original exhibit. Disposal of exhibits shall be pursuant to Sup. R. 26.

RULE 57.10 CERTIFICATE OF NOTICE OF ENTRY OF JUDGMENT

Any proposed entry submitted to the Court subject to Civ. R 58(B) as modified by Civ. R 73(I) shall contain a certificate of service including the names and addresses of all parties and other interested persons required to be served.

RULE 57.11 DECEDENT'S NAMES

In every estate, the name of the decedent entered on the caption of the initial filing and on the Letters of Authority, Entry Relieving Estate or Entry Granting Summary Release shall be identical to that reflected on the death certificate and on the decedent's Last Will and Testament. If the name on the death certificate and the will are different, then the caption of the initial filing and the Letters of Authority, Entry Relieving Estate or Entry Granting Summary Release shall recite each of the names and use the applicable abbreviation for "also known as" (aka) or "formerly known as" (fka).

SUP. R. 58 DEPOSIT FOR COURT COSTS

RULE 58.1 DEPOSITS

- A. The business of the Court shall be conducted on a cash, check, debit card, or credit card basis with a deposit being payable at the time of initial filing. The Court reserves the right to refuse non-attorney personal checks and limit the types of acceptable credit card. A list of deposits required is attached as Appendix A. If the cost deposit is inadequate to cover the cost or fee for any filing, the filing may not be accepted by the Court without payment of the appropriate filing cost or fee. The Court may, in its discretion, require an additional costs deposit or invoice for costs in any matter.
- B. In an adoption, costs shall be payable at the time of the initial filing. Any balance of costs due shall be paid when the final Order of Adoption is filed. The standard fee for the home assessment is included in the initial filing fee for stepparent adoptions only. Any additional fees/expenses will be charged to the total costs. If a pre-finalization assessment is required, the additional assessor's fee will be added to the standard deposit and paid at the time of filing.
- C. In a guardianship or trust, costs shall be payable at the time of the initial filing. The costs paid at the time of the filing of a guardianship include the investigator's fees. Additional costs are due when filing a guardian's report, an account or upon its termination.
- D. In a civil proceeding from an estate or guardianship, costs shall be payable at the time of the initial filing and any additional costs shall be due and payable upon termination.

- E. Filing a subpoena may require a deposit for in county Sheriff service and witness fees in the amount of \$6.00 for half day and \$12.00 for a full day. Subpoenas served out of county may require additional deposits and shall include a check for witness and mileage fees made payable to the witness. The attorney or party issuing the subpoena is responsible for paying the witness directly for witness fees. If the Court pays any subpoena related costs, they will be taxed as Court costs and may be allocated by the Court at the end of the case.
- F. In all other proceedings, costs will be payable as determined by the Court.
- G. At the conclusion of a case, if the remaining cost deposit balance for any depositor is less than Twenty-Five Dollars (\$25.00), it shall be transferred to the Court's Indigent Guardianship Fund.

RULE 58.2 WITNESS FEES

Witness fees must be requested at the conclusion of the hearing for which the subpoena was issued. If not requested at that time, the fee is waived. All unused portions of the subpoena deposit will be refunded to the depositor.

RULE 58.3 RELEASE OF ADOPTION INFORMATION

The fee for filing a petition for the release of adoption information pursuant to Ohio R.C. 2101.16(F) shall be fifty dollars (\$50.00).

RULE 58.4 FILING TRANSCRIPTS, EXHIBITS OR FOREIGN RECORDS

The filing fee required by Ohio R.C. 2101.16(A)(57) shall be paid at the time of filing the transcript, exhibits or foreign records.

SUP. R. 59 WILLS

RULE 59.1 CERTIFICATE OF SERVICE

The applicant for the admission of a will to probate, or the person listed in R.C. 2107.19, shall file a Certificate of Service of Notice of Probate of Will not later than two (2) months after the appointment of the fiduciary or, if no fiduciary has been appointed, not later than two (2) months after the admission of the will to probate. The period for the contest of a will does not begin to run until the Certificate of Service of Notice of Probate of Will has been filed. A delayed filing may result in the Court extending other deadlines that are dependent upon the expiration of the period for the contest of a will. Proof of service shall consist of either waivers, photocopies of original signed certified mail return receipt cards, or, when applicable, postal certificates of mailing, as provided under Civ.R. 73E(3). Neither a minor nor a person under disability may waive notice. The Court will not approve an Inventory until after the Notice and proof of service have been filed with the Court.

SUP. R. 60
APPLICATION FOR LETTERS OF AUTHORITY TO ADMINISTER ESTATE
AND NOTICE OF APPOINTMENT

RULE 60.1 FIDUCIARY ACCEPTANCE

All executors and administrators shall personally sign and file the Fiduciary's Acceptance prior to the issuance of Letters of Authority. When co-executors or co-administrators have been appointed, each fiduciary must sign the filing or the filing must explain the reason for the absence of a co-fiduciary's signature and the efforts made to obtain it.

RULE 60.2 CITATION/SUMMARY PAPERS

The Court will require a Citation to Surviving Spouse to Exercise Elective Rights along with a Summary of General Rights to Surviving Spouse to be filed with the original estate documents, UNLESS WAIVED, in all estates where there is a surviving spouse including estates where there is no Will. The court will then issue the Citation/Summary to the surviving spouse. The Court will accept a Surviving Spouse Waiver of Service of the Citation to Elect. However, it must accompany the original estate documents. The form is attached.

RULE 60.3 APPOINTMENT OF NON-RESIDENT FIDUCIARIES

An applicant to be appointed fiduciary of a decedent's estate, or trust, who is not a resident of this state, must be in compliance with Ohio R.C. 2109.21 and use as the attorney of record an attorney licensed to practice law in this state. To assure the assets remain in Knox County, Ohio, during the administration of the estate or trust, the applicant must meet one or more of the following criteria (unless specifically waived by the Court upon proper motion of the applicant): (1) place a substantial amount of the decedent's personal assets in a custodial depository in this county, pursuant to R.C. 2109.13; (2) have a co-fiduciary who is a resident of this State; or (3) post a bond in compliance with Ohio R.C. 2109.04.

SUP. R. 61
APPRAISERS

RULE 61.1 APPRAISERS

- A. The following persons are disqualified from being an appraiser:
- 1) A beneficiary of the estate.
 - 2) A person related by blood or marriage to the decedent or to the attorney for the estate or to the fiduciary for the estate.
 - 3) Real estate appraisals shall be made by licensed real estate agents, brokers, auctioneers, credentialed real estate appraisers, or such other persons who by experience and training are qualified to make real estate appraisals. The name, address, and qualifications of the appraiser must be set forth on Standard Probate Form 3.0.

- 4) No appraiser shall be permitted to directly or indirectly purchase any of the property he or she appraises, except at public auction.
- 5) Readily ascertainable value of real property:
Notwithstanding sections (1) through (3) of this Rule, the market value of real estate as found in the Knox County Auditor's property records may be adopted as the readily ascertainable value of the property and no further appraisal of such property shall be required except as provided under Paragraph 7 of this rule. A copy of said evaluation shall be attached to the applicable form.
- 6) Readily ascertainable value of motor vehicle:
Notwithstanding sections (1) through 3 of this Rule, the market value of any motor vehicle as found in the current N.A.D.A Official Used Car Guide under the category (Average Condition Retail) or in the current Kelley Blue Book may be adopted as the readily ascertainable value of the property and no further appraisal of such property shall be required except as provided under Paragraph 7 of this rule. A copy of the appropriate page from said booklet shall be attached to the appropriate form.
- 7) An administrator, executor, fiduciary, beneficiary or creditor of a decedent's estate may file a written request with the probate court not later than five days before the date set for hearing on the Inventory and Appraisal that any property deemed to be appraised by readily ascertainable value shall be appraised by a suitable and disinterested appraiser as provided in Sections 1 through 3 of this Rule.

RULE 61.2 APPRAISER SELF-DEALING

During the administration of the estate or within twelve (12) months of the appointment of the appraiser, no appraiser shall directly or indirectly purchase or negotiate the purchase, sale, trade, or management of property that he or she has appraised, except at public auction.

SUP. R. 62 CLAIMS AGAINST ESTATE

RULE 62.1 CLAIMS FILED WITH THE COURT

- A. Upon receipt of a claim, the Court shall send notice of filing of claim to the attorney for the estate and the fiduciary by regular mail. The attorney is required to file a response with the Court, whether accepting or rejecting the claim, within thirty (30) days of receipt thereof. If the claim is rejected, the Court shall immediately send a notice of rejection to claimant. The estate cannot be closed until sixty (60) days after rejection.
- B. No claim will be processed unless \$10.00 filing fee is received.

SUP. R. 64
ACCOUNTS

RULE 64.1 FIDUCIARY'S SIGNATURE

- A. All accounts must be personally signed by the fiduciary and contain the fiduciary's full typewritten or legible handwritten name.
- B. All fiduciaries must sign the account when multiple fiduciaries have been appointed.

RULE 64.2 DELINQUENCY IN FILING AN ACCOUNT

- A. No expenditures, sale, distribution or fee will be approved while the fiduciary is delinquent in filing an account. *See also* Sup. R. 78. The Court may modify or deny compensation and fees when the filing timelines are not met.
- B. If a final account cannot be fully rendered when due, a partial account should be filed along with a status report.
- C. Only one (1) extension of time may be granted without a hearing, unless good cause is otherwise shown.
- D. The attorney and the fiduciary or fiduciaries must sign any request for an extension of time and each request must recite any previous requests for an extension.

RULE 64.3 CONTENTS OF PROBATE ACCOUNTINGS

In addition to accounting for the cash receipts and expenditures, fiduciaries must account for the assets, their gains, losses, and distributions. All initial accounts must commence with the assets reflected on the Inventory and then reflect any losses or gains in those assets during the period of the accounting. Subsequent accounts must begin with the entire sum reflected on the prior account's assets remaining, until the balance remaining is zero dollars (\$0.00). The Court will not approve accounts that fail to account for all of the assets. When assets, including land, are sold at gains or losses from the carrying values, the closing/settlement statements, if any, shall be reduced to letter size and attached to the account, and the resulting changes in value reflected in the receipts (gain) or disbursements (loss). The accounting shall show any changes in investments since the most recent prior account.

RULE 64.4 BOND

The Court may order a fiduciary to file a bond, or order an additional bond. This most often occurs because of new matters, the filing of a will contest action, or increases

in the valuation of the assets disclosed by the pleadings. In any event, any bonding requirements shall comply with Ohio law.

RULE 64.5 EVIDENCE OF ASSETS

- A. The Court requires all assets be exhibited at the time of filing a partial account.
- B. Cash balances shall be verified by Bank Certificate signed by a bank officer of the financial institution. Assets held in a safe deposit box of a fiduciary or by a surety company on current inventory thereof 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, such exhibition may be made by proper certification as to the assets so held.

RULE 64.6 COURT COSTS PAID

A final and distributive account shall not be approved until all court costs are paid.

RULE 64.7 TIME FOR FILING

- A. For decedent's estates, the final and distributive account due within six months after appointment of the fiduciary may be extended by Application to thirteen (13) months for the reasons enumerated in Ohio R.C 2109.301(B)(1). All subsequent accounts must be filed on an annual basis unless the Court otherwise orders. Accounts not filed in compliance with this rule shall be subject to citation.
- B. For guardianships or trusts, the first account shall be filed not later than one (1) year following the date of the appointment of the fiduciary and all subsequent accounts shall be filed on an annual basis, unless otherwise ordered by the Court.
- C. Notices/citations shall be issued when an account is not filed when due, unless an application to extend administration/notice to extend has been filed.
- D. If a fiduciary is delinquent in filing an account or exhibiting assets and no extension has been granted, a citation shall be issued requiring the fiduciary to appear forthwith and show cause why the account has not been filed or why the assets have not been exhibited.

RULE 64.8 ACCEPTABLE VOUCHERS

Acceptable vouchers are: “paid” bills; cancelled checks with the endorsement of the beneficiary on the back, imaged copies or receipts signed by the beneficiary. Vouchers must be provided to the Court for verification on all trusts and guardianships. Vouchers shall not be required on estates.

RULE 64.9 HEARING, CERTIFICATES, AND SERVICE

- A. Every account shall be set for non-oral hearing. A copy of every account and notice of hearing shall be served by the fiduciary upon every heir, beneficiary, interested party and such other persons as the Court designates. For purposes of this rule, “interested party” is defined as (1) all known intestate beneficiaries in the case of an intestacy; (2) any surviving spouse and all residuary beneficiaries of a testate estate; (3) legatees and devisees whose bequests have not been satisfied; (4) in guardianships, all known next of kin of the ward; (5) for a Testamentary Trust, all known beneficiaries in the trust; (6) for an inventory in a testate estate, all testate beneficiaries; and (7) in cases of reported insolvency, all creditors who have filed claims and appeared at the insolvency hearing.
- B. Prior to the non-oral hearing on the account, every fiduciary filing an account must also file (1) a Certificate of Notice of Hearing on Account and (2) proof of service for each person required to be served consisting of waivers, photocopies of original signed certified mail return receipt cards, or, when applicable, postal certificates of mailing, as provided under Civ.R. 73E(3).

RULE 64.10 CERTIFICATE OF TERMINATION

No partial or final accounting is required to be filed if the sole beneficiary or heir is also the sole fiduciary. The fiduciary shall be discharged and the estate completed after filing with the court within thirty (30) days after completing the administration of the estate a Certificate of Termination pursuant to Section 2109.30(B)(2) O.R.C.

SUP. R. 65 LAND SALES

RULE 65.1 LAND SALES-O.R.C. CHAPTER 2127

- A. In cases involving public sale the complainant shall, prior to the issuance of an order of sale, file with the Court evidence of title showing the record condition of the title to the premises described in the complaint, prepared and extended by a reasonable abstract or title or an attorney’s certificate to a date subsequent to the date in which the complaint was filed.
- B. In all cases where a public sale is authorized, complainant shall post a sign in a conspicuous place on the premises to be sold stating the property will be sold

at public sale and giving the time and place thereof. The complainant shall also give notice to all defendants of the time and place of sale at least three weeks prior to the date of sale in the method provided by Civil Rule 4.1. Prior to the sale, the complainant shall file an affidavit stating: (1) that a sign was placed on the property; (2) the required notice was given to the defendants at least three (3) weeks prior to the date of sale, and (3) the notice conforms to Civ. R. 4.1.

- C. When an order of private sale is required, excepting those cases where the consent of all necessary parties to the proceedings has been filed or cases involving the sale of fractional interest, then the complainant shall be required, by affidavit or testimony under oath, to establish: (1) whether or not the sale has been the subject of prior negotiations; (2) the amount offered for the sale of the property; (3) the appraised value in the land sale proceedings; (4) the identity of the prospective purchaser and counsel, if any; (5) whether or not the proposed transaction will be, or has already been, placed in escrow; and (6) the identity of the escrow agent.
- D. The Court may, in its discretion, 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 his 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.
- E. In all land sale proceedings involving the sale of real estate owned by the ward under guardianship, service of process on the ward is required and may not be waived.
- F. Confirmation of sale must be filed before the case can be closed.
- G. When a fiduciary sells real estate using a unanimous Consent to power to Sell Real Estate as authorized by R.C. 2127.011, the Court will require the fiduciary to file a fiduciary bond adequate to cover the appraised value of the real estate covered by the Consent.

SUP. R. 66 GUARDIANSHIPS

RULE 66.1 GUARDIANSHIP OF MINORS

- A. All applications for appointment of guardian shall be captioned in the name of the proposed ward.
- B. For purposes of completing the Next of Kin of Proposed Ward, the applicant shall identify any person, whether or not a resident of Ohio, who at that time

would be entitled to inherit from the proposed ward under the Ohio laws of intestacy, and all known children of the proposed ward.

- C. Notice of hearing shall be given to all next of kin, regardless of state residency, unless waived.
- D. All applications for the appointment of a guardian of minor, if other than by the natural parent, shall state: (1) the relationship of the applicant to the minor (2) the reason that the applicant and not the natural parent is making the application and (3) the reason for the necessity of the guardianship. Custody affidavit (O.R.C. 3109.27) shall be a required filing on all guardianships involving minors. A copy of the minor's birth certificate must be filed with an Application for Appointment of Guardian of Minor.
- E. County form "Guardian's Credibility Application" must be filed in addition to all other necessary forms when application for guardianship is made. The Court may waive said form. The form is attached.
- F. When application for guardianship of an indigent ward is filed, such application must be accompanied by an Affidavit of Indigency.
- G. The Court will not establish a guardianship for school purposes only. Custody for school purposes is a matter to be heard and determined by the Juvenile or Domestic Relations Divisions.

RULE 66.2 RELEASE OF FUNDS

Funds in the name of the ward shall not be released to the guardian without a specific court order.

RULE 66.3 CHANGE OF ADDRESS

A guardian appointed by this Court shall inform the Court of any change of address of the guardian. This notification must be filed with the Court within thirty (30) days of the address change. A guardian shall comply with Sup. R. 66.08(E) regarding a change of address/residence of the ward.

RULE 66.4 GUARDIAN'S REPORT

The Guardian of the person shall file the guardian's report. If there is only a guardian of the estate, the guardian's report must be filed by this guardian.

Where a physician or clinical psychologist states on a Statement of Expert Evaluation that to a reasonable degree of medical certainty it is unlikely the ward's mental competence will improve, the Court may dispense with the filing of subsequent Statements of Expert Evaluation when filing their subsequent annual guardian's reports.

RULE 66.5 EXPERT EVALUATION

All applications for the appointment of a guardian on the grounds of mental incompetence, for dismissal of such guardianship, or for declaration of competency, shall be accompanied by a **STATEMENT OF EXPERT EVALUATION**, a statement of a physician, clinical psychologist, or a statement that the prospective ward has refused to submit to an examination.

RULE 66.6 PAYMENT FOR SUPPORT

- A. Payment for support, maintenance or education of a ward shall not be approved until such time as the guardian files an application to determine, separate and apart from the account, the amount to be allowed for the support, maintenance or education of the ward, and until an inventory has been filed.
- B. An application by a parent-guardian for the allowance of care and support of a minor shall allege, if such is the fact, that the mother and father are financially unable to provide the items for which the amount is sought.

RULE 66.7 ADDITIONAL COST DEPOSIT

Pursuant to R.C. 2111.031, and in addition to the basic cost deposit, the Court may require an Applicant for a guardianship to make an advance cost deposit in an amount the Court determines necessary (a) to defray the anticipated costs of examinations of an alleged incompetent, and (b) to cover the fees and costs to be incurred to assist the Court in deciding whether a guardianship is necessary.

RULE 66.8 EMERGENCY GUARDIANSHIPS

Pursuant to Sup. R. 66.03(A) this Court has adopted the following process for emergency guardianships. Every application for the appointment of an ex parte emergency guardianship shall be accompanied by: (1) a Statement of Expert Evaluation, as supplemented for emergency guardianships; (2) a completed Next of Kin form; and (3) a narrative statement signed by the applicant setting forth anecdotal information describing the imminent risk of significant injury to the person or property of the minor or incompetent that justifies an ex parte emergency appointment. The applicant shall appear at the Court when filing the application for emergency guardianship. The applicant shall attend the 72 hour hearing to determine whether to extend the emergency guardianship for up to 30 additional days. The applicant is expected to file an application for appointment of guardian within seven days of the completion of a hearing extending the guardianship beyond the initial 72 hour appointment if it is expected the need for continued guardianship will exist longer than the emergency guardianship.

RULE 66.9 GUARDIAN COMPLAINTS

Pursuant to Sup. R. 66.03(B) this Court has adopted the following process for submitting and considering comments or complaints regarding the performance of guardians appointed by this Court. This local rule is applicable to all guardians appointed by the Court pursuant to R.C. 2111.02. Comments and complaints received regarding the performance of guardians and the resulting documents and correspondence are considered to be case documents and accessible to the public, unless otherwise excluded pursuant to Sup. R. 44(C)(2). The Court will communicate complaints about a guardian's performance to the guardian and/or the guardian's counsel expeditiously.

The Court will not accept or act upon an oral or telephonic complaint against a guardian, other than to provide the address to which to hand-deliver, fax, e-mail, or mail the written complaint. The Court will not accept any anonymous complaint. When the Court receives the written complaint regarding a guardian's performance, it will date-stamp the complaint.

Within ten working days of the receipt of the complaint, the Court will serve a copy of the complaint upon the guardian and/or the guardian's attorney and perform an initial review of the complaint after a study of the guardianship case. The Court will also make any required referrals, including referrals to law enforcement or to the Knox County Department of Job and Family Services, as appropriate. Following the initial investigation, the Court will determine whether to dismiss the complaint, request additional written information or responses concerning the complaint, or set an oral hearing on the complaint.

RULE 66.10 GUARDIAN TRAINING

Every guardian must meet the guardianship fundamentals training requirements under Sup. R. 66.06 by completing, prior to appointment or within six months thereafter, a six hour guardian fundamentals course provided by the Supreme Court of Ohio, or, with prior approval of this Court, another entity. Those failing to meet the requirement shall be subject to citation for being in contempt of court and subject to sanctions including, but not limited to, imposition of a fine, denial of compensation, and/or removal.

Every guardian who is not related to the ward by consanguinity (blood relationship) or affinity (kinship by marriage) must obtain at least three hours of continuing guardianship training per year provided by the Supreme Court of Ohio after the initial fundamentals course. This requirement is waived for any guardian related by consanguinity or affinity to the ward. If a guardian fails to comply with the continuing education requirement, the guardian shall not be eligible for further appointment until the requirement is met. The guardian may also be subject to sanctions and/or removal.

Every guardian shall provide documentation to the Court showing compliance with the training requirements by December 31 of each year. The Court may order any guardian to complete a designated continuing education training course, even though exempted from guardianship training and not otherwise mandated by this rule.

RULE 66.11 GENERAL RESPONSIBILITIES OF GUARDIAN TO WARD

The guardian shall meet with the ward at least quarterly throughout the year, or more often if needed to promote the best interests of the ward. The guardian shall deposit the ward's last will and testament with the Court for safekeeping if the will is in the possession or control of the guardian. If the ward's will is not in the possession of the guardian, upon being advised of the location, the Court shall order the holder to deposit the will with the Court for safekeeping.

RULE 66.12 GUARDIANSHIPS OF MINORS

When applying for the appointment of a guardian of a minor, a certified copy of the minor's birth certificate must be displayed to the Court with the guardianship application. A copy will be made by the Court and the original will be returned to the submitter. The Court will not establish any guardianship over the person of a minor where another Court has jurisdiction over custody of the minor.

RULE 66.13 POWERS OF ATTORNEY BY GUARDIAN PROHIBITED

The Court, through this Local Rule, exercises its discretion under R.C. 2111.50(A)(2)(c) and hereby prohibits a guardian appointed by the Court from executing a power of attorney or any other document which purports to appoint an agent to execute any of the duties or responsibilities imposed upon the guardian by law, rule, or order of the Court, unless otherwise approved by a specific order of the Court.

RULE 66.14 TERMINATIONS

Except for the termination of a guardianship of a minor attaining the age of majority or upon the death of the ward, a termination of a guardianship shall require notice to all persons designated in R.C. 2111.04 and to any other individuals who received actual notice of the original appointment of the guardian. It is the responsibility of the applicant for termination to perfect service pursuant to Civ.R. 73 when a termination is requested. A Certificate of Service with supporting documentation satisfactory to the Court must be filed prior to the consideration of the application.

SUP. R. 67

ESTATES OF MINORS NOT MORE THAN TEN THOUSAND DOLLARS

RULE 67.1 DISPENSE WITH GUARDIANSHIP

Applications to dispense with guardianship shall follow the notice required in Ohio R.C. 2111.04.

RULE 67.2 BIRTH CERTIFICATE

A copy of the minor's birth certificate must be presented to the Court upon the filing of the application to dispense with guardianship.

RULE 67.3 APPLICATION

- A. An 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. A parent who is not the applicant as well as a minor fourteen years of age or over, shall consent in writing to the application. If either or both parents are deceased, or their whereabouts unknown, such facts shall be noted in the application. If parents are divorced or separated, and custody has been awarded to the applicant, the application shall so state.
- C. Applications on behalf of incompetents will not be entertained until such time as a physician has completed a statement of expert evaluation.

RULE 67.4 DEPOSIT OF FUNDS

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 interest of the minor shall prepare an entry: (1) ordering the deposit of funds in a Knox County federally insured financial institution in the name of the minor; (2) impounding both the principal and interest; and (3) release the funds to the minor at the age of majority upon application and further order of this Court. The entry shall be presented at the time the entry dispensing with the appointment of a guardian or approving settlement is approved.

Pursuant to Sup. R. 67C the attorney representing the applicants or the payor in the matter shall acknowledge responsibility for depositing the funds and 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 thirty (30) days of the issuance of the entry.

SUP. R. 68 SETTLEMENT OF INJURY CLAIMS OF MINORS

RULE 68.1 BIRTH CERTIFICATE

A copy of the minor's birth certificate must be presented to the Court upon the filing of the application to settle a minor's claim.

RULE 68.2 SEPARATE CASE NUMBER

Settlement of minor's claims are separate proceedings in this Court and shall not proceed under the case number assigned to the guardianships, if any.

RULE 68.3 STRUCTURED SETTLEMENTS

In the event parties involved in claims for injuries to minor or incompetents desire to enter into a structured settlement, defined as a settlement wherein payments are made on a periodic basis, the following shall apply:

- A. The application shall include a signed statement from one of the following independent professionals, specifying the present value of the settlement and the method of calculation of that value; an actuary, certified public accountant, certified financial planner, chartered life underwriter, chartered financial consultant or an equivalent professional.
- B. If the settlement is to be funded by an annuity, the application shall include a signed statement by the annuity carrier or the broker procuring the policy stating:
 - 1) The annuity carrier is licensed to write annuities in Ohio; and
 - 2) The annuity carrier's rating from at least two of the following criteria:
 - i. A.M. Best Company: A++, A+, or A;
 - ii. Duff & Phelps Credit Rating Company (Claims Paying Ability Rating): AAA, AA+, or AA;
 - iii. Moody's Investors Service (Financial Strength): AAA, AA1, or AAA2;
 - iv. Standard & Poor's Corporation. (Financial Strength): AAA, AA+ or A.
 - v. Weiss Research Inc: A+ or A.
- C. In addition to the requirements of Paragraph (B) above, an annuity carrier must meet any other requirements the Court considers reasonably necessary to assure that funding to satisfy periodic payment settlements will be provided and maintained.
- D. The annuity carrier shall guarantee there will be no premature withdrawals or hypothecation of the annuity without prior Court approval.

RULE 68.4 SETTLEMENT OF CLAIMS FOR INJURIES TO MINORS UNDER TEN THOUSAND DOLLARS

- A. Applications involving the payment of ten thousand dollars or less shall be by the parent or parents or by the person having custody of the minor, and shall be captioned in the name of the minor. If either or both parents are deceased, or their whereabouts are unknown, such facts shall be noted in the caption. If the parents are divorced or separated, and custody has been awarded to the

applicant, the application shall so state. A parent who is not the applicant, as well as minors fourteen years of age or over, must consent to the application in writing.

- B. The application shall be accompanied by a current statement of the examining physician in respect to the injuries sustained, the extent of recovery thereto, and the physician's prognosis.
- C. After reviewing the case the Court will determine if a hearing is necessary. If a hearing is necessary, the presence of the minor, applicant and attorney shall be required.
- D. The Court will not authorize payment to anyone other than the minor except under extraordinary circumstances.
- E. The application shall state what additional consideration, if any, is being paid to persons other than the minor.
- F. The application shall state what arrangements, if any, have been made with respect to counsel fees, which fees shall be subject to review by the Court.
- G. A recommended distribution of the gross proceeds shall be filed with the Court.

SUP. R. 70
SETTLEMENT OF CLAIMS FOR WRONGFUL DEATH

RULE 70.1 SETTLEMENT OF CLAIMS

- A. Application for approval of settlement of a claim for wrongful death shall contain a statement of facts, including the amount to be received in settlement of the claim and the amount, if any, to be received in the settlement of the right of action for conscious pain and suffering. The statement shall include the proposed allocation of the compensation to be received in settlement of the action for wrongful death.
- B. A hearing upon the application may be set, at the discretion of the Judge.
- C. The application shall state what arrangement have been made with respect to counsel fees, which fees shall be subject to review by the Court.
- D. Guardians-ad-litem may be required for minor beneficiaries.

RULE 70.2 MULTIPLE BENEFICIARIES

A separate wrongful death trust, with its own case number, shall be created for each trust beneficiary.

**SUP. R. 71
COUNSEL FEES**

RULE 71.1 ATTORNEY FEES

Counsel in decedent's estates shall enter into a dated written fee agreement with the fiduciary for the estate and file the fee agreement with the Court at the time the inventory is filed.

RULE 71.3 ATTORNEY SERVING AS FIDUCIARY

In all matters where an attorney is the fiduciary of the estate, guardianship or trust, and that attorney or another is the attorney of record, detailed records shall be maintained describing time and services as fiduciary and as attorney, which records shall, upon request, be submitted to the Court for review. Prof.Cond.R. 1.5 shall govern the reasonableness of all fees, notwithstanding statutory allowances. The Court assumes an attorney, appointed as fiduciary, has been selected due to the attorney's special knowledge and abilities resulting in a savings of fees to the estate, guardianship or trust.

RULE 71.4 EARLY PAYMENT OF ATTORNEY FEES

Attorney fees for the administration of decedents' estate shall not be paid or advanced from any source until the final account or final closing documents are prepared for filing unless otherwise approved by the Court upon application. Such application shall contain a statement that the fee is being required in advance of the time permitted by Sup. R. 71(B) and shall set forth the reason for requesting early payment of fees. The application shall be accompanied by a consent as to the amount and the timing of the fees by all beneficiaries who have yet to receive their complete distribution or shall be set for hearing with notice to the non-consenting beneficiaries.

RULE 71.5 NOTICE AND CONSENT FOR ATTORNEY FEES IN ESTATES

- A. Application for attorney fees in estates, made at the time of the filing of the final account, shall include a statement of the amount of the fees and a statement of services rendered. The applicant shall give notice of the hearing on the fees to **all persons or entities** whose interests are affected by the payment of the fees, including creditors if the estate is insolvent.
- B. If persons entitled to greater than 50% of the assets used for the payment of the fees filed a written consent to the fees, the Court may, subject to Sup. R. 71 (D), dispense with the filing of the application and the hearing on the fees subject to any exceptions to the final account by non-consenting beneficiaries or creditors.

RULE 71.6 NOTICE AND CONSENT FOR ALL ATTORNEY FEES IN GUARDIANSHIPS

- A. In guardianship administration, the Court shall consider applications for attorney fees for the establishment of the guardianship upon the filing of the inventory, and shall consider additional fees annually upon the filing of each account. Notice of the application shall be given to the guardian of the estate. The guardian of the estate may waive notice of the hearing and consent to the payment of fees. All applications for attorney fees in guardianships shall be accompanied by a statement of all attorney and guardian fees approved by the Court in that guardianship in the last five years.
- B. After the death of the ward, the Court will consider attorney fees and guardian fees as liens on the ward's assets. If the fees are approved by the Court, the fees may be paid out of the guardianship assets and included in the final guardianship account.
- C. The Court may require notice of the hearing on the fees be given to the estate fiduciary of the deceased ward or other interested persons.

RULE 71.7 NOTICE AND CONSENT FOR ATTORNEY FEES IN TRUSTS

- A. In trust administration, the Court shall consider applications for attorney fees for the establishment of the trust upon the filing of the inventory, and shall consider additional fees annually upon the filing of each account. All applications for attorney fees in trusts shall be accompanied by a statement of all attorney and trustee fees approved by the Court in that trust in the last five (5) years.
- B. Notice of application shall be given to the trustee. The trustee may waive notice of the hearing and consent to payment of fees. The Court may require notice of the hearing on the payment of the fees be given to the trust beneficiaries who are affected by the payment of fees.

RULE 71.8 CONTESTED FEES

The burden is upon the attorney to prove the reasonableness of the fee as governed by Prof.Cond.R. 1.5. A detailed fee statement may be required which includes the itemization and date of service performed, time expended, identification of the individual(s) performing the services and the hourly rate charged.

RULE 71.9 CONTINGENT FEES

Prior to an attorney entering into any contingent fee agreement with a fiduciary, an application for authority to enter into said agreement shall be approved by and filed with the Court. In all cases, there shall be a written fee agreement as required by R.C. Section

4705.15. The Court shall review the reasonableness of the attorney's fees and itemized expenses of the litigation.

- A. If the contingent fee agreement does not exceed 33 1/3% of the recovery, or 40% if an appeal is taken, prior court approval is not required and the approval of the contingent fee agreement may be ratified at the time of settlement.
- B. If the contingent fee agreement exceeds 33 1/3% of the recovery or 40% if an appeal is taken, prior approval of the Court is required for the fiduciary to enter into such an agreement. Absent such prior approval, the maximum fee permitted shall not exceed 33 1/3% of the recovery.

SUP. R. 72

EXECUTOR'S AND ADMINISTRATOR'S COMMISSION

RULE 72.1 EXECUTOR/ADMINISTRATOR COMMISSION

- A. Where there is a claim for extraordinary services, an application shall be filed setting forth an itemized statement of the services rendered. The Court may require the application to be set for hearing with notice given to parties affected by the payment of fees in accordance with Civ. R. 4.1.
- B. Except for good cause shown, commissions will not be allowed if there is a delinquency in the filing of an account.
- C. The commissions of co-executors in the aggregate shall not exceed the commissions which would have been allowed to one executor or administrator acting alone except where the instrument under which the co-executors serve provided otherwise.
- D. Where counsel fees of extraordinary nature have been awarded for services to the estate which normally would have been performed by the executor or administrator, the said executor's or administrator's fee may be reduced by the amount awarded to counsel for those services rendered, unless, for good cause shown, the Court finds that such a ruling would be unfair.
- E. When the fiduciary or his firm is also the attorney for the estate and the fiduciary's commission is being claimed, the Court may set a hearing on the application for allowance of attorney fees.

SUP. R. 73
GUARDIAN'S COMPENSATION

RULE 73.1 GUARDIAN'S COMPENSATION

Unless otherwise provided by law or ordered by the Court, a guardian may charge for his ordinary services an amount computed in accordance with the following schedule:

- A. In estates where the principal is less than \$100,000, the guardian may receive compensation as follows:
 - 1) During each accounting period required by statute, 4% of the first \$3,000 of income, and 3% of the balance in excess of \$3,000; and 4% of the first \$3,000 of expenditures and 3% of the balance in excess of \$3,000.
 - 2) An annual fee of \$2 per \$1000 of the fair market value of the principal.
 - 3) Minimum compensation of \$50.00 per year.
 - 4) Compensation computed on income will not be allowed on balances carried forward from one accounting period to another; nor will an investment of funds or the final distribution of unexpended balances to a ward at the close of a guardianship be considered as an expenditure.
- B. In estates where the fair market value of the principal is \$100,000 or more, the guardian may receive as annual compensation an amount to be computed on the fair market value of the principal, in accordance with the following schedule:
 - 1) \$5 per \$1000 on the first \$100,000 of the fair market value of the principal;
 - 2) \$4 per \$1000 on the next \$200,000 of the fair market value of the principal;
 - 3) \$3.50 per \$1000 on the next \$700,000 of the fair market value of the principal; and
 - 4) \$3 per \$1000 on all over \$1,000,000 of the principal.
- C. For the purpose of computing a guardian's compensation as herein provided in (A) or (B) of this Rule, the fair market value of the principal shall be determined by the guardian as of the date of his appointment and as of each anniversary thereafter. The compensation so determined may be charged during the ensuing year. The annual principal valuation shall be adjusted from time to time to reflect additions to and withdrawals from the principal of the estate, and the compensation for the remaining portion of the annual period shall be similarly adjusted to reflect such revised valuation.

SUP. R. 74
TRUSTEE'S COMPENSATION

RULE 74.1 TRUSTEE'S COMPENSATION

- A. Except where the instrument creating the trust makes provision for compensation, a testamentary trustee may charge annually for ordinary services performed by the trustee in connection with the administration of the trust in accordance with its fee schedule for inter vivos trusts, or if it has no such fee schedule then as follows:
- 1) \$8 per \$1000 on the first \$200,000 of the fair market value of the principal;
 - 2) \$6 per \$1000 on the next \$800,000 of the fair market value of the principal;
 - 3) \$4.50 per \$1000 on all over \$1,000,000 of the fair market value of the principal;
 - 4) The trustee may charge a minimum fee of \$600 per year.
- B. There may be allowed an amount equal to 1% of the fair market value of any distribution or payment from the principal of the trust property. This amount shall be charged against and deducted from the distribution or payment.
- C. For the purpose of computing the trustee's compensation as herein provided, the fair market value of the principal of the trust property shall be determined by the trustee as of a date, determined by the trustee, such date to commence during the month of the original receipt of trust property and each anniversary date thereafter. At the option of the trustee, fee evaluations may be made on a quarterly basis, each evaluation to be coordinated with the original annual evaluation date as selected by the trustee – if this option is selected by the trustee, the trustee must continue to compute his trustee's fee on the quarterly valuation basis, unless upon application to the Probate Court, a change in fee valuation method is allowed.

CORPORATE TRUSTEES:

- D. Except where the instrument creating the Trust provides for compensation, a testamentary trustee may charge fees on the same basis as it charges for living trusts.
- E. When assets are invested in common trust funds (pooled funds), management fees may be charged within the fund rather than at the account level. However, a trust's portion of those fees may not exceed those that may have been charged to the trust had it not participated in the pooled funds.

On each accounting where fees have been taken, an affidavit is required which asserts that the fees charged and included in the accounting represents those charges for similar services in living trusts.

**SUP. R. 75
LOCAL RULES-SPECIAL PROVISIONS**

RULE 75.1 NOTICE ON PROBATE OF WILL (O.R.C. 2107.19)

- A. Notice on admission of will to probate shall be given within two (2) weeks of the admission to probate to comply with R.C. 2107.19. A copy of the will shall be included with the notice to the legatees and devisees named in the will.
- B. The fiduciary, applicant for admission of the will to probate, applicant for release from administration, any other interested persons, or the attorney shall file the certificate.
- C. Notices shall be made according to Civil Rule 73(E), by:
 - 1) personal service;
 - 2) residential service;
 - 3) certified mail service (PREFERRED BY THE COURT);
 - 4) ordinary mail service if certified mail returned “refused” or “unclaimed”; or
 - 5) publication for three (3) consecutive weeks, proof of which must be filed with the Court.
- D. Notice shall be issued to the following persons:
 - 1) surviving spouse of the testator;
 - 2) legatees and devisees named in the will; and
 - 3) all persons who would be entitled to inherit from the testator under R.C. 2105.01, *et seq.*, if the decedent had died intestate.
- E. Will contests shall be filed within three (3) months after the filing of certificate of notice.
- F. The fiduciary or his or her attorney MUST provide proof of service.
- G. Probate form 1.0 - Surviving Spouse, Next of Kin, Legatees and Devisees - shall accompany any Will submitted to the Court. If additional next of kin are discovered, an amended form 1.0 shall be filed with the Court.
- H. A Will may be filed with the Court but need not be probated if there are no assets pursuant to R.C. 2941.22, 2107.09 and 2107.10.

RULE 75.2 NOTICE ON ACCOUNTS

- A. In ALL estate accounts, a certificate of service of account to heirs or beneficiaries IS REQUIRED with the account (form 13.9).
- B. Upon the filing of an Account (partial or final), the Court shall assign a non-oral hearing date/time. Prior to this hearing date, the Attorney shall cause green return receipt cards or waivers to be filed with the Court.
 - 1) In the event the attorney is unable to file all the waivers or green cards by this hearing date, he/she must file a motion requesting a continuance in order to afford time to file the waivers/green cards, or cause notice to be sent as required.
- I. Waivers or Notices shall be obtained/given to the following:
 - 1) in testate estates, all residual beneficiaries along with all specific bequest beneficiaries who have not signed a receipt for the specific bequest.
 - 2) in intestate estates, all next of kin.

RULE 75.3 INVENTORY & APPRAISAL/OHIO ESTATE TAX RETURNS

- A. Upon filing Inventory, the Court shall assign a non-oral hearing date and time. Prior to this hearing date the attorney shall cause waivers and/or green return receipt cards, along with a Certificate of Service to be filed with the Court.
 - 1) In the event the attorney is unable to file all the waivers or green return receipt cards by this hearing date, he/she must file a motion requesting a continuance, in order to afford time to file the waivers/green cards, or cause notice to be sent as required.
 - 2) In the event the certificate of service is not filed by hearing date and a motion to continue has not been filed, a Notice of failure to approve inventory will be issued to the attorney and executor/administrator.
- B. Waivers or Notices shall be obtained /given to the following:
 - 1) surviving spouse of the testator;
 - 2) in testate estates, all beneficiaries named in will; and
 - 3) in intestate estates, all next of kin.
- C. The name and address of the appraiser shall be typed or printed on the return of any appraisal. The appraiser shall sign the certificate of appraiser located at the bottom of the Inventory and Appraisal form or the attached appraisal. If more than one appraiser is used, a separate certificate shall be signed by each appraiser as to the items he/she appraised.
- D. Pursuant to R.C. 2115.06, the Court, upon application and for good cause shown, may dispense with the appraisement of any estate asset comprising a part of the estate inventory. Each application shall specifically state the

reason(s) for the request. Notwithstanding the foregoing, pursuant to R.C. 2115.06, an application to dispense with appraisal is not necessary when the fiduciary elects to use the County Auditor's valuation for real estate, provided the fiduciary includes a notation on the Inventory that the auditor's valuation is being used and attaches to the Inventory a copy of the parcel's property tax card. The county auditor's valuation, when used for the inventory, is not determinative or fair market value in related proceedings in which the Court must approve the price for a sale or purchase of the real estate parcel.

- E. The executor or administrator, or, if no executor or administrator has been appointed, another person in possession of property the transfer of which is subject to Ohio estate taxes under R.C. 5731.02 or 5731.19(A), shall file an estate tax return with the Court in accordance with R.C. 5731.21.
- F. The certificate of service of notice that a will admitted to probate and accompanying proof of service shall be filed with the Court prior to the Court approving the Inventory.

RULE 75.4 RELIEVING ESTATES FROM ADMINISTRATION

In cases of estates entitled to be relieved from administration where there is a Will, said Will may be presented for probate. If the entire estate will be consumed in the payment of debts, costs and applicable statutory allowances, or if the Will distributes the net of Descent and Distribution, and there is no real estate involved, then the Will may be filed only and need not be admitted to probate. If the Will is admitted to probate, an application for an order relieving the estate from administration may be filed in lieu of the appointment of the executor named in the Will. If probate of the Will is denied, an application for an order relieving the estate from administration may be granted and distribution made under the laws of intestate succession. Where no heirs are known to the applicant, the court shall set the application for hearing not less than three weeks from the date of such filing and shall require publication.

When an application to relieve an estate from administration has been filed, at least five (5) days notice in writing of the hearing on the application shall be given to the surviving spouse, heirs at law and creditors of said estate unless notices are waived or found unnecessary.

Commissioner's compensation shall be set by the Court on a case-by-case basis upon application to the Court.

RULE 75.5 SUMMARY RELEASE FROM ADMINISTRATION

- A. A summary release from administration may be filed if: the applicant is decedent's surviving spouse entitled to one hundred percent (100%) of the allowance for support and decedent's funeral and burial expenses have been prepaid; **OR** the surviving spouse has paid or is obligated in writing to pay

decedent's funeral and burial expenses and the value of the assets does not exceed the \$40,000 allowance for support plus an amount not exceeding \$5,000 for decedent's funeral and burial expense; **OR** the applicant who is not the surviving spouse has paid or is obligated in writing to pay decedent's funeral and burial expenses and the value of the assets is the lesser of \$5,000 or the amount of decedent's funeral and burial expenses.

- B. Required filings are: Application for Summary Release, certified copy of the death certificate, standard probate form 1.0, either a copy of a paid funeral bill or a signed agreement of the funeral home to accept later payment, and an entry granting summary release.
- C. The procedure is intended to be a speedy uncomplicated process to assist the public in those situations where a full estate or release from administration is not needed. However, the Court reserves the right to require additional filings or set hearing if it deems they are necessary to assure proper collection of assets, payment of obligations and distribution of decedent's assets.
- D. Commissioner's compensation shall be set by the Court on a case-by-case basis upon application to the Court.

RULE 75.6 ADOPTIONS

- A. All petitioners for adoption are required to be represented by an attorney, except for proceedings for the recognition of foreign adoptions and adult adoptions.
- B. All hearings regarding pre-adoption placements of children, and for Interlocutory Order shall be set before the Court. Hearings are required on all Final Decrees of Adoption, except those cases in which an Interlocutory Order has been issued, unless otherwise ordered by the Court. Said hearing shall be set before the Probate Judge.
- C. Hearings regarding pre-adoption placements of children are required prior to the filing of all petitions for adoption except in stepparent adoptions, adoptions by natural grandparents, and placements made by agencies authorized by law. A Custody Affidavit (R.C. 3127.23) shall be filed on all adoptions involving minors.
- D. In all placement hearings, the birth mother must be represented at the hearing by counsel. Attorney fees for the birth mother will be assessed as costs to the petitioner(s).
- E. The Court requires consent to the adoption be signed and filed by the natural parent who is married to the petitioner in a stepparent adoption.
- F. All adoption assessment reports shall be filed using ODJS form 1698.

- G. A full accounting of all disbursements made in connection with the adoption must be filed with the Court before the petition is heard in all adoptions, excluding stepparent.
- H. When a petition for adoption of a minor child whose father's address is reported as unknown is filed, notice by publication must be made pursuant to the Rules of Procedure and R.C. 3107.11.

RULE 75.7 INSOLVENCY CLAIMS

Upon filing a Schedule of Claims in accordance with R.C. 2117.25, the Court shall assign a non-oral hearing date and time on both the determination of insolvency and the application for an order in connection therewith. (R.C. 2117.15) In the event an interested party files a written objection prior to the non-oral hearing, or if the Court determines it to be appropriate, the matter will be set for oral hearing with notice to the fiduciary and the objector.

RULE 75.8 FAMILY ALLOWANCE CLAIM

The Application for apportionment of a family allowance pursuant to R.C. 2106.13 shall be prepared and filed on the standard probate forms. Any hearing on this application for family allowance shall be set with proper notice to all interested parties.

RULE 75.9 CERTIFICATE OF TRANSFER

- A. A certificate of transfer of real estate must have the description of the real estate approved by the Auditor of the County in which the real estate is located prior to filing with the Court. The Court will not approve any certificate that has not been approved by the Auditor for transfer.
- B. All certificates of transfer shall indicate what share of the decedent's interest each beneficiary is receiving.
- C. Certificate of Transfers will not be accepted by the Court until the inventory and appraisal is filed.

RULE 75.10 COURT SERVICE ON KNOX COUNTY ATTORNEYS

Any documents or other papers placed by a deputy clerk, employee or official of this Court in an attorney's mailbox maintained within the Court, will be construed as sufficient service. Any such service or delivery shall be deemed effective two business days after the date the documents or other papers are placed in that mailbox. Business days are all days other than Saturdays, Sundays or legal holidays observed by the State of Ohio or as designated by the Court.

RULE 75.11 DELINQUENT ACCOUNTS

- A. The Court will send a reminder to file account thirty (30) days prior to the due date.
- B. When an account is fifteen (15) days past due, the Court will send a Notice to file account.
- C. The Court will send a reminder to file inventory thirty (30) days prior to the due date.
- D. When an inventory is fifteen (15) days past due, the Court will send Notice to file inventory.
- E. If the inventory or account is not filed within forty five (45) days of due date, a Citation will be sent to the fiduciary and the attorney requiring their appearance before the Judge to show why no filing has been made with the Court.

RULE 75.12 ATTORNEYS OF RECORD

The application for the appointment of a fiduciary shall contain the name, address, Ohio Supreme Court registration number and telephone number of the attorney representing the fiduciary. If such attorney shall resign, the attorney and fiduciary shall notify the Court and the fiduciary shall submit the information required for the successor attorney. Such information shall be in writing. In any instance where an attorney files an application to withdraw as counsel representing fiduciary, it will be necessary the matter be set for hearing and the fiduciary be notified and be present at the hearing, unless notice and hearing is dispensed with by the Court.

RULE 75.13 ATTORNEY'S APPROVAL ON ENTRIES SUBMITTED

Each journal entry presented to the 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 the following form:

Approved:

Attorney for fiduciary
Address
Phone number

RULE 75.14 SUMMONS, NOTICES AND MOTIONS

- A. The Ohio Rules of Civil Procedures shall apply except as otherwise provided by Statute.
- B. The Court reserves the right to hear a handwritten or typed letter motion filed by a party to the action.

RULE 75.15 HEARINGS AND CONTINUANCES

- A. It is the Court's practice for a Deputy Clerk to schedule all hearings by contact with the attorney of record or his/her office to check with his/her calendar. Therefore, once notice is sent, the Court presumes the scheduled date and time have been accepted and approved by the attorney or his/her staff. Any attorney requesting a continuance on the grounds of the Court's alleged failure to notify him/her must overcome this presumption.
- B. Requests for continuance will be made in accordance with Sup. R. 41.
- C. Motions for continuance shall be submitted in writing with the proper caption and case number, as far in advance of hearing dates as practicable. If grounds for the request are conflicting assignment in another court, the attorney shall attach a time stamped copy of the notice of that conflicting assignment pursuant to Sup R. 41(B).
- D. No continuances, except on the Court's own Motion, shall be granted in the absence of proof of reasonable notice to or consent by counsel for the adverse party, if represented by counsel and, if not, by the adverse party. Failure after such notice to object to a continuance within a reasonable time shall be deemed as consent thereto.
- E. Unless the Court otherwise directs, counsel for the party in whose favor a verdict or opinion is rendered, shall within seven (7) days thereafter prepare the proper judgment entry and submit the original to the Court and send a copy to counsel for the opposite party. Counsel for the opposing party shall have seven (7) days to object to the Court after the receipt thereof.
- F. Upon failure to comply with this Rule, the matter may be dismissed. The Court may prepare and file the appropriate entry and charge the costs of the same to the responsible party or take whatever actions it deems necessary.

RULE 75.16 NAME CHANGES –MINOR

At the hearing on an application for the change of name of a minor, the applicant for the change of name of a minor must provide the Court with the copy of the child support enforcement agency's payment history for the minor, if a child support order has been issued with respect to the minor.

SUP. R. 78
CASE MANAGEMENT

RULE 78.1 CASE MANAGEMENT

I. CIVIL ACTIONS: (Excluding Land Sales)

- A. For the purpose of insuring the readiness of civil cases, the Probate Division may require pre-trial or status conferences.
- B. At such hearing, the following decisions shall be made and all counsel attending must have full authority to enter into a binding final pre-trial order:
 - 1) The Court will rule on all pre-trial motions;
 - 2) Briefs on all legal issues shall be submitted;
 - 3) Proposed jury instructions shall be submitted;
 - 4) Proposed jury interrogatories shall be submitted;
 - 5) Clients shall be present unless excused by the Court;
 - 6) No motions shall be heard after the final pre-trial without Order of the Court and after showing good cause.
- C. The trial date shall not be changed nor shall the trial be continued without Order of the Court after showing good cause.

II. CIVIL ACTIONS: LAND SALES

- A. All land sales which have not been concluded within one (1) year from the date of filing shall be set for pre-trial conference within ten (10) days following the expiration of one year.
- B. All counsel attending the pre-trial conference must have full authority and enter into a binding pre-trial order, and:
 - 1) the attorney of record and fiduciary must attend the pre-trial conference;
 - 2) a written status report shall be filed with the Court no later than seven (7) days prior to the pre-trial conference;
 - 3) 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.

III. MENTAL ILLNESS & DEVELOPMENTAL DISABILITIES HEARINGS

All hearings shall comply with R.C. Chapters 5122 and 5123.

IV. ADOPTIONS

The status of pending pre-placement applications and adoption proceedings shall be reviewed annually and the Court shall order further action as necessary. Additional rules on adoptions are located in Local Court Rule 75.6.

V. FAILURE TO COMPLY

Failure to comply with this Case Management Rule may result in dismissal pursuant to Civ.R. 41 and other sanctions, including but not limited to, payment of costs and attorney fees.

RULE 78.2 WITHDRAWAL OF COUNSEL

An attorney desiring to withdraw shall file a motion to withdraw stating the reason for withdrawal. The motion shall contain the last known address and telephone number (if any) of the client. The Court shall not issue an entry approving the withdrawal until the attorney has filed a certification that the following conditions have been fulfilled:

- 1) Notice has been given to the client stating all filing deadlines affecting the client;
- 2) Notice has been given to all attorneys, unrepresented parties, and interested persons; and
- 3) Attorneys withdrawing from representation of a fiduciary shall file the written acknowledgement of the withdrawal signed by the fiduciary or withdrawal shall be granted after a hearing with notice to the fiduciary. The attorney shall also notice any bonding agencies involved.

RULE 78.3 JURY MANAGEMENT

The Knox County Common Pleas Court General Division Rule 19 as they relate to juries shall apply to proceedings in the Probate Division except to the extent that by their nature they would be clearly inapplicable.

RULE 78.4 EVIDENCE OF DEATH

With the initial filing of any estate administration proceeding in which there is not an attorney representing the applicant, a certified copy of the decedent's death certificate shall be exhibited to the Court. The deputy clerk shall make a photocopy of the death certificate and, before filing, redact the social security numbers. If an attorney enters an appearance for the applicant, a photocopy of the death certificate may be submitted with the social security number redacted before filing.

If the death certificate is not reasonably available when the initial estate filing is made, the application to open the estate must be accompanied by a published obituary for the decedent or letter from the funeral home identifying the decedent. To be accepted, the funeral home letter and obituary must recite the date of death and the decedent's residence address. This alternative evidence of death does not exempt the estate from the requirement for providing the death certificate as soon as it is available and no distribution or transfer of assets may be made without the death certificate first being filed or a specific order of the Court.

KNOX COUNTY PROBATE COURT DEPOSITS AND COURT COSTS

DEPOSITS:

Estate

Full Administration.....	\$225.00
Release.....	\$175.00
Summary Release.....	\$110.00
Summary of Release with Real Estate.....	\$125.00
Re-Open a Closed Estate.....	\$ 50.00

Guardianship

Minor (Estate Only).....	\$200.00
Incompetent.....	\$275.00
Conservatorship.....	\$150.00

Trust.....	\$150.00
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Civil Action.....	\$175.00
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Adoption

Public Agency – Knox County.....	\$225.00*
Public Agency – Out of County...(Includes Assessment).....	\$375.00*
Foreign Adoption.....	\$175.00*
Private Adoption.....	\$250.00*
Step-Parent Adoption...(Includes Assessment).....	\$375.00*
Adult Adoption.....	\$125.00
*Add \$150.00 for each additional child	

Transcript.....	\$400.00
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Minor Settlement.....	\$125.00
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Lottery Commission.....	\$125.00
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Application to Release Medical Records.....	\$110.00
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Application to Inventory Safe Deposit Box.....	\$ 25.00
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ONE TIME FEES:

Will for record only.....	\$ 50.00
Authenticated Copies.....	\$ 50.00*
*plus \$1.00 per page exhibits	
Exemplified Copies.....	\$ 3.00*
*plus \$1.00 per page for exhibits	
Tax only-non-taxable.....	\$ 50.00*
*plus \$1.00 per page exhibits	
Tax only-taxable.....	\$ 50.00*
*plus \$1.00 per page exhibits	
Change of Name (Adult or Minor).....	\$ 90.00
Birth Correction.....	\$ 90.00
Birth Registration.....	\$ 90.00
Copy of Audio Recording.....	\$ 25.00
Marriage License.....	\$ 60.00
Certified Copy of Marriage Record.....	\$ 3.00
Will on Deposit.....	\$ 15.00

FEES EFFECTIVE SEPTEMBER 18, 2019

APPENDIX A-1

PROBATE COURT OF KNOX COUNTY, OHIO

TRUST OF
GUARDIANSHIP OF
ESTATE OF _____

CASE NO. _____

NOTICE OF HEARING ON APPLICATION FOR ATTORNEY FEES

To the following persons:

_____	_____
Name	Address

_____	_____
Name	Address

_____	_____
Name	Address

An application for allowance of attorney's fees in the within case has been filed with this Court. Said application, a copy of which is included, requests approval of attorney's fees in the amount of \$_____ and reimbursement of costs advanced in the amount of \$_____.

The hearing on the Application will be held on _____ at _____ o'clock ____ M. in this Court.

The Court is located on 1st floor, Courthouse, 111 East High Street, Mount Vernon, Ohio.

Fiduciary

APPENDIX A-2

**COURT OF COMMON PLEAS
PROBATE DIVISION
KNOX COUNTY, OHIO**

IN THE MATTER OF:

CASE NO.

CONSENT TO PAYMENT OF ATTORNEY FEES

The undersigned, being a residuary beneficiary or other interested person in the above captioned estate, hereby consents to the payment of attorney fees in the amount of \$_____.

By signing this consent, the undersigned hereby acknowledges:

- 1) The receipt of the attorney's fee statement with a description of services rendered to the estate;
- 2) The fee charged is within the Court's guideline and said guideline fee has not been represented as a schedule of a minimum or maximum fee to be charged;
- 3) The Court need not make an independent determination that said services were reasonable, necessary and beneficial to the estate.

APPENDIX A-3

**COURT OF COMMON PLEAS
PROBATE DIVISION
KNOX COUNTY, OHIO**

IN THE MATTER OF:

Case No. _____

**WAIVER OF NOTICE OF HEARING ON APPLICATION FOR ATTORNEY
FEES AND CONSENT TO PAYMENT OF ATTORNEY FEES**

The undersigned, being a residuary beneficiary or other interested person in the above captioned estate, hereby waives notice of hearing on application for attorney fees and consents to the payment of attorney fees in the amount of \$_____.

By signing this consent, the undersigned hereby acknowledges:

- 1) The receipt of the attorney's fee statement with a description of services rendered to the estate.

PROBATE COURT OF KNOX COUNTY, OHIO

IN THE ESTATE OF:

Case No. _____

**SURVIVING SPOUSE WAIVER OF SERVICE OF
THE CITATION TO ELECT**

The undersigned, surviving spouse of the above named decedent, being eighteen years of age or older and not under disability, waives the service of the citation required by section 2106.01(A) of the Revised Code.

I acknowledge I have received Form 8.3, Summary of General Rights of Surviving Spouse.

I understand that most of my rights must be exercised within five months from the date of the initial appointment of the administrator. If I do not timely elect to exercise any specific right, it will be conclusively presumed I have elected not to exercise that right and the right will be forfeited.

Attorney for Estate

Attorney Registration No.

Address

City, State, Zip

Telephone Number

Signature of Surviving Spouse

Typed or Printed Name

Address

City, State, Zip

Telephone Number

PROBATE COURT OF KNOX COUNTY, OHIO

IN THE GUARDIANSHIP OF:

_____ Case No. _____

GUARDIAN'S CREDIBILITY APPLICATION

Name of Alleged Incompetent _____

Name of Applicant to be Appointed Guardian _____ DOB _____

Applicant's Current Address _____

Previous Address (5 yrs. Only) _____

Spouse's Name _____

Employer's Name and Address _____

Contact Person _____ Phone # _____
(if court unable to contact you)

Has Applicant Ever Filed Bankruptcy? _____ Yes _____ No

Has Applicant Ever Been Garnished? _____ Yes _____ No

Has Applicant Ever Been in Receivership? _____ Yes _____ No

Has Applicant Ever Been Convicted of a Felony? _____ Yes _____ No

This statement is made in support of my application to be appointed Guardian in the above styled matter and the undersigned says that the facts stated in the foregoing applications are true.

Signature of Applicant