

# **LAWRENCE COUNTY PROBATE COURT LOCAL RULES OF PRACTICE**

**Effective January 1, 2021**

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**INTRODUCTION**  
**TO**  
**LAWRENCE COUNTY**  
**PROBATE COURT**  
**LOCAL RULES OF PRACTICE**

Lawrence County Probate Court has adopted these Local Rules of Practice to facilitate the prompt disposition of cases in our Court. The Rules create uniform policies and procedures to aid the Court in handling each case in a fair, impartial, and efficient manner. The Rules should also help minimize mistakes, delays, and misunderstandings by clearly describing Court requirements.

These Rules supplement the Rules of Superintendence for the Courts of Ohio. It is important to understand that our Local Rules do not replace any statutory requirements, case law or other procedural rules relating to probate cases. These Local Rules reflect our Court's method of achieving legal compliance in a practical, effective way that enables the Court to fulfill its obligation to oversee probate proceedings.

Each Local Rule has two components. The first component is the actual Rule, numbered to generally correspond to the appropriate Rule of Superintendence. The second component is a "Best Practice" section, which provides practical guidance on how to comply with the Rule. The actual Rules are mandatory. The Best Practice is merely a suggestion.

Throughout these Rules you will find parenthetical references to specific local forms relating to the particular subject. Local forms are available at the Court. These Rules do not reference every available form.

**IMPORTANT**

**THESE RULES APPLY EQUALLY TO EVERY PERSON INVOLVED IN A PROCEEDING IN LAWRENCE COUNTY PROBATE COURT, REGARDLESS OF WHETHER THE PERSON IS OR IS NOT REPRESENTED BY AN ATTORNEY. THERE ARE NO SPECIAL EXCEPTIONS OR MORE LENIENT STANDARDS FOR PERSONS WHO REPRESENT THEMSELVES WITHOUT THE ASSISTANCE OF LEGAL COUNSEL.**

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## **Superintendence Rule2 Definitions**

### **Local Rule 2.1 Special Terms**

For purposes of these Rules, the following words, phrases, and abbreviations beginning with capital letters are defined terms with the specific meanings stated below.

**A. Calendar Days**

The phrase “Calendar Days” means every day, including weekends and holidays.

**B. Court**

The word “Court” means the Probate Division of Lawrence County Court of Common Pleas.

**C. Court Days**

The phrase “Court Days” means Monday through Friday, except legal holidays and emergency closings. Legal holidays are set by the Lawrence County Commissioners. The Court also reserves the right to set additional holidays for which the Court will be closed. Emergency closings are those days, or portions of days, in which the Lawrence County Commissioners have delayed or closed all County offices.

**D. Fiduciary**

The word “Fiduciary” means all types of fiduciaries subject to jurisdiction of the Court, as defined in R.C. §2109.01. The word includes, without limitation, an administrator, special administrator, administrator with the will annexed, executor, commissioner, guardian, conservator, and testamentary trustee.

**E. LC Form**

The phrase “LC Form” means the forms the Court prescribes for use in proceedings in Lawrence County Probate Court, all of which are available at the Court.

**F. R.C.**

The abbreviation “R.C.” means the Ohio Revised Code.

**G. Rules**

The word “Rules” means these Lawrence County Probate Local Rules of Practice.

**H. SC Form**

The phrase “SC Form” means the standard forms the Ohio Supreme Court prescribes for use in probate proceedings.

**I. Sup. R.**

The abbreviation “Sup. R.” means the Rules of Superintendence for the Courts of Ohio.

**J. Hearing**

When used without additional qualifiers, the term “hearing” means either an oral hearing, where parties provide oral testimony in front of a judicial officer, or a non-oral hearing where the judicial officer reviews all filed documents without causing any party to appear before the Court. Unless the Ohio Revised Code or the Rules of Superintendence provide for a specific type of hearing, the Court may utilize its discretion to determine the type of hearing set.

## **Local Rule 2.2 Statutory Definitions**

Defined words and phrases in statutes or other legal rules or regulations have the same meaning for purposes of these Rules.

## **Local Rule 2.3 Meaning of Certain Phrases**

The following phrases, although not capitalized, have the meanings described below for purposes of these Rules.

### **A. Applicable Law**

The phrase “applicable law” means all statutes, case law, rules, regulations, codes, and every other form of legal authority that directly or indirectly relates to the issue or matter.

### **B. Exceptional Circumstances**

The phrase “exceptional circumstances” is a higher standard than reasonable cause, and means events that were completely unanticipated and not reasonably foreseeable such that it was highly improbable in the exercise of diligence and attention that the situation could have been avoided. Examples of exceptional circumstances include death, physical or mental disability, prolonged serious illness or injury, act of God, and similar unavoidable events.

### **C. Reasonable Cause**

The phrase “reasonable cause” is a lower standard than exceptional circumstances, and means a genuine, plausible and justifiable excuse for an act or omission that, although possibly anticipated or foreseeable, could not be avoided with normal diligence and attention to the matter.

### **D. Timely Manner**

The phrase “timely manner” means that an act was performed before expiration of the time required for that act to be completed under applicable law or under these Rules.

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### **Best Practice**

#### **Local Rule 2.1**

Be careful to check whether a particular time requirement in these Rules is tied to “Calendar Days” or “Court Days.” “Calendar Days” includes every day, regardless of whether the Court is open that day or not. “Court Days” are only those days that the Court is open. If a Rule is silent, assume that it means “Calendar Days.”

#### **Local Rule 2.2**

Statutes often have their own defined terms. Be sure to check the statute to see if there are special terms that apply to your situation. Remember that statutes have priority over these Rules. There should not be any conflicts between the defined terms in these Rules and those in statutes, but if there is, the statutes control.

#### **Local Rule 2.3**

It is important to understand the difference between “Exceptional Circumstances” and “Reasonable Cause.” In your filings, be sure to explain in clear, concise terms why the facts of your situation fit the required standard. Vague or incomplete explanations will not help your cause and may result in the Court denying your request. Help the Court understand your request by providing legitimate and understandable reasons.

# **Superintendence Rule5 Local Rules of Court**

## **Local Rule 5.1 Adoption of Local Rules**

Under the authority of R.C. §2101.04 and Sup. R. 5, the Court adopts these Rules as the local rules of practice for Lawrence County Probate Court. These Rules supplement applicable statutes, Rules of Superintendence, Ohio Rules of Civil Procedure and other law pertaining to probate proceedings.

## **Local Rule 5.2 Effective Date and Application**

These Rules are effective beginning January 1, 2021. These Rules apply to all cases on or after that date, regardless of whether the case is pending, reopened, or newly filed.

## **Local Rule 5.3 Amendment**

The Court may amend these Rules if the Court determines that the amendments would be beneficial or necessary to comply with changes in the law.

## **Local Rule 5.4 Court Discretion**

The Court may modify or waive the application of any of these Rules if the Court determines, in its sole discretion, that the particular circumstances warrant it. Modification or waiver in one circumstance does not create a precedent that the Court will grant a modification or waiver in similar or different circumstances.

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### **Best Practice**

#### **Local Rule 5.1**

It is always important to verify what an applicable statute requires in a particular situation first because statutes have priority over these Rules. Likewise, the Rules of Superintendence and Civil Rules have priority over these Rules. The Local Rules are intended to provide guidance in how to carry out the statutory requirements, but they do not replace or overrule any statutes or superior rules.

#### **Local Rule 5.2**

These Rules go into effect on January 1, 2021. They apply to all cases that are pending on that date, and to new cases that are started on or after that date. It would be nearly impossible to apply old rules to pending cases and new rules to new cases. Therefore, these Rules apply to all cases after the effective date.

#### **Local Rule 5.4**

Obviously, there will be situations that are unique and do not fit squarely within the requirements in these Rules. In those unusual situations, the Court will work with you to be sure these Rules do not result in unfair treatment of your case. Lack of diligence in addressing unusual problems will likely not be sufficient to convince the Court to waive or modify a particular Rule.

If you anticipate problems, bring them to the attention of the Court as early as possible so we can work through solutions together. Waiting until the last minute to raise issues with the application of a particular Rule will likely delay your case and may make the situation worse.

# **Superintendence Rule 8 Court Appointments**

## **Local Rule 8.1 Appointment Process**

The Court will make appointments from its appointment lists in a manner that will best assure the equitable distribution of appointments among the qualified appointees. The Court's selection process will take into account the type, complexity and special requirements of the particular case, as well as the skill, experience and current caseload of the available appointees. To the extent that all other factors are equal, the Court will make appointments on a rotating basis.

## **Local Rule 8.2 Master Lists**

The Court will create a separate master lists of persons who are eligible for appointment as attorney, guardian ad litem, commissioner, Fiduciary, trustee, or other capacity. Prospective appointees may request the Court to add them to one or more list upon demonstrating to the Court that they possess the necessary skills, experience and licensure Ohio law or the Court requires for the position. The Court may periodically review its appointment lists to assure that all eligible appointees continue to meet the Court's qualification criteria and the Court has the authority to remove any attorney from the list if the attorney does not meet the Court's criteria.

## **Local Rule 8.3. Compensation**

Persons whom the Court appoints to serve in any capacity are entitled to reasonable compensation as the Court determines. The Court may create standard compensation rates for different types of appointments, which the Court will provide to all available appointees and persons who request to be included on the appointment lists.

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### **Best Practice**

Court appointments are a good way for newer attorneys and those transitioning into probate practice to gain valuable experience handling probate cases. It is also a way for experienced probate attorneys to occasionally share their expertise in more complex cases.

Compensation in court-appointed cases normally is not as high as in private cases, but usually the Court is able to provide some compensation to the appointed attorney. It is best to discuss the scope of the case and the compensation with the Court before accepting the appointment.

## **Superintendence Rule9 Court Security Plans**

### **Local Rule 9.1 Adoption**

The Court has adopted and implemented a plan for court security which is not treated as public record.

### **Local Rule 9.2 Application**

All persons entering the Lawrence County Courthouse for any reason are subject to the security plan, including the security screening procedures upon entering the building.

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#### **Best Practice**

Keep in mind that everyone entering the Lawrence County Courthouse must first go through security. While that is usually a fast process, it is always best to arrive at least 10 minutes early for any hearing or appointment in case there are delays at the security station.

# **Superintendence Rule 11**

## **Recording of Proceedings**

### **Local Rule 11.1 Record**

This Rule describes the circumstances under and the means by which the Court will record proceedings.

#### **A. Contested Matters**

The Court digitally records all hearings and trials in contested matters, and in all proceedings in which the law requires recording of the proceeding. The Court's recording is the official record of the proceeding.

#### **B. Other Proceedings**

In non-contested matters, the Court may record the proceeding at its discretion. Any party or the party's attorney may request that the Court record a proceeding in a non-contested matter. The request may be made orally or in writing but must be made before the proceeding begins.

#### **C. Alternative Methods**

If a party, other person with an interest in the matter, or their respective attorney desires a record of a proceeding by means other than digital recording, whether by stenographic, video or other recording method, the requesting person must obtain the Court's permission at least three Court Days in advance of the proceeding. If granted, the requesting person is responsible for making all arrangements and for paying all costs associated with the alternative recording. Alternative recording methods are in addition to, and not in replacement of, the Court's digital recording. The Court's recording will be the official record of the proceeding.

#### **D. Prohibition**

No person, including media representatives, are permitted to make, or cause to be made, any other audio or visual recording of any proceeding in our Court without the Court's prior permission.

### **Local Rule 11.2 Transcripts**

This Rule describes the means by which a person may obtain a transcript of the recording of any proceeding in this Court.

#### **A. Retention of Recordings**

The Court maintains its digital recordings of proceedings for at least two years pursuant to the Court's record retention policy. Any person desiring to maintain the recording longer than that may do so by obtaining a copy of the recording from the Court in the manner described in this Rule before expiration of the two-year period.

#### **B. Who May Request Copy**

Any person may request a transcript of any proceeding, except in cases that are confidential by law or by Court order. Only a party or a party's attorney may request a copy of the transcript of a proceeding that is confidential by law or by Court order.

### **C. Transcription and Cost**

Any person desiring to have a written transcript of the proceeding made from the Court's digital recording may do so from the copy obtained from the Court. The requesting person is responsible for making all arrangements and paying all costs associated with preparing a written transcript of a proceeding.

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#### **Best Practice**

##### **Local Rule 11.2**

If you request a transcript of a proceeding that is not confidential, you may either pick it up in person at the Court or have the Court mail it to you. You need to provide a self-addressed envelope with sufficient postage if you want the Court to mail the copy to you. Otherwise, the Court will call you when the copy is available for pickup.

Copies of confidential proceedings may only be picked up in person by the party or the party's attorney. You will need to provide the Court with proper photo identification when you pick up the copy.

## **Superintendence Rule 26 Court Records Management and Retention**

### **Local Rule 26.1 Medium**

The Court adopts the combined indexes, dockets and journals as defined in Superintendence Rule 26 through 26.05. The indexes, dockets and journals may be maintained in an electronic medium. The records shall be permanently retained. Microfilm, digital imaging or electronic data shall be considered the permanent record once the Court transitions to said medium. Traditional paper or bound book records may be destroyed after having been transferred to such medium. Case files shall be maintained in traditional paper medium until after having been converted to digital imaging.

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#### **Best Practice**

If you are searching for a probate record that is more than five years old, it is advisable to call the Court first to determine whether the record is still maintained at the Court, or if it has been closed or sent to Lawrence County Archives. That will save you a wasted trip to the Court if the record is in the archives. The County maintains its archives at a different locations.



# Superintendence Rule 51 Standard Probate Forms

## Local Rule 51.1 Ohio Supreme Court Forms

In all instances in which the Ohio Supreme Court has prescribed forms for use in probate proceedings, the applicable Supreme Court forms must be used and are available on the Supreme Court's website.

## Local Rule 51.2 Lawrence County Forms

In all instances in which our Court has prescribed forms to implement these Rules for use in probate proceedings, the applicable Lawrence County Probate Court forms are recommended to be used. Our Court may choose, in its discretion, whether or not to accept any other forms in place of our prescribed forms, even if the other forms purport to contain the same information.

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### Best Practice

#### Local Rule 51.1

The Rules of Superintendence require that you must use probate forms prescribed by the Ohio Supreme Court if a form is available for your particular purpose. This is mandatory. Please be sure you are using the most recent version of the form, as they change periodically.

#### Local Rule 51.2

Lawrence County Probate Court also has numerous prescribed forms. Many of those forms are referenced in these Rules. If there is a local prescribed form for a particular purpose, its use is recommended. The reason is that uniformity of the forms for routine purposes makes it more efficient for the Court to review and process filings.

Make sure you are using the correct form in its most recent version to save time and to avoid the embarrassment of having to get the correct forms signed again.

# Superintendence Rule 52 Specifications for Printing Probate Forms

## Local Rule 52.1 Standard Prescribed Forms

All standard probate forms prescribed by the Ohio Supreme Court or Lawrence County Probate Court must comply with the following requirements.

### A. Compliance with Rules of Superintendence

All forms presented to our Court for filing must comply with all specifications and requirements in Rule 52 of the Rules of Superintendence.

### B. Computer Generated Forms

All computer generated forms must be prepared and filed with the exact wording and formatting, including the retention of all blank lines whether filled-in or remaining blank, as they appear in the prescribed forms. No alterations are permitted.

### C. Third Party Software

If using third party software for form preparation, it is the preparer's responsibility to check the Court's website to assure that the most recent version of Supreme Court's or this Court's

prescribed local forms are being used.

**D. Printing Requirements**

All forms and other documents presented to the Court for filing must be printed on only one side of the paper and only on 8.5 by 11-inch size paper with no backing. The only exception is for original wills and other attachments that were prepared and signed previously that must be filed in their original format without alteration.

**E. Effect of Signature**

The signature of an applicant, Fiduciary or attorney on any prescribed form constitutes that person's representation and warranty that the form is presented without alteration and complies with all requirements in the Rules of Superintendence and with these Rules.

**Local Rule 52.2 Acceptance for Filing**

The Court may decline to accept any forms for filing that do not comply with this Rule and with the requirements in Rule 57. The Court may also require that any forms be amended or supplemental information provided prior to acting on any forms filed in the Court.

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**Best Practice**

Please note that our Court requires that documents be printed only on one side. Do not print two-sided. This is important for purposes of future scanning for electronic storage and microfilming.

If you use probate software from a third-party vendor, it is good practice to be sure your software is current to take into account changes in these Rules and the Court's prescribed forms

**Superintendence Rule 53  
Hours of Court**

**Local Rule 53.1 Normal Court Hours**

Lawrence County Probate Court is open every Court Day from 8:00 a.m. through 4:00 p.m.

**Local Rule 53.2 Marriage License Bureau Hours**

The Marriage License Bureau of Lawrence County Probate Court is open every Court Day from 8:00 a.m. through 4:00 p.m.

**A. Application Materials**

Instructions for completing a marriage license application and a checklist of all necessary supporting materials are available at the Probate Clerk's office.

**Local Rule 53.3 Hearing Schedule**

Our Court conducts hearings Monday through Friday.

**A. Check-In**

All participants in a hearing should normally check in at the Clerk's Office no later than five minutes before the scheduled hearing time.

**Best Practice**

The Court generally follows the same holiday and closure schedule as all Lawrence County offices. If there are additional times that the Court will be closed, it will be established by Journal Entry in January of the given year. However, there may be occasional closures due to weather or other emergencies that are not posted. Those closures will be announced through local media. If in doubt, please call the Court in advance to verify that it is open.

**Local Rule 53.2**

Personal presence at the Court is required for issuance of a marriage license because it is necessary to sign the application under oath in the presence of a Deputy Clerk. It is very important to complete every detail of the application fully and accurately. It is also important to make sure you bring all required documents and information with you to the Court.

## **Superintendence Rule 54**

### **Conduct in Court**

#### **Local Rule 54.1 Expectations**

All persons present in the Court must conduct themselves in a respectful, dignified manner at all times.

##### **A. Dress Code**

The Court expects all persons having business with the Court to dress appropriately for the importance of the occasion. Attorneys are expected to dress professionally in most circumstances.

##### **B. Treatment of Others**

Before, during and after any formal or informal proceeding, all persons must communicate with each other in a respectful and dignified manner.

##### **C. No Disruptions**

No person may engage in any conduct that is distracting or disruptive to the business of the Court. All mobile phones, pagers and other electronic devices must be placed on silent or vibrate, or turned off, while in the Court. No person may text, email, or otherwise engage in activities not directly related to the purpose at hand in a disruptive fashion during any formal or informal proceedings. The Court may ask any person who violates this Rule to leave the Court if the disruption continues.

#### **Local Rule 54.2 Recording**

No person, including media representatives, are permitted to make, or cause to be made, any audio or visual recording of any proceeding in Court without the Court's prior permission.

## **Superintendence Rule 55 Examination of Probate Records**

### **Local Rule 55.1 Public Records**

All public records in our Court are open and available for examination by any person, in compliance with this Rule. Public records are those that are not designated as confidential by law or by Court order.

#### **A. Public Access**

Any person may examine the public records in the Court's files in person. Records in current, open files are available in the Court's office. Closed files may not be in the Court's office, so the Court's Deputy Clerks need up to ten (10) Court Days prior notice to retrieve a closed file. It is advisable to call the Court first to determine if a file is in storage.

#### **B. No Removal**

No person or entity is permitted to remove any file or other record from the Court's office at any time for any purpose. All files and records must remain in the possession and control of the Court at all times.

#### **C. Copies**

Any person may request copies of the Court's public records during the Court's normal business hours. The Court charges 10¢ per page.

#### **D. Authenticated Copies**

Any person who desires to obtain certified, authenticated or exemplified copies of Court records must place the request for the records at least one Court Day in advance to enable the Deputy Clerks adequate time to make the copies. Payment for these copies is due in advance of making them. Any request to mail the copies must include a self-addressed, stamped envelope.

### **Local Rule 55.2 Confidential Records**

Records that are confidential by law or by Court order are not open and available for examination by any person at any time for any reason.

# Superintendence Rule 56

## Continuances

### Local Rule 56.1 Extensions in Non-Litigation Matters

This Rule governs all requests to extend the time for filing a document that is required by law, by these Rules or by Court order in a decedent's estate, guardianship, trust or other non-litigation probate cases.

#### A. Application Process

All applications for extension of time must be on the appropriate local form and accompanied by a corresponding proposed entry. The Court will complete the blank information areas in the body of the entry to reflect its decision on the application. The following are references to the appropriate application and entry forms for extensions.

<u>Case Type</u>	<u>Application</u>	<u>Entry</u>
Decedent's Estate	<a href="#">LC Form 56.1-A</a>	<a href="#">LC Form 56.1-B</a>
Guardianship	<a href="#">LC Form 56.1-C</a>	<a href="#">LC Form 56.1-D</a>
Trust	<a href="#">LC Form 56.1-E</a>	<a href="#">LC Form 56.1-F</a>
Other Cases	<a href="#">LC Form 56.1-G</a>	<a href="#">LC Form 56.1-H</a>

#### B. Timing

An application for extension of time must normally be filed at least three Court Days before the actual due date to allow the Court adequate time to consider and rule on the application. (See Rule 57.4(C) regarding filing by fax). The Court may consider or grant an application for extension that is filed after the due date, with good cause shown.

#### C. Grounds

An initial application for extension of time must contain a clear and concise statement establishing reasonable cause for why additional time is needed. If additional time is necessary beyond an initial extension, the application for any additional extensions must contain a clear and concise statement establishing exceptional circumstances for why additional time is needed.

#### D. Length of Extension

The length of additional time requested in an application must be reasonable under the circumstances. Generally, the maximum extension time the Court permits on an initial application is 60 Calendar Days. The maximum extension time the Court generally permits on a second extension is 30 Calendar Days. The Court may make exceptions to these general time limitations in situations involving truly unusual and complex circumstances.

### Local Rule 56.2 Continuances in Litigation Matters

This Rule governs all requests to extend the time for filing a document or for the occurrence of any scheduled event in probate litigation cases.

**A. Process**

All requests for a continuance or other extension of time must be made by motion, accompanied by a proposed entry with blank spaces for the Court to complete if it grants the motion. There are no prescribed local forms for continuance motions and entries in litigation matters.

**B. Timing**

A motion for a continuance of a hearing or trial or motions for extension of time to file must be filed at least three Court Days before the scheduled date to allow the Court adequate time to consider and rule on the application. (See Rule 57.4(C) regarding filing by fax). The Court will not consider or grant an application for extension that is filed after the scheduled date or due date, absent of a clear showing of exceptional circumstances that prevented filing before the due date.

**C. Contents of Motion**

A motion for a continuance or other extension of time must contain a clear and concise statement establishing reasonable cause for why additional time is needed and how much additional time is requested. The motion must also contain the consent of adverse parties or their attorneys, or a statement explaining the efforts to obtain the consent and why it could not be obtained.

**D. Ruling on Motion**

Notwithstanding Rule 78.10(C), the Court may grant a motion for a continuance or other extension of time before a response in opposition is otherwise due if the Court finds that the motion is reasonable and would not prejudice the adverse parties. The Court may also deny a motion for a continuance or other extension of time if the Court finds that the motion is unreasonable, unnecessary or otherwise would prejudice an adverse party.

## **Superintendence Rule 57 Filings and Judgment Entries**

### **Local Rule 57.1 General**

All filings must be received by the Court within the time required by law, subject to extension under Rule 56. Late filings will subject the Fiduciary and the Fiduciary's attorney to compliance enforcement under Rule 77.

### **Local Rule 57.2 Content of Filings**

All documents filed in any case in this Court must satisfy all of the following requirements. The Court may decline to accept any filing that fails to comply with these requirements.

#### **A. Typewritten**

All documents filed in this Court must be typed manually or by computer or written legibly in ink. The only exception is for documents that are submitted as attachments or exhibits that were previously prepared and that must be submitted in their original form.

#### **B. Complete Information**

All information that is applicable to a particular filing using a prescribed form must be complete and accurate. The Court will not modify any proposed filing to correct inaccurate information or to add missing information that is required.

#### **C. Personal Identifiers**

Unless otherwise required by law or by Court order, no document filed with the Court may contain any protected personal identifiers. Personal identifiers include social security numbers, account numbers, PIN's, user names, passwords and digital access codes. Account numbers in any filing must be identified with only the last four digits of the actual account number. An example of an acceptable way to list an account number is, "xxxx-xxx-xx-1234." If the Court orders disclosure of any personal identifiers in a proceeding that is not confidential by law, the information must be filed on a separate document, which will not become part of the public record.

#### **D. Protected Health Information**

Unless required by law in a confidential proceeding, and except in cases in which a statement of expert evaluation is required by law or by Court order, no filing may disclose any person's health information that is protected under federal HIPAA law.

#### **E. Multiple Page Filings**

All filings that contain more than one page must contain the case number and name of the attorney at the top of each page, including all attachments.

#### **F. Proposed Entry**

All filings must be accompanied by a proposed entry in compliance with Rule 57.5(A).

#### **G. Who Must Sign**

All filings must be signed by the applicant, party, Fiduciary or other person submitting the filing, and/or their respective attorney, if any. Unless the law or a prescribed form requires otherwise, any attorney may sign and file a document on behalf of the attorney's client.



## **H. Signature of Co-Fiduciaries**

In all cases in which there are Co-Fiduciaries, all of the Co-Fiduciaries must sign each filed document that requires the signature of a Fiduciary or explain the reason for the absence of a Co-Fiduciary's signature and the efforts made to obtain it.

## **I. Signatures by Agent under Power of Attorney**

Except as otherwise permitted in these Rules or required by law, the Court will not accept the signature of an agent under a power of attorney in place of the signature of the principal, unless (i) the power of attorney contains specific language authorizing the agent to sign for the principal in the court proceedings; and (ii) a complete and accurate copy of the power of attorney is attached to the filing.

## **J. Effect of Signature**

The signature of any person on a document filed in this Court constitutes a representation and warranty that to the best knowledge and belief of that person the information in the document is true, accurate and complete, is filed in good-faith, is not misleading, is not filed for the purpose of delay or hindrance of the proceeding, and is in compliance with Ohio law, the Rules of Superintendence and these Rules. Additionally, the signature of an attorney constitutes the attorney's representation and warranty that filing of the document does not violate the attorney's responsibilities as an officer of the Court or any requirement in the Code of Professional Responsibility. It is a criminal offense to file any document that the person knows is false.

## **Local Rule 57.3 Special Filing Requirements**

The following requirements apply to all filings with the Court.

### **A. Paper Size and Font**

All documents presented to the Court for filing must be printed on only one side of the paper and only on 8.5 by 11 inch size paper with no backing. The only exception is for original wills and other attachments that were prepared and signed previously that must be filed in their original format without alteration. Except for headings and footers, the font size must not be smaller than 12 pt. or larger than 14 pt.

### **B. Original and File Copies**

The Court will only file documents containing original signatures. The Court will file-stamp up to two additional sets of filings provided by the filer. The Court may discard additional document sets submitted for file-stamping.

### **C. Required Additional Service Sets**

If the Court is required to serve any document filed, the person filing the document must provide sufficient additional sets of the document to enable the Court to provide service.

### **D. Stapling**

Original documents submitted for filing must not be stapled, so as to not interfere with the Court's document imaging process. Additional filing sets submitted for file-stamping or service should be stapled.

## **Local Rule 57.4 Method of Filing**

Filings with the Court may be presented in any of the methods described in this Rule.

### **A. In Person**

Filings may be made in person to the Court's Deputy Clerks during the Court's normal business hours. (See Rule 53.1).

### **B. By Mail**

The Court will accept filings by mail or other private delivery service. The Court must actually receive the mail or delivery before expiration of the required deadline to be considered timely filed. The filing must be accompanied by a cover letter identifying the sender's complete contact information, the case by name and case number, and must provide clear instructions of the action the filer desires. Payment of the exact amount of the filing fee must also accompany the filing, if a filing fee is due. If the Court is requested to return file-stamped copies, the filer must provide a self-addressed, stamped envelope adequate in size to hold the return documents and with sufficient postage prepaid. Otherwise, the Court will place the return documents in the attorney's inter-court mailbox. Otherwise the documents will be available for window pick-up for up to 14 days.

### **C. By Fax**

The Court will not accept filings to create a new case by fax. Any subsequent filings may be made by fax only in emergency or time critical circumstances. The sender bears the risk of successful transmission to and receipt by the Court. The fax filing must be accompanied by a cover sheet identifying the sender's complete contact information, the case by name and case number, a short statement explaining the time critical circumstances. Filings the Court receives by fax and accepts for filing as complying with these Rules will be filed upon receipt. In the event all procedures are not followed, the Court may order the filing stricken from the record. The Court reserves the right, in any case, to request that the filer provide the Court with the original document. In the event of this request, the filer must provide the original document within 10 Court Days of the Court's request.

### **D. Electronic**

The Court does not presently accept any filings by email unless expressly authorized by the Court in individual circumstances. This rule may be updated in the future to provide a mechanism for utilizing an electronic filing system for filing in new and existing cases.

## **Local Rule 57.5 Judgment Entries**

This Rule provides the Court's requirements regarding judgment entries.

### **A. Preparation of Entry**

All applications or motions must be accompanied by a proposed entry prepared by the person applying or moving for the entry. The Court may decline to accept the application or motion for filing if it is not accompanied by a proposed entry.

In contested matters, the prevailing party must prepare and present the proposed entry to the Court and to the opposing parties or their attorney within five Court Days after conclusion of the hearing to which the entry applies, unless the Court orders otherwise. If required under the Ohio Rules of Civil Procedure, the proposed entry must contain a certificate of service showing the names and addresses of all parties and other interested persons to whom service is required.

### **B. Method of Transmission**

The Court's preferred method of transmitting any judgment entries or other notices from the Court is by mail, unless the law requires a different method or unless the Court elects to use a different method. In all instances in which the law does not require a different method, the Court will transmit copies of all judgment entries or other notices by mail to all persons and attorneys for whom the Court has a current mail address, and will charge the case for all postage costs.

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### **Best Practice**

#### **Local Rule 57.1**

Timeliness is important. Statutes establish the timelines for all filings. It is crucial to know when each type of filing is due.

#### **Local Rule 57.2**

Accuracy and detail are critical with each document you file with the Court. You should proofread and double check each document before filing. If required information is missing, or if any information is inaccurate or inconsistent with previous filings in the case, the Court will not be able to accept the document for filing. The Deputy Clerks cannot make changes or corrections for you.

Make sure the Court always has complete contact information for all parties and their respective attorneys. As changes occur, it is important to update the Court with the new information. Otherwise, the Court cannot communicate with persons involved in the case.

#### **Local Rule 57.3**

Remember to not staple the original documents you submit for filing. Staples will hamper the Court's ability to efficiently scan and/or copy documents. You can submit up to two additional sets (not counting the number of sets needed for service) of documents for time-stamping. Additional sets beyond two will be returned to you unstamped. The reason for this is to enable the Deputy Clerks to limit the time spent on each filing so they can serve other customers promptly. All of these requirements are designed to make the Court operate more efficiently.

**Local Rule 57.4**

Every effort should be made to file documents in person or by mail. Fax filings should only be used in emergency situations, but not as a routine practice. Be sure that the correct filing fee, if required, accompanies each filing. The Court may not accept documents for filing unless the filing fee is paid simultaneously with the filing. Confirm your court costs to avoid returned filings and delays.

**Local Rule 57.5**

The filer is required to prepare and submit proposed entries with each filing, where necessary. Most of the Court's prescribed Local Forms and Supreme Court Forms also include prescribed entries. As with all other filings, be sure the proposed entry is complete and accurate

Be sure the Court has your correct mail address because the Court sends its judgments, entries, and orders by mail unless a statute requires a different method of delivery or service in particular circumstances.

## **Superintendence Rule 58 Deposit for Court Costs**

### **Local Rule 58.1 Court Costs**

The Court charges for filings made with the Court and other services the Court performs. This Rule states the Court's policies on the amount and payment of those costs.

#### **A. Cost Schedule**

A schedule of the cost of each filing or other service is available in the Probate Clerk's Office. The schedule may change periodically. The Court will not accept any document for filing and will not perform any other service until all amounts due are paid in full.

#### **B. Advanced Payment**

The Court requires an advanced payment of the full amount of costs anticipated to be incurred in the type of proceeding being filed. A schedule of the required deposit amount for various proceedings is also available in the Clerk's office. Additional documents filed or services performed in the same case that are not covered by the original advanced payment will be charged and must be paid as filings are made or other services are performed.

#### **C. Jury Deposit**

Jury deposits must be paid simultaneously with filing the jury demand. The deposit for a one-day jury trial shall be \$750.00 and the deposit for each additional day scheduled shall be \$270.00.

#### **D. Witness Fees**

Witness fees must be requested at or before conclusion of the hearing or trial for which the subpoena was issued. If not timely requested, witness fees will be deemed waived.

### **Local Rule 58.2 Form of Payment**

This Rule describes the manner in which Court costs may be paid.

#### **A. Marriage License Application**

All charges for marriage license application must be paid with cash or money order.

#### **B. Other Court Costs**

All other costs may be paid by means of cash, money order, certified or bank cashier's check, or ordinary business check. The Court does not accept personal checks. The Court does not currently have the ability to accept credit cards or debit cards. An ATM is located on the first floor and several banks with ATMs are within walking distance of the Court.

#### **C. Dishonored Payment**

If any payment is dishonored for insufficient funds or other deficiencies in the payment, the payor must pay the full amount due in cash, plus reimburse the Court for bank charges it incurs, within three Court Days after notice from the Court of nonpayment. If not paid within that time, the Court may strike the filing from the record or take other appropriate action as the Court may deem appropriate.

## **Superintendence Rule 59**

### **Wills**

#### **Local Rule 59.1 Safekeeping of Will**

This Rule applies to wills deposited with the Court under R.C. §§2107.07 and 2107.08.

##### **A. Procedure**

Only the original of a will may be deposited with the Court for safekeeping. The Court will only release a deposited will to a person entitled to it upon satisfactory proof of identification.

##### **B. Guardianships**

A guardian of the person or estate of a mentally incompetent adult who becomes aware that the ward has a will and who has knowledge of the location of the original will, must deposit the original of the will with the Court for safekeeping. (See Rule 66.3(D)). If there is more than one original will, the guardian must deposit all originals for safekeeping.

#### **Local Rule 59.2 Probate of Will**

This Rule provides requirements relating to probating a will in a decedent's estate.

##### **A. Certificate of Service**

The Fiduciary of a decedent's estate in which the decedent's will has been admitted to probate must timely comply with the notice provisions in R.C. §2107.19. Proof of service or waivers of notice must accompany the certificate of service of notice of probate of will. Proof of service must be in the form of green return receipt cards or USPS tracking confirmation that the notice was received. Failure to file the certificate within the required time, as modified by any extension under Rule 56.1, will subject the Fiduciary and the Fiduciary's attorney to citation under Rule 77.

##### **B. Who May Waive**

Only those persons identified in Rule 4(D) of the Ohio Rules of Civil Procedure may waive notice of admission of the will to probate.

#### **Local Rule 59.3 Filing for Record Only**

Any person may file an original of a decedent's will with the Court for record only, and without admission of the will to probate if none of the decedent's assets are subject to probate administration, or if for any other reason there is no intention to administer or release the estate from administration. The original will must accompany an application to file will for record only.

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## **Best Practice**

### **Local Rule 59.1**

It is not as common today for people to deposit a Will with the Court for safekeeping. However, the Court requires it in guardianships of incompetent adults. This is the best way to assure that the ward's Will is not somehow lost during the guardianship – which protects the guardian and the guardian's attorney from potential liability after the ward's death.

Since Wills may be on deposit with the Court, it is always a good practice to check with the Court to determine if a Will is in the Court's possession before beginning the administration of any estate.

### **Local Rule 59.2**

Although these Rules dispense with the requirement of filing certified mail green cards in certain situations, they are required to be filed as proof of service with the Certificate of Service of Notice of Probate of Will (for persons who did not waive service). That is because the statute specifically requires it.

### **Local Rule 59.3**

The Application to File Will for Record Only replaces the former Will & Affidavit action. The Affidavit will no longer be accepted. This action was more applicable when Ohio Estate Tax was still in place. Filing a Will for record is not mandatory, but it is good practice in case you later find assets that may require probating the Will.

# **Superintendence Rule 60**

## **Application for Authority to Administer**

### **Local Rule 60.1 Special Administrator for Estate Investigation**

In recognition of the fact that uncertainty often exists regarding the composition and value of estate assets before commencing administration, and in further recognition of the fact that it is often difficult or impossible to obtain necessary information regarding estate assets until after formal appointment of a Fiduciary, the Court has implemented this Rule as a means of facilitating appropriate due diligence investigations about the estate before beginning formal administration. This procedure is a variation of the special administrator authority under R.C. §§2113.15 – 2113.17.

#### **A. Purpose**

In a decedent's estate in which it is necessary or beneficial to delay formal estate administration in order to more fully investigate the composition and value of estate assets or other material aspects of the estate, a person described in subparagraph B below may apply to the Court for appointment as a special administrator under this Rule.

#### **B. Who May Apply**

The decedent's surviving spouse who resides in Ohio or one of the decedent's next of kin who resides in Ohio, in the priority stated in R.C. §2113.06, may apply to be appointed special administrator. If there is no surviving spouse or next of kin residing in Ohio, or if all that are eligible waive or decline to pursue appointment as special administrator, an attorney representing any of them may apply for appointment. The attorney must be licensed and in good standing to practice law in Ohio. No creditor may apply for appointment as a special administrator under this Rule.

#### **C. Initiation of Proceeding**

The applicant may initiate the proceeding by filing an application for appointment as special administrator ([LC Form 60.1-A](#)). [LC Form 1.0](#) identifying all of the known heirs or beneficiaries of the estate and an acceptance of fiduciary duties ([LC Form 60.1-B](#)) must accompany the application. The applicant must also prepare and submit a proposed entry appointing special administrator ([LC Form 60.1-C](#)) and proposed letters of authority ([LC Form 60.1 -D](#)).

#### **D. Appointment**

The Court may appoint the applicant as special administrator under this Rule without hearing if the Court determines that the applicant is suitable for the duties of the position. Upon appointment, the Court will issue the special administrator letters of authority consistent with this Rule. Within seven Calendar Days after appointment, the special administrator must mail written notice of the appointment ([LC Form 60.1-E](#)) by regular mail to all persons identified on the [LC Form 1.0](#), unless the applicant does not know and cannot with reasonable diligence determine their address. The notice may be waived in writing ([LC Form 60.1-F](#)).

The special administrator is not required to post bond because the special administrator will not have access to any of the decedent's assets. If the Court later authorizes the special



administrator to engage in any financial activities on behalf of the estate, the Court may require bond.

#### **E. Powers and Responsibilities**

The special administrator will have the power and obligation to investigate and gather information regarding all aspects of the decedent's estate, including without limitation the composition and value of the decedent's assets, the decedent's liabilities or other material aspects of the estate that are or will be necessary or beneficial in the formal administration of the decedent's estate. The special administrator may also have access to the decedent's mail and may change the address with the United States Postal Service to redirect delivery to the special administrator, or to his or her attorney. Creditors may present claims to the special administrator, who must collect the information, but may not allow or reject claims without prior Court approval. The Court may grant the special administrator other powers and responsibilities as the Court deems appropriate. In carrying out the powers and responsibilities of the position, the special administrator is subject to all fiduciary duties provided by law.

#### **F. Limitations on Authority**

Notwithstanding the scope of authority a special administrator has under R.C. §2113.15, the authority of a special administrator in a proceeding under this Rule is limited to only those powers the Court grants. Specifically, but without limitation, a special administrator under this Rule does not have any power to access any of the decedent's financial assets, close or transfer any accounts, sell, transfer or distribute any assets, pay any liabilities, bind the estate to any obligations or institute or defend any lawsuit, without prior Court authority. The special administrator does not have any obligation to secure or preserve any of the decedent's tangible personal property, unless the Court orders otherwise.

#### **G. Termination of Authority**

The authority of a special administrator under this Rule terminates automatically on the earlier of: (i) 90 Calendar Days after the date of the entry appointing the special administrator; or (ii) issuance of letters testamentary, letters of administration, entry releasing the estate from administration or order granting summary release from administration. The Court will not grant any extensions.

#### **H. Obligations on Request or Termination**

The special administrator must promptly deliver, in tangible or electronic form, all documents and information in the special administrator's possession or control that the special administrator has obtained or created that in any way relates to the decedent's estate, to the person and at the time required below.

##### **1. Delivery on Request**

At any time before termination of the special administrator's authority, upon written request of a person who has valid priority to appointment as the formal Fiduciary of a decedent's estate or that person's attorney, the special administrator must promptly deliver the information to that person or attorney. If the special administrator fails to do so within 15 Court Days after receipt of the request, the person entitled to the information may apply to the Court for an order enforcing the request.

## 2. Delivery on Termination

On termination, the special administrator must promptly deliver the information to the appointed executor, administrator, or commissioner of the decedent's estate. If the special administrator fails to do so within 15 Court Days after receiving notice of the appointment, the special administrator will be subject to citation for contempt.

## 3. Retention if No Estate

If no estate administration, release from administration or summary release is commenced by the time the special administrator's authority terminates, the special administrator must maintain and preserve the documents and information for a period of one year from the date of termination.

## 4. No Inventory or Accounting

A special administrator is not required to provide any inventory or accounting to the Court unless the Court orders otherwise.

### **I. Compensation**

A special administrator who has fulfilled his or her duties faithfully is entitled to compensation of \$500.00 if he or she is not ultimately appointed as Fiduciary of the decedent's formal estate settlement proceeding, whether a full administration, release from administration or summary release. If the special administrator is ultimately appointed as Fiduciary, he or she is not entitled to any additional compensation beyond the statutory commission provided in R.C. §2113.35. Services as special administrator are not grounds for further allowance under R.C. §2113.36.

An attorney who represents a special administrator, but who does not later represent the Fiduciary of the decedent's formal estate settlement proceeding, whether a full administration, release from administration or summary release, may apply to the Court for reasonable compensation on an hourly basis, consistent with the requirements in Rule 71. If the attorney represents the special administrator and the Fiduciary of the decedent's formal estate, the attorney's compensation will be determined under Rule 71.2.

The compensation allowed to the special administrator and attorney are valid expenses of administration. If payable to a special administrator or attorney who do not later serve as Fiduciary or attorney of the decedent's formal estate settlement proceeding, the compensation must be paid within 30 Calendar Days after appointment of the Fiduciary of the decedent's formal estate.

### **J. Cost and Expenses of Proceeding**

Court costs and other properly reimbursable expenses incurred in connection with a special administrator proceeding under this Rule are valid expenses of administration. Expenses payable to a special administrator or attorney who do not later serve as Fiduciary or attorney of the decedent's formal estate must be paid within 30 Calendar Days after appointment of the Fiduciary of the decedent's formal estate. Court costs for a special administrator proceeding under this Rule do not apply to or reduce the court costs due for the formal estate settlement proceeding.

## **Local Rule 60.2 Application for Authority to Administer**

All applications for authority to administer estate ([SC Form 4.0](#)) must comply with the requirements of this Rule.

### **A. Death Certificate**

The applicant must file a true and accurate copy of the decedent's death certificate with the application for authority to administer the estate. The decedent's social security number must be redacted from the certificate before filing.

### **B. Prerequisite**

Before filing an application for authority to administer, the applicant or the applicant's attorney must determine if there is a will of the decedent on deposit or on file with this Court.

### **C. Contents of Application**

All portions of the application that apply to the particular case must be complete. The Court will not accept for filing any application that is incomplete.

#### **1. Estimate of Values**

The application must contain a good faith estimate of the value of the estate assets and other financial information the form requires. The Court WILL NOT ACCEPT for filing any application in which the value estimates are blank, listed at \$0.00, stated as "unknown," or otherwise fail to reflect any positive value, except as provided in next subparagraph.

#### **2. Exception**

Valuation estimates are not necessary in decedent's estates that the applicant is filing for appointment as a Fiduciary solely for the purpose of pursuing wrongful death or survival claims, and the Fiduciary is not aware of any other probate assets to administer. A notice of appointment for wrongful death or survival action ([LC Form 60.2-A](#)) must accompany the application in this type of case.

### **D. Bond**

Rule 75.2 governs Fiduciary bond requirements.

#### **1. Bond Exemption**

The applicant must establish any claimed qualification for exemption from bond under Rule 75.2(G) simultaneously with filing the application.

#### **2. Bond Commitment**

In cases in which the Fiduciary does not qualify for exemption from bond requirements, a bond commitment must accompany the application. See Rule 75.2(C).

#### **3. Letters**

The Court will not issue letters to any Fiduciary until the Fiduciary satisfies all bond or bond exemption requirements in Rule 75.2.

## **E. Fiduciary Acceptance**

The applicant must sign and file with the application a fiduciary acceptance (R.C. 2109.02).

### **Best Practice**

#### **Local Rule 60.1**

Local Rule 60.1 is a special proceeding. It is a precursor to an actual, formal estate administration. The person appointed is not an administrator or executor, with full powers of those positions as provided by law. The special administrator is a very limited-authority fiduciary, appointed under R.C. §§2113.15-17, but with even more restricted powers and responsibilities.

This is a new procedure that may be very beneficial in cases in which it is difficult to readily determine the existence, value and titling of a decedent's assets. The procedure is designed to counter the difficulty you commonly face in obtaining necessary information from financial institutions before the formal appointment of an administrator or executor.

The Special Administrator procedure enables you to move forward gathering necessary information without starting the clock on the six-month administration period. Essentially, this can stretch the six-month administration period to nine months. If administration is extended, you now effectively have 16 months in which to file the first account. The creditor claims period continues to run during the Special Administrator procedure because the claims period is measured from the decedent's date of death, not from the appointment of the formal administrator or executor.

In potentially problematic estates, it may be advisable to serve notice to interested parties by certified mail so you have proof of notice, but certified mail is not required. The Rule permits regular mail notice because this is an investigative proceeding and does not have the potential to affect the financial interests of any heir, beneficiary or creditor. The Special Administrator does not have to file any certification of service of the notice with the Court.

The hope is that effective use of this procedure will increase the number of estates that can be completed in the standard six-month administration period. It should also increase the number of extended administrations that can file a final and distributive account by the thirteenth month after formal appointment of the administrator or executor. (This also has a significant benefit under Local Rule 71.2(B) regarding expedited approval of attorney fees).

#### **Local Rule 60.2**

The Court no longer accepts applications for appointment of an administrator or executor that do not have estimated values of the decedent's assets (except in cases filed for purposes of pursuing wrongful death or survival claims only). Exact values are not required, only good faith estimates. Exact values will be established later in the Inventory and Appraisal. If the values are "unknown" when you file for authority to administer, you should consider using the Special Administrator procedure under Local Rule 60.1 first.

The reason for requiring estimated values is twofold. First, it allows the Court to verify that you are utilizing the correct procedure for administering the estate – full administration, release from administration or summary release. Second, it enables the Court to establish the initial bond, if required.

# **Superintendence Rule 61**

## **Appraisers and Inventories**

### **Local Rule 61.1 Appointment of Appraiser**

If the value of an asset is not readily ascertainable, the Fiduciary must apply to the Court for appointment of a suitable, disinterested person with appropriate qualifications and experience to determine the asset's value. A proposed entry appointing the appraiser must accompany the application.

#### **A. Qualifications of Real Estate Appraiser**

Any licensed real estate agent, broker, auctioneer, credentialed appraiser or real estate loan officer with substantial experience in the sale or valuation of similar real estate in Lawrence County, Ohio may be appointed as the appraiser of real estate in the estate.

#### **B. Qualifications of Other Appraisers**

The applicant must present sufficient information with the application to establish that the proposed appraiser of any other asset has the necessary expertise, by reason of education, special training, licensing, and experience or otherwise, to render a fair, impartial and accurate valuation of the asset for which they are appointed to appraise.

#### **C. Disqualification**

A person who is an heir or beneficiary, or who is related to the decedent, the Fiduciary or the Fiduciary's attorney by blood, marriage or employment is disqualified from serving as appraiser.

#### **D. Prohibition**

During the administration of an estate, no appraiser may directly or indirectly purchase any asset that the appraiser has appraised. This restriction does not prohibit the appraiser from serving as the agent or broker.

### **Local Rule 61.2 Alternative Valuation Method**

Certain assets may be valued without formal appraisal, as described below.

#### **A. Real Estate**

The Fiduciary may use the most recent tax value for real estate shown on the property records of the County Auditor in the county in which the real estate is located as the fair market value of the real estate. A copy of the Auditor's property record must accompany the schedule of assets (SC Form 6.1) or assets and liabilities to be released from administration (SC Form 5.1).

#### **B. Motor Vehicles**

The Fiduciary may use the average trade-in value as shown on any recognized valuation resource for motor vehicles as the fair market value of the motor vehicles. A copy of the valuation must accompany the schedule of assets ([SC Form 6.1](#)) or assets and liabilities to be released from administration ([SC Form 5.1](#)).

### **C. Order for Appraisal**

Notwithstanding the preceding subparagraphs of this Rule, upon the motion of any heir, beneficiary, or creditor, or on the Court's own motion, the Court may order a formal appraisal of any real estate or motor vehicle.

### **Local Rule 61.3 Appraiser Compensation**

The Fiduciary may compensate an appraiser a reasonable amount that the Fiduciary and the appraiser mutually agree without prior Court approval. If they fail to agree, the Fiduciary must file an application for allowance of compensation to the appraiser. The Fiduciary will show the compensation paid to each appraiser on the next accounting as an expense of administration.

### **Local Rule 61.4 Notice of Hearing on Inventories**

When an inventory is filed with the Court, the following shall apply:

#### **A. Estates**

When an inventory is filed in an Estate, the Court shall review the filing and set the matter for a non-oral hearing within 30 days of the filing of the inventory. The fiduciary must supply waivers or proof of notice of the hearing on the inventory to the following:

1. Testate Estates (No Will Contest Filed) – All those listed on the second page of the 1.0
2. Testate Estates (Will Contest Filed) – All those listed on first and second page of the 1.0
3. Intestate Estates – All those listed on the first page of the 1.0

#### **B. Guardianships and Trusts**

When an inventory is filed in a Guardianship or Trust, the Court shall review the filing and enter it into the record as of the date it was filed. The Court will typically not set a hearing unless a hearing is requested or deemed necessary by the Court.

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### **Best Practice**

#### **Local Rule 61.1**

This Rule is self-explanatory and does not depart from prior practice in this Court. It does, however, clarify the avoidance of conflicts of interest.

#### **Local Rule 61.2**

The Court encourages the use of alternative valuation methods listed in this Rule. There may be occasions when a formal appraisal is necessary, such as when the alternative methods show a value that is clearly not accurate. It may be best to get formal appraisals in cases where you anticipate potential disputes with heirs or beneficiaries. In normal cases, however, alternative valuation methods will work fine and may save costs of administration.

Regardless of whether you use a formal appraisal or an alternate valuation, be sure you have all the required valuations for real and personal property before attempting to file the Inventory. The Court cannot accept Inventories that lack proper evidence of valuations.

#### **Local Rule 61.3**

As with all compensation in probate proceedings, the amount you pay an appraiser must be reasonable. It is always best to have an agreement on appraiser compensation before authorizing the appraisal. The agreement should be in writing, but may be as simple as a letter agreement. The key is to avoid disputes by resolving the issue up front.

Be sure that if an appraiser is appointed the proper appraisal form is filed before or simultaneously with the Inventory. Make sure the appraiser signs the Certificate of Appraiser. Do not file the entire appraisal with an Inventory. Just show the appraised value on the Inventory and provide the appraiser's certificate.

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# **Superintendence Rule 62**

## **Claims Against Estate**

### **Local Rule 62.1 General**

The following requirements apply to all claims against the estate and any insolvency proceedings.

#### **A. Filing Rejection of Claim**

If a creditor presents a claim by filing it in our Court and the Fiduciary later rejects that claim, the Fiduciary also must file the rejection of the claim with the Court.

#### **B. Schedule of Claims**

Any schedule of claims (SC Forms 24.4 and 24.5) must be complete, accurate, well-organized and sufficiently detailed in a manner that will avoid any speculation regarding the claim or its proposed priority classification. Claims must be listed in the order of priority stated in R.C. §2117.25(A) (1-10), with all claims of the same class subtotaled before proceeding to the next class.

#### **C. Resolution of Claims**

A Fiduciary may not close an estate until it has properly rejected or accepted and resolved all claims against the estate.

### **Local Rule 62.2 Summary Insolvency**

If it is clear the total of all claims properly classified under R.C. §2117.25(A) (1) through (A) (3) exceeds the value of the probate assets shown on the inventory, the Fiduciary may seek a determination of insolvency without hearing under this Rule.

#### **A. Procedure**

The Fiduciary will initiate an insolvency proceeding under this Rule by filing a representation of summary insolvency ([LC Form 62.2-A](#)). A schedule of all claims (SC Forms [24.4](#) and [24.5](#)) must accompany the representation. The fiduciary must also prepare and file a proposed judgment entry of summary insolvency ([LC Form 62.2-B](#)) with the initial filings. The Fiduciary must also file the appropriate application for approval of attorney fees under Rule 71.2(D) and the Fiduciary commission computation under Rule 72.1(A), unless the Court has previously approved the attorney fees and Fiduciary commissions.

#### **B. Limitation of Administrative Expense Claims**

In order to qualify for a summary insolvency, attorney fees may not exceed the amount determined under Rule 71.2(G) (2) and Fiduciary commissions may not exceed the statutory amount under R.C. §2113.35.

#### **C. Determination without Hearing**

If the Court finds from the information the Fiduciary files that there are insufficient assets to pay any claims beyond those properly classified under R.C. §2117.25(A)(1) through (A)(3), the Court will enter a judgment entry of summary insolvency without hearing and without prior notice to any interested party. The Fiduciary must send a copy of the judgment entry to all heirs, beneficiaries and creditors within 30 Calendar Days after the date of the Court's entry.

## **Local Rule 62.3 Full Insolvency Proceeding**

In all insolvent estates that do not qualify for a summary insolvency under Rule 62.2, the Fiduciary must proceed with a full insolvency proceeding under R.C. §2117.15 *et seq.* The Court requires that the insolvency and all related matters be scheduled for hearing and that the Fiduciary make proper service of notice of the oral hearing. The Fiduciary must provide proof of service of the notice at the hearing.

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### **Best Practice**

#### **Local Rule 62.1**

Regardless of whether you use a summary insolvency (Local Rule 62.2) or a full insolvency (Local Rule 62.3), you must file a schedule of claims (SC Forms 24.4 and 24.5). This is the key to evaluating the insolvency, so it needs to be detailed and accurate, with the claims properly classified according to the statute. The easier you make it for the Court to fully understand your situation, the more likely the proceeding will be resolved efficiently.

It is best to organize the schedule of claims using the same order of priorities shown in R.C. §2117.25(A) (1-10). Subtotal all claims of the same class so the Court can easily see the total amount in that class. That makes it easy to see the point at which the estate runs out of money to pay claims. It also makes it easy to determine which class of claims may need to be prorated.

Also note that the only time you need to file a rejection of claim with the Court is when the creditor actually filed the claim with the Court. The reason for this is that then the Court's file will tell a complete story – a claim was filed and this is how the Fiduciary handled it. If a claim is accepted and paid, all you need to do is show the payment on the account. Nothing else is required. The acceptance or rejection of creditor claims that were sent to the Fiduciary only (and not filed in Court) does not need to be documented in the Court's file.

#### **Local Rule 62.2**

A summary insolvency is a special proceeding. It is based on the practical concept that if there is not enough money in the estate to pay any claims below class A-3 (allowance for support), no creditors in lower priority classes will be prejudiced by expediting the insolvency proceeding. If all of the documentation is in order, the Court will generally approve the summary insolvency without hearing. All you need to do then is send a copy of the final judgment entry to each creditor and interested party. You do not have to use certified mail.

In a summary insolvency proceeding, you must use the Lawrence County prescribed forms. The Court will not accept any other forms or variations of the prescribed forms for filing.

#### **Local Rule 62.3**

Remember that in a full insolvency, the statute does require prior notice to all creditors and interested parties. This does need to be accomplished by certified mail. You may bring the green return receipt cards or USPS tracking information to the insolvency hearing and file them as your proof of service. You do not have to show proof of service simultaneously with the representation of insolvency.

In a full insolvency proceeding, you must use the Lawrence County forms. The Court will not accept any other forms or variations of the prescribed forms for filing.

#### **SPECIALNOTE!**

*PEOPLE OFTEN MAKE THE MISTAKE OF PAYING CLAIMS OUT OF PRIORITY, AND THEN DISCOVERING LATER THAT THE ESTATE IS INSOLVENT. IT IS BEST TO NEVER PAY CLAIMS UNTIL YOU HAVE DETERMINED FOR CERTAIN THAT THE ESTATE IS FULLY SOLVENT. IF CLAIMS ARE PAID OUT OF PRIORITY AND THE ESTATE IS LATER DEEMED INSOLVENT, THE FIDUCIARY MAY BE PERSONALLY LIABLE FOR CLAIMS THAT WERE PAID WHEN THEY SHOULD NOT HAVE BEEN. BE CAREFUL TO AVOID THAT MISTAKE!*



**Superintendence Rule 63**  
**Application to Sell Personal Property**

Our Court does not have any additional requirements regarding the sale of personal property beyond the requirements in R.C. §§2113.40-43 and Sup. R. 63.

# **Superintendence Rule 64**

## **Accounts**

### **Local Rule 64.1 General**

The requirements in this Rule apply to all accounts.

#### **A. Timeliness of Accounts**

All Fiduciaries, except special administrators under Rule 60.1, must file their accounts within the time required by law. Failure to file an account within the required time will subject the Fiduciary to the citation and compliance process in Rule 77.

#### **B. Content of Accounts**

The accounts of all Fiduciaries must provide complete, detailed, accurate and itemized information that accurately reflects all of the Fiduciary's receipts, disbursements, distributions and other financial transactions during the accounting period without room for uncertainty or speculation. If real estate has been sold during the accounting period, a copy of the settlement statement detailing all financial aspects of the transaction must accompany the account. Each account must be on the Ohio Supreme Court prescribed forms and must contain all information those forms require.

#### **C. Format of Account**

All accounts must conform substantially to the following requirements.

##### **1. Beginning Balance**

Each account must begin with the total asset value shown on the inventory for first accounts and the ending balance from the immediately preceding account for all subsequent accounts.

##### **2. Receipts**

The account must add to the beginning balance all assets acquired or discovered, all income received and other forms of financial gain since the beginning of the administration on first accounts or since the last accounting on subsequent accounts. All receipts must be subtotaled by class, with all subtotals added to determine the total receipts during the accounting period.

##### **3. Disbursements**

The account must subtract all expenses paid, distributions made, amounts lost and all other forms of expenditure since the beginning of the administration on first accounts or since the last accounting on subsequent accounts. All disbursements must be subtotaled by class, with all subtotals added to determine the total disbursements during the accounting period.

##### **4. Ending Balance**

The result from adding the total receipts to the beginning balance and then subtracting the total disbursements must be shown as the ending balance for the accounting period.

#### **D. Authority for Expenditures**

A Fiduciary is not permitted to make any expenditure or other disbursement unless authorized by law or approved in advance by Court order.

#### **E. Prohibited Transactions**

A Fiduciary must not make any payment, expenditure or other form of disbursement by means of a cash transaction, whether in cash, by debit card or electronic means, unless authorized by law or by Court order and supported by a contemporaneously issued receipt showing the date of the transaction, the amount, the recipient of the funds and the service, product or other purpose for which the Fiduciary used the funds. A Fiduciary is permitted to pay routine and recurring expenses by electronic payment only with prior Court approval.

### **Local Rule 64.2 Accounts in Decedent's Estates**

This Rule provides the requirements for accounts in decedent's estates.

#### **A. When Account Due**

The Fiduciary of a decedent's estate must file a final and distributive account or a certificate of termination within six months after the date of appointment, unless the circumstances of the estate qualify for extended administration. This account cannot be waived under any circumstances.

#### **B. Extended Administration**

In order to qualify for extending the estate administration beyond the six-month period, one of the circumstances in R.C. §2109.301(B) (1) must apply.

##### **1. Notice to Extend Administration**

If the estate qualifies for extended administration beyond six months under one or more of the circumstances described in R.C. §2109.301(B)(1)(a) – (f), the Fiduciary must file a Notice to Extend Administration ([SC Form 13.10](#)). The notice must be filed no later than the date the initial six- month administration period expires. No Court approval is necessary. The notice will automatically extend the administration if it is timely filed.

##### **2. Application to Extend Administration**

If the estate does not qualify for extended administration under subparagraph (1) above, but the Fiduciary contends that the estate qualifies for extended administration under R.C. §2109.301(B)(1)(g), the Fiduciary must file an Application to Extend Administration ([SC Form 13.8](#)). The application must usually be filed no later than five Court Days before the date the initial six-month administration period expires to enable the Court adequate time to consider and rule on the application. Court approval is necessary.

In order to be approved, the application must establish by clear and convincing evidence that actual, material circumstances that were beyond the anticipation and control of the Fiduciary and the Fiduciary's attorney exist that have precluded completing the estate settlement within the six-month initial administration period. Circumstances indicating lack of diligence in the administration on the part of the Fiduciary or the Fiduciary's attorney are not valid grounds for extending administration. Absent a showing of exceptional circumstances, inability to sell real estate is not valid grounds for extending the administration unless the Fiduciary shows that the real estate has been actively listed for sale for at least 30 consecutive Calendar Days immediately preceding the date of filing the application.

3. Effect on Account

The Fiduciary's first account or certificate of termination is due no later than 13 months after the date of appointment if the Fiduciary files a notice under subparagraph (1) above, or if the Court approves an application under subparagraph (2) above. The Fiduciary's final and distributive account or certificate of termination is due no later than 60 Calendar Days after expiration of the initial six-month administration period if the Court denies the application under subparagraph (2) above. Filing a partial account before expiration of the initial six-month administration period will not extend the administration.

4. Failure to Qualify

If the circumstances of the estate do not qualify to extend the administration under any of the criteria in R.C. §2109.301(B)(1), the Fiduciary may in the alternative apply for an extension of time to file the final and distributive account. Rule 56.1 governs the process for obtaining extensions of time to file.

**C. First Partial Account**

In all cases in which the estate administration is properly extended under Rule 64.2(B), but the Fiduciary is not able to file a final distributive account or certificate of termination 13 months after the date of appointment, the Fiduciary must file an actual accounting for the first partial account. The Court will not accept waivers of a first partial account. The first partial account must be designated as such on the first page of the account.

**D. Additional Partial Accounts**

After the first partial account, the Fiduciary must file an account with the Court annually, on or before the anniversary date of the thirteenth month after the Fiduciary's appointment. Each partial account must identify on the first page of the account the number of that account by ordinal number (second, third, etc.). Partial accounts after the first partial account may be waived in the manner described in R.C. §2109.301(A), unless the Court orders an actual accounting in the particular case for a particular accounting period. Waiver of a partial account does not waive the requirement of filing a status report, as required in Rule 64.2(H).

**E. No Zero Accounts**

No partial account may show zero receipts and zero disbursements, unless authorized by Court order in advance. All loans, advances or other payments that a third-party (including the Fiduciary in his or her personal capacity) pays to or on behalf of the estate must be itemized as a receipt during the accounting period it is made, with itemized disbursements describing where the third-party loan, advance or other payment was expended during that accounting period. If this information is not disclosed on the current account, the Fiduciary may not repay or reimburse the third-party for the loans, advances or other payments without prior Court approval.

**F. Accounts in Wrongful Death and Survival Action Cases**

A decedent's estate that the Fiduciary opened for the sole purpose of pursuing wrongful death or survival claims, and in which there are no other probate assets to administer, are exempt from the requirement of filing annual partial accountings in this Rule, but are not exempt from filing the annual status report under Rule 64.2(H). If there are other probate assets to administer, all accounting requirements in this Rule apply.

When an estate for wrongful death or survival purposes only is settled, and all or a portion of the settlement proceeds are allocated to survival claims in the entry approving settlement, the Fiduciary must file a report of distribution as required in the entry and must file a final and distributive account within 60 Calendar Days after the date of filing the entry approving settlement.

**G. Supporting Documentation**

The Fiduciary does not have to file supporting documentation with any account in a decedent's estate, and does not have to display the proof of payment at the time of filing the account, unless the Court orders otherwise in the particular case. The Court may request the supporting documentation at any time, whether to resolve a particular issue in an account or as a means of random audit. The Fiduciary must be able to produce the supporting documentation within five Court Days after the Court's demand.

**H. Assets Remaining in the Fiduciary's Hands**

When a partial account is filed in an estate, the account must include an itemized list of remaining estate assets which are still in the Fiduciary's control. The Fiduciary would utilize SC Form 13.2 to adhere to this requirement. Unless requested by an interested party and ordered by the Court, or ordered by the Court on its own motion, the Fiduciary is not required to provide the Court with supporting documentation to verify the identity and current value of assets remaining in the Fiduciary's hands.

## **I. Status Report**

All Fiduciaries must file a status report with the Court simultaneously with filing each partial account or waiver of partial account, using [LC Form 64.2-B](#). The status report must describe the status of all estate assets remaining in the Fiduciary's hands, the efforts made during the accounting period to complete the estate administration, the status of payment of all outstanding estate liabilities, and whether the estate remains solvent..

In decedent's estates in which the Fiduciary was appointed for the sole purpose of pursuing wrongful death or survival claims with no other probate assets, the Fiduciary must file a status report with the Court each year on or before the anniversary date of the Fiduciary's appointment, using [LC Form 64.2-C](#).

The Court may order a status conference after the filing of any status report accompanying a partial account or waiver of partial account. The Fiduciary and/or the Fiduciary's attorney must attend the status conference in person, unless the Court permits an alternate means of appearance. The Court may issue any further orders that it deems appropriate as a result of the status conference.

## **J. Certificate of Service of Account**

Every Fiduciary in a decedent's estate must provide a copy of each account to all heirs or beneficiaries in compliance with R.C. §2109.32(B). Before or simultaneously with filing the account, the Fiduciary must file with the Court a certificate of service of account (SC Form 13.9), as required under R.C. §2109.32(B)(2). The Fiduciary must provide green return receipt cards, USPS tracking reports, acknowledgements of receipt, or waivers from all interested parties when filing a certificate of service of account. In the alternative, if all interested parties sign a waiver of notice of hearing and consent to account, the Fiduciary does not need to file a certificate of service of account.

## **K. Hearing on Account**

The Court will set every Fiduciary account for hearing under R.C. §2109.32(A). The Fiduciary is required to serve notice of the hearing to interested persons unless the person has waived notice of the hearing. No hearing is required on the filing of a certificate of termination under R.C. §2109.301(B)(2), unless the Court orders otherwise.

A Fiduciary who serves notice of the hearing must supply evidence of providing the notice to all interested parties by providing the green return receipt cards, USPS tracking reports, waivers or other proof of service. Alternatively, the Fiduciary or the Fiduciary's attorney may attach to the certificate an affidavit evidencing service of the notice to all interested parties. If a person files an exception to the account after the time permitted in R.C.

§2109.33, the Court will allow further time for filing the exceptions and will consider the exceptions, unless the Fiduciary can prove that the person filing the exceptions received notice of the hearing.

## **L. Election of Surviving Spouse**

If a surviving spouse is the sole beneficiary under a will and the spouse files a certificate of termination before filing an election under or against the will, or before expiration of the 5-month period in which to make the election, the Court will conclusively presume that the surviving spouse elects to take under the will and that filing the certificate affirmatively manifests that intent. The Court will close the estate on that basis. (See R.C. §2106.01(F)).

## **Local Rule 64.3 Accounts in Guardianships and Conservatorships**

This Rule provides the requirements for accounts in guardianships and conservatorships.

### **A. When Accounts Due**

Every guardian of the estate must file an account on or before the first anniversary of the date of appointment. After filing the first account, the guardian must file an account every year. The Court may order periodic accountings more frequently.

### **B. Final Account**

Every guardian of the estate must file a final account within 30 Calendar Days after death of ward or other termination of guardianship, unless the Court requires otherwise.

### **C. Supporting Documentation**

All disbursements in all accounts must be supported by corresponding receipts, vouchers, cancelled checks, written acknowledgments or other appropriate evidence of payment. A bank or other financial institution statement that shows the date, amount, payee, and purpose of a payment may be used as appropriate evidence of payment.

### **D. Assets Remaining in Guardian's Hands**

An account must itemize and describe the assets and their respective values that remain in the Fiduciary's hands, which together comprise the ending balance shown on the account. The Guardian must provide the Court with written proof to Court's satisfaction of the identity and current value of all assets remaining in the Fiduciary's hands.

### **E. Hearing on Account**

Rule 64.2(K) also applies to hearings on guardian's accounts.

### **F. Conservatorships**

All requirements in this Rule 64.3 also apply to conservatorships, substituting the word conservator for guardian.

## **Local Rule 64.4 Accounts in Testamentary Trusts and Other Fiduciaries**

All requirements in Rule 64.3 also apply to the accounts of testamentary trustees and other fiduciaries who are not executors, administrators, except as provided in R.C. §2109.303(B).

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### **Best Practice**

#### **Local Rule 64.1**

Failing to file accounts on time is one of the biggest problems the Court encounters, both in decedent's estates and in guardianships. You are responsible for managing your own calendar and knowing when your account is due. The Court no longer sends you reminders.

It is much easier to prepare an account if you gather and organize the information throughout the year, instead of in a mad rush just before the account is due. Consider developing a system to gather the necessary information at least monthly to minimize stress and chaos as you near the due date.

In preparing accounts, remember that detail, accuracy and good organization are crucial. Rule 64.1(C) suggests a good, logical format for an account. Remember, the easier you make it for the Deputy Clerks to review and understand your account, the faster and more likely it is to be approved.

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#### **Local Rule 64.2**

This Rule requires careful review, as it is much different than past practice. Be sure you understand the difference between a Notice to Extend Administration and an Application to Extend Administration, and use the correct form to fit your circumstances.

There is sometimes confusion as to which form a filer should utilize to extend the time to file an account. In the event the filer believes that a final account can be completed and filed up to 60 days after the initial 6-month deadline, the filer should utilize the forms found in Local Rule 56.1. In the event that the filer believes that a final account will likely not be able to be completed within 60 days after the initial 6-month deadline, the filer should utilize either Form 13.8 or Form 13.10 to extend the estate's administration.

The Court's goal is to have a vast majority of estate cases closed through a final and distributive account no later than 13 months after appointment. If that is not possible, the first partial account cannot be waived because the Court needs to see what is going on to that point, so it has a handle on where the case stands. Subsequent partial accounts may be waived, but you still need to file a status report to keep the Court informed about what is going on in the case.

"Zero" accounts are not permitted (and really do not make any sense). If there is intangible personal property, there should at least be nominal income from their investment. Otherwise, the Fiduciary may not be fulfilling his or her fiduciary duty. If there is only real estate, the Fiduciary should be keeping the taxes, insurance, and utilities current. Even if the source of funds to pay those expenses are loans or advances from the Fiduciary or someone else, they need to be shown as such on the account, with an itemization of where the loan or advancement was spent.

#### **Local Rule 64.3**

Be sure that you set up a guardianship bank account and receive statements with cancelled checks. You will need those as supporting documentation for your account. Trying to obtain cancelled checks after the fact can be costly and time consuming.

Remember that guardianship accounts require that you produce supporting documentation to back up each entry on the account. Provide that with the account, as the Court cannot accept the account for filing without it.

#### **Local Rule 64.4**

Trust accounts follow the same rules as guardianship accounts.



## **Superintendence Rule 65**

### **Land Sales**

#### **Local Rule 65.1 Title Issues**

This Rule governs the requirements relating to assuring that all land sale proceedings properly include all parties with an interest in the real estate that is the subject of the sale.

##### **A. Initial Certification of Title**

A certification of title must accompany all complaints for the sale of lands under R.C. Chapter 2127. The certification must verify that the plaintiff obtained an examination of title to the real estate within 15 Calendar Days before filing the complaint to confirm that all parties with any interest in the real estate, as determined by the title examination, are named as parties to the action. The County Treasurer must always be named as a defendant, even if all real estate taxes are current. The title examination must be performed by a licensed title company or by an attorney experienced in examining titles. The written title report does not need to accompany the certification but must be available to the Court for review upon the Court's request. The Court will not accept the complaint for filing without this certification.

##### **B. Purchaser's Title Evidence**

The purchaser of the real estate in any land sale proceeding, whether by private sale or public auction, will have 30 Calendar Days from the date of signing the purchase contract in which to obtain an attorney's opinion of title, commitment for title insurance or other evidence of title to the property. The purchaser may waive any or all of this 30 day period in writing signed by the purchaser and filed with the Court.

#### **Local Rule 65.2 Additional Requirements**

The additional requirements in this Rule also apply to all contested and uncontested land sale proceedings.

##### **A. Guardian Ad Litem**

In all guardianship land sale proceedings, simultaneously with filing the complaint for the sale of land the plaintiff must cause the appointment of a guardian ad litem to answer for the ward in a manner that the guardian ad litem believes represents the best interest of the ward. The guardian ad litem must be an attorney licensed and in good standing to practice law in Ohio, and who is not affiliated with or related to the plaintiff or plaintiff's attorney. The guardian ad litem is entitled to compensation in an amount the Court determines to be reasonable under the circumstances of the case.

##### **B. Settlement Statement**

A copy of the proposed settlement statement, showing the gross sale proceeds, all proposed charges relating to the sale and the net proceeds payable to the plaintiff, must be attached to the motion for confirmation of the sale. If any changes to the settlement occur before closing, plaintiff must supplement the motion with a copy of the revised settlement statement. The

settlement statement will serve as the proposed distribution of the sale proceeds. The proposed order of distribution the plaintiff submits to the Court must be consistent with the settlement statement unless the Court orders otherwise.

### **C. Status Conference**

The Court will schedule a status conference on all land sale proceedings that are not finalized and closed within nine months from the date of filing the complaint. The plaintiff and plaintiff's attorney must attend the status conference in person or by video. At least 10 Court Days before the status conference, the plaintiff must file a status report detailing the current physical status of the property, proof that the property is properly insured, the efforts made to sell the property, the status of payment of any mortgages and taxes on the property, and the name and address of the real estate agent that has the property listed for sale. At the status conference, the plaintiff must explain the circumstances that have precluded conclusion of the case and must show cause why the Court should not order sale of the property by public auction. The Court may issue any further orders that it deems appropriate as a result of the status conference.

## **Local Rule 65.3 Contested Land Sales**

In all land sale proceedings in which one or more of the defendant's timely files an answer objecting to, or asserting rights adverse to, the Plaintiff's prayer for relief, the Court will treat the case as a contested civil litigation matter subject to the requirements in Rule 78.10.

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### **Best Practice**

#### **Local Rule 65.1**

The only way to assure that all parties having an interest in real estate that is subject to a land sale proceeding are properly named in the complaint is to do a title examination. This Rule does not require that you file the actual title examination with the Court. It merely requires that you file a certification that you had a title examination performed and that all persons with an interest in the real estate are included in the complaint.

Likewise, the Rule requires a follow-up certification before the order of sale. This is to assure that no new parties have gained an interest in the real estate while the case was pending. Again, only the certification is required. You do not need to file the actual title examination.

It is always advisable to keep the title examination in your file in case an issue arises during the case or after the sale is concluded.

#### **Local Rule 65.2**

One new Rule is the requirement of a status conference for any land sale proceeding that is not concluded in nine months. This is an opportunity for the Court to review the case thoroughly to make sure everything possible is being done to complete a sale of the property. In preparing your status report, be thorough and cover all of the points described in this Rule. Be prepared to discuss every aspect of the case in detail at the status conference.

#### **Local Rule 65.3**

Most land sale proceedings are uncontested. However, occasionally one or more of the defendants may raise issues in their answer that require litigation to resolve. In those cases, the Court will treat the land sale proceeding in the same manner as it does other contested litigation. This may include referring the matter to mediation.

As with any disputed matter, the Court strongly encourages the parties to make every effort to resolve their differences before filing a land sale proceeding that you know or believe will be contested.

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# **Superintendence Rule 66**

## **Guardianships**

### **Local Rule 66.1 General**

The requirements in this Rule apply to all guardianships.

**A. Residency**

A minor or alleged incompetent who is not a citizen of the United States or a resident alien is not considered by this Court to be a resident of this County or to have a legal residence in this County for purposes of R.C. §2111.02(A).

**B. Criminal Background Check**

All applicants for appointment as a guardian and all current guardians who are serving prior to the implementation of this rule must submit to the Court the results of a criminal background check. The applicant must pay the cost of the criminal background check if any exists. The requirements in this Rule do not apply if the applicant is the natural or adoptive parent of a minor ward, a state agency, or an attorney licensed and in good standing to practice law in Ohio.

**C. Application**

All applicants for appointment as guardian must file a completed application packet with the Probate Clerk of Courts before a hearing will be set.

**D. Authority to Expend Funds**

No guardian of a ward's estate may expend any of the ward's funds without prior Court authorization. The Application for Authority to Expend Funds ([SC Form 15.7](#)) must describe the payee, the amount and the purpose of each proposed expenditure. It must also specify whether the proposed expenditures are recurring expenses or non-recurring expenses, as well as the funds currently available to the Guardian. The Court will not approve any expenditures of the ward's funds until the guardian has filed an inventory, unless the guardian shows that delaying the authorization will be detrimental to the ward.

**E. Prohibited Transactions**

A guardian must not make any payment, expenditure or other form of disbursement by means of a cash transaction, whether in cash, by debit card or electronic means, unless authorized by law or by Court order and supported by a contemporaneously issued receipt showing the date of the transaction, the amount, the recipient of the funds and the service, product or other purpose for which the guardian used the funds. A guardian is permitted to pay routine and recurring expenses by electronic payment only with prior Court approval.

**F. Authority to Sell Ward's Assets**

No guardian of a ward's estate may sell, exchange, transfer or otherwise dispose of any of the ward's assets until the guardian has filed an inventory, unless the guardian shows to the Court that delaying the transaction will be detrimental to the ward. The guardian of the estate may not sell the ward's tangible assets without a Court order if 1) the personal property is specifically bequeathed under the ward's will, 2) the personal property is to be sold to a

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relative of the ward or guardian, or 3) the value of the tangible personal property is greater than \$1,000. The guardian of the estate may not sell the ward's real estate unless the Court orders the sale out of a land sale complaint (see Local Rule 65) or the guardian of the estate follows the procedure set forth in R.C. 2127.012.

**G. Veterans' Benefits**

All guardianships of the ward's estate that involve veterans' benefits are subject to and must comply with R.C. Chapter 5905 and all rules and regulations of the Department of Veterans' Affairs. All applications for authority to expend funds, including all applications to pay guardian or attorney fees, must also be approved by the Department of Veterans' Affairs. In the alternative, the application may be set for hearing with notice given to the Department of Veterans' Affairs.

**H. Ward's Death**

If the ward dies, the guardian must notify the Court in writing within 30 calendar days after the death. The guardian must provide a copy of the ward's death certificate at the time of notification to the Court. This notice is the responsibility of the guardian of the person. If there is no guardian of the person, the notice is the responsibility of the guardian of the estate.

## **Local Rule 66.2      Guardianship of Minors**

### **A.      Coordination with Other Proceedings**

The Court will not establish a guardianship of the person of a minor if another court has pending or continuing jurisdiction over the custody of the minor.

### **B.      Birth Certificate**

Upon filing an application for appointment as guardian of a minor, the applicant must simultaneously file a true and accurate copy of the minor's birth certificate.

### **C.      Expenditures for Minor's Health, Education, Maintenance or Support**

If the guardian of a minor's estate is also the minor's natural or adoptive parent, and the Court determines that the expenditure requested is within the parent's legal obligation to support the minor, the Court will not approve said expenditure unless the applicant establishes to the Court's satisfaction that the expenditure is necessary and the parent or parents do not have the financial resources to pay the expense.

### **D.      Notice of Termination**

All applications to terminate the guardianship of a minor before the minor reaches the age of 18 years require notice to be served on all persons entitled to notice under R.C. §2111.04(A)(1), to all persons who received actual notice of the original appointment of the guardian, and to such other persons as the Court may order. The applicant is responsible for serving the notice.

### **E.      Grandparent's Power of Attorney**

No guardian of a minor is permitted to create a power of attorney under R.C. §3109.52 that transfers any of the guardian's powers or obligations to a grandparent of the child with whom the child is residing without this Court's prior authorization.

## **Local Rule 66.3      Guardianship of Mentally Incompetent Adult**

### **A.      Notice of Hearing**

In addition to those entitled to notice of the hearing on the application for appointment of a guardian of an adult under R.C. §2111.04(B), the Court may order that notice also be served to other persons as the Court may direct. If not otherwise entitled to notice by statute, the applicant must provide the Court with the names and addresses of all of the proposed ward's adult children who are known to reside in Ohio. The Court will serve notice of the hearing on those children. Any notice required by law or by this Rule may be waived.

**B. Burden of Proof**

At the hearing on the application for appointment of a guardian of the person or estate of a mentally incompetent adult, the applicant bears the burden of proving, by clear and convincing evidence both of the following: (i) the ward's mental incompetence; and (ii) that no less restrictive alternative exists to the proposed guardianship.

*1. Existence of Powers of Attorney*

If the proposed ward has executed a valid durable power of attorney or durable power of attorney for health care that remain in effect, the applicant must file true and accurate copies of the powers of attorney with the application. The applicant must present satisfactory evidence of why an existing power of attorney is ineffective in meeting the ward's needs.

*2. Rebuttable Presumption*

The Court establishes a rebuttable presumption that valid durable powers of attorney are less restrictive alternatives to guardianship.

**C. Effect on Powers of Attorney**

If the Court appoints the guardian, and the guardian is also the designated ward's agent under a valid durable power of attorney or durable power of attorney for health care that remain in effect, the Court may order that one or both powers of attorney are deemed terminated and void, or may order that one or both powers of attorney remain valid and effective for purposes that the Court directs. If the guardian is permitted to use either or both powers of attorney, the guardian is accountable to the Court for all activities undertaken as agent under the powers of attorney. If the Court appoints the guardian, and the guardian is not the designated agent under a valid durable power of attorney or durable power of attorney for health care, the powers of attorney are automatically deemed terminated and void, unless the Court orders otherwise.

**D. Deposit of Wills**

Within three months after the guardian's appointment, a guardian shall file with this Court a list of all of the ward's important legal papers, including but not limited to estate planning documents, advance directives, and powers of attorney, and the location of such legal papers, if known at the time of the filing. If the guardian discovers these documents after the time of the filing, the guardian must inform the Court of those legal papers within 30 calendar days of discovery. The guardian may also deposit the originals of all wills of the ward with the Court for safekeeping, pursuant to the procedure in R.C. §2107.07.

## **Local Rule 66.4      Conservatorships**

All requirements in Rules 66.1 and 66.3 also apply to conservatorships, substituting the word conservator for guardian, unless a particular provision is clearly inapplicable to conservatorships by statute.

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### **Best Practice**

#### **Local Rule 66.1**

Guardianships are serious probate proceedings that are under more intense scrutiny in recent years because of increased instances of neglect, abuse and plain indifference by many guardians. Therefore, these Rules tighten-up on Court oversight of guardianship cases.

Our Court now requires criminal background checks on all persons who apply to be appointed as a guardian, with a few exceptions. You need to start early on this task because it takes some time to obtain the written verification of a clean record, which must accompany the initial application.

The bottom line of this Rule is that the Court will exercise greater oversight on guardians. Therefore, guardians need to act with greater care in carrying out their duties and work with the Court to assure the best interests of the Ward are being met.

#### **Local Rule 66.2**

In cases where a parent is the guardian of a minor child's estate, applications for authority to expend the ward's funds can easily become unclear. Parents have a legal obligation to provide support for their children. They cannot expend the minor ward's funds for that purpose. Therefore, it is important for a parent-guardian to clearly show that the request to expend the minor's funds are not being used for something that is the parent's obligation to provide anyway. Alternatively, the parent-guardian must show that they do not have the financial means to provide the necessary support for the minor without expending the minor's funds for a particular purpose.

## **Superintendence Rule 67**

### **Estates of Minors**

#### **Local Rule 67.1 General**

This Rule applies to estates of minors with a value less than \$25,000.00 (as that amount may in the future be adjusted under R.C. §2111.05) in which the applicant desires to terminate a guardianship of a minor, or desires to dispense with the need to establish a guardianship for a minor.

##### **A. Applicant**

An application to terminate an existing guardianship of a minor under R.C. §2111.05 must be filed by the guardian of the minor's estate. An application to dispense with a guardianship of the minors' estate must be filed by the minor's parent or parents with whom the minor resides, or by the person who has legal custody of the child.

##### **B. Representation of Minor**

If the minor is not represented by an attorney, the attorney representing the party responsible for payment of the funds to which the minor is entitled is also responsible for the obligations under Sup. R. 67(B) and (C).

##### **C. Verification of Receipt and Deposit**

The attorney representing the minor, or the responsible party under Rule 67.1(A), is responsible for obtaining and filing with the Court a verification of receipt and deposit of the minor's funds ([SC Form 22.3](#)) within 30 Calendar Days after the Court files its entry requiring the deposit of the minor's funds in an impounded account at a financial institution. Failure to timely return and file the signed verification may result in the Court rescinding its prior order and requiring a guardianship of the minor's estate.

#### **Local Rule 67.2 Withdrawals**

No person may withdraw any funds from an account that the Court has ordered impounded under R.C. §2111.05, unless one of the following apply.

##### **A. Court Approval**

The minor's parent or parents with whom the minor resides, or the person who has legal custody of the child, may apply to the Court for authority to expend funds from the account. The application must state the exact amount of funds requested and must describe specifically the purpose for which the funds will be expended.

The Court will not approve expenditures of the minor's estate for items that can reasonably be considered relating to the minor's health, education, maintenance or support if the Court determines that the expenditure is within the parent's legal obligation to support the minor, unless the applicant establishes to the Court's satisfaction that the expenditure is necessary and the parent or parents do not have the financial resources to pay the expense.



## **B. Minor Reaching 18**

The person for whose benefit the impounded account was established may withdraw all or any portion of the funds in the account without Court approval upon attaining the age of 18 years.

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### **Best Practice**

#### **Local Rule 67.1**

Impounding a minor's assets under \$25,000.00 is a good way to eliminate the need for and added expense of a guardianship. The Court encourages the use of this alternative when possible. The key is to obtain and file with the Court a verification from the bank that the funds have been deposited and restricted so that withdrawal is not possible without further Court order. Until the verification is filed, the Court's order authorizing the use of this method is not effective. Therefore, it is critical to get the money into an account and get the bank's verification as quickly as possible.

#### **Local Rule 67.2**

The same issues concerning a parent's obligation to provide support for minor children that apply in a minor's guardianship (Rule 66.2) also apply in minor's estates that are not subject to guardianship. Support obligations cannot be satisfied from the minor's funds without proof that the parents do not have adequate resources to provide the support for necessary items. The parent must be prepared to address this issue in any application to expend funds from a minor's impounded account.

## **Superintendence Rule 68**

### **Settlement of Injury Claims of Minors**

#### **Local Rule 68.1 General**

This Rule applies to all proceedings for authority to settle minor's claims.

##### **A. Birth Certificate**

Upon filing an application to settle a minor's claim, the applicant must simultaneously file a true and accurate copy of the minor's birth certificate.

##### **B. Guardianship**

The Court requires the appointment of a guardian of the minor's estate if the net proceeds of the settlement exceed \$25,000.00 (as that amount may in the future be adjusted under R.C. §2111.05). The guardianship must be established before the hearing on the settlement of the minor's claim.

##### **C. Narrative**

A written narrative setting forth the circumstances of the minor's injury must be filed with the application to settle the minor's claim. The narrative must also address, in general terms, the prognosis regarding future medical issues or treatment.

##### **D. Who Must Attend Hearing**

The parent or parents with whom the minor resides or the person who has legal custody of the child and the guardian of the minor's estate, if any, and their respective attorneys, must attend the hearing on the settlement of the minor's claim. The minor must also attend the hearing, unless the Court excuses the minor's attendance in advance.

#### **Local Rule 68.2 Structured Settlement**

All proposed settlements of a minor's claim that are to be paid in whole or in part by means of structured settlement must comply with the requirements in this Rule.

##### **A. Documentation**

A complete and accurate copy of all documentation relating to the proposed structured settlement must accompany the application to settle a minor's claim for the Court's review before the hearing.

##### **B. Disclosure of Defendant's Cost**

A statement disclosing the total actual cost of the structured settlement annuity that the defendant must pay must also accompany the application. The Court will use that amount in determining the reasonableness of the fees payable to the attorney representing the minor's interests in the claim.

##### **C. Verification of Insurer's Qualifications**

If the structured settlement is to be funded by an annuity, an affidavit or other similar proof verifying that the insurer issuing the annuity funding the structured settlement meets the following qualifications must also accompany the application.

1. Licensing

The company issuing the annuity must be licensed and in good standing to write annuities in Ohio.

2. Rating

The company issuing the annuity must have an A rating or greater.

**D. Present Value Calculation**

The application must also include a signed statement from an independent certified public accountant, actuary, certified financial planner, or equivalently qualified professional specifying the present value of the structured settlement and the calculations used to arrive at that present value determination.

**Local Rule 68.3 Attorney Fees**

Attorney fees payable to legal counsel representing the interests of the minor in a minor's claim are subject to all of the requirements and limitations in Rule 71.5.

**Local Rule 68.4 Withdrawal or Hypothecation**

No premature withdrawals or hypothecation of the structured settlement, whether during the minor's minority or after the minor attains the age of 18 years, is permitted without the Court's prior approval.

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**Best Practice**

**Local Rule 68.1**

If net settlement proceeds payable to a minor are less than \$25,000.00, the Court encourages the use of an impounded account under Rule 67.1, rather than a minor's guardianship under Rule 66.2. That will save money and preserve the minor's funds for better uses.

Of course, a guardianship is required if the net settlement funds exceed \$25,000.00. The Court cannot approve the settlement in those circumstances until the guardianship is established. It is important to get the guardianship established quickly, so as to not delay approval of the settlement.

**Local Rule 68.2**

This is a new Rule that requires documentation to substantiate that the issuer of a structured settlement is a reliable company. The Court needs sufficient time to review the required information, so it is important to submit the information with the initial application to approve the settlement. That way there will be sufficient time to resolve any problems without delaying the settlement hearing.

**Local Rule 68.3**

Rule 71.5 describes the requirements for approval of attorney fees in minor's settlement cases. It is important to address those requirements up front when filing the initial application for settlement approval to avoid delays in the settlement hearing.

**Local Rule 68.4**

The Court strictly reviews all applications to liquidate all or portions of a structured settlement prematurely. The application must show a compelling reason for early access to structured settlement funds. Due to the steep discounting of structured settlement liquidations, the Court will require detailed proof that the proposed buyout is financially reasonable. The best way to prove reasonableness is to obtain multiple proposals for comparison.

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**Superintendence Rule69**  
**Settlement of Claims of or Against Adult Wards**

Our Court does not have any additional requirements regarding settlement of claims of or against adult wards beyond the requirements in Sup. R. 69. Reference is made to Rule 68, to the extent applicable to an adult, regarding the requirements the Court will impose in the settlement of claims for injury to an adult ward, unless there is good cause to require otherwise.

# **Superintendence Rule 70**

## **Settlement of Wrongful Death and Survival Claims**

### **Local Rule 70.1 General**

This Rule provides requirements in the settlement and apportionment of wrongful death and survival claims.

#### **A. Narrative**

A written narrative setting forth the circumstances of the wrongful death must be filed with the application to settle the claims.

#### **B. Hearing and Notice**

Unless an exception applies, the Court will set all applications for settlement of wrongful death or survival claims for oral hearings. The Court expects that the fiduciary and attorney for the estate will appear in person at any oral hearing. The applicant must serve written notice of the date, time and place of the hearing and a copy of the application on all interested persons at least seven Calendar Days before the hearing. If not filed sooner, the applicant may file proof of service at the hearing. Interested persons include the decedent's surviving spouse, children, parents and other next of kin. Interested persons may waive notice and consent to the settlement, apportionment and distribution of the proceeds in writing.

#### **C. Exception**

In situations where there are multiple wrongful death settlements for the same decedent, such as asbestos litigation, the Court may dispense with the requirement for holding oral hearings subsequent to the first oral hearing to approve a wrongful death settlement. However, The Court will likely require an oral hearing in the event that wrongful death beneficiaries change or the proposed formula for distribution changes from a previously approved wrongful death settlement.

#### **D. Separate Hearings**

The Court considers the application to settle a claim for wrongful death and the apportionment of the proceeds as two distinct matters. The Court may conduct separate hearings on each issue if the apportionment is not easily determinable or is disputed.

#### **E. Who Must Attend**

The applicant and his or her attorney must attend all hearings on applications for settlement of wrongful death or survival claims.

### **Local Rule 70.2 Wrongful Death Trusts**

If a wrongful death trust under R.C. §2125.03(A)(2) is to receive any settlement proceeds, the applicant must provide the Court with a complete copy of the proposed trust at least 10 Court Days before the settlement hearing. No settlement proceeds may be distributed to the trust until the Court has approved the trust.

### **Local Rule 70.3 Attorney Fees**

Attorney fees payable to legal counsel representing the interests of the Fiduciary in a wrongful death or survival action are subject to all of the requirements and limitations in Rule 71.5.

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**Best Practice**

**Local Rule 70.1**

The most common mistake in the application for approval of a wrongful death settlement is correctly identifying whether the prospective recipients are on an equal degree of consanguinity. That is an important distinction that requires thought.

It is always best if those entitled to a share of the wrongful death proceeds reach an agreement in advance as to how the proceeds will be allocated. If they all consent to the allocation, the settlement hearing is much easier. If they cannot agree, it may be necessary to have a separate hearing on allocating the proceeds.

Remember that if any portion of the settlement is deemed compensation for a survival claim, those proceeds are part of the decedent's probate estate. Therefore, a separate determination of allocating those proceeds is not necessary. The survival claim proceeds will be distributed to the heirs or beneficiaries of the estate.

The distribution of wrongful death proceeds must be reported to the Court on a Report of Distribution. The distribution of survival claim proceeds will appear on the Fiduciary's accounting in the decedent's estate.

**Local Rule 70.3**

Rule 71.5 describes the requirements for approval of attorney fees in the settlement of wrongful death and survival claims. It is important to address those requirements up front when filing the initial application for settlement approval to avoid delays in the settlement hearing.

# Superintendence Rule 71

## Counsel Fees

### Local Rule 71.1 General

All attorney fees in probate matters must comply with Rule 1.5 of the Ohio Rules of Professional Conduct, Sup. R. 71 and these Rules.

#### A. **Written Fee Agreement**

An attorney representing any type of Fiduciary in a probate matter must document their relationship in a written fee agreement that both parties sign at the beginning of the representation. The fee agreement must clearly explain the scope of the attorney's services, the method of determining the fee and when payment of the fee is due. The guidelines accompanying these Rules should not be utilized as method of determining a fixed fee, but rather these guidelines should be used to help determine if a total hourly fee is reasonable.

Do not file the fee agreement with the Court unless the Court or these Rules otherwise require. The Court reserves the right to request a copy of the fee agreement to review at any time and for any purpose.

#### B. **Prohibited Statements**

Attorneys must not under any circumstances make any oral or written statement to a client or other person interested in a probate matter that would lead a reasonable person to believe that the Court mandates or otherwise automatically approves any particular fee or method of computing the amount charged. The Court does not sanction or impose any particular fee or fee structure. There are no minimum or maximum fees that the Court will automatically approve.

#### C. **Method of Application**

All applications and proposed entries for authority to pay attorney fees must be on the appropriate forms.

#### D. **Content of Hourly Billing**

If a fee request is based on hourly billing, the application must contain a complete and detailed billing statement. The billing statement must include separate daily entries showing who performed the services, the date performed, a description of the services, the time expended, the hourly rate charged and the total charge for each separate entry. It must also provide a summary of the total time each attorney or paralegal expended, his or her hourly rate and the total charges attributable to each. No block billing or summary statements are permitted.

#### E. **Hourly Billing Rate**

All hourly rates must be reasonable in comparison to rates charged by other attorneys, paralegals, or legal assistants of similar skill and experience in the Lawrence County, Ohio area. Other factors affecting the reasonableness of an hourly rate include, without limitation, the degree of difficulty the case presents, special or advanced skills of the attorney that are necessary or beneficial in the particular case and unusually short time constraints that do not normally exist in the same type of cases. Please see the Ohio Rules of Professional Conduct for additional information on this subject.

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**F. Limitation of Fees**

The Court will not approve any proposed fees that the Court determines are due to the attorney's inexperience, general training or "learning curve." Legal research to resolve unique or complex issues beyond those normally encountered in typical probate cases are chargeable to the extent the Court finds the time the attorney expended was reasonable, necessary and beneficial to the case.

**G. Voluntary Reduction**

The Court encourages attorneys to voluntarily reduce the fee they charge in any type of probate matter if the fee permitted in this Rule would be clearly excessive considering the circumstances of the case.

**H. Fees During Delinquency**

The Court will not consider, approve or permit the payment of any fee to an attorney or Fiduciary during any period in which the Fiduciary or attorney is delinquent in performing any obligation in a timely manner or in which the Fiduciary or attorney is otherwise not in full compliance with the requirements in these Rules.

**I. Fee Hearings**

The Court may conduct an oral hearing to resolve any dispute concerning an application for authority to pay attorney fees, or in other instances that these Rules require or permit. Within 10 Calendar Days before the hearing, the attorney must provide the Court with a copy of the fee agreement, all billing statements and all other information relating to how the attorney computed his or her requested fee.

**J. Hearing on Court's Motion**

Notwithstanding any provision in these Rules to the contrary, the Court may on its own motion require an oral hearing on any fee application for any reason. The Court may randomly select cases in which to conduct a hearing as a means of monitoring compliance with this Rule.

**K. Cost Reimbursement**

Reimbursement of the actual, reasonable, and necessary costs an attorney advances in connection with a probate matter does not require prior approval of the Court. Cost reimbursements must be reflected on the account for the period in which the reimbursement is paid.

**Local Rule 71.2 Attorney Fees in Decedent's Estates**

This Rule 71.2 governs attorney fees for representing a Fiduciary in the administration of a decedent's estate.

**A. Scope of Fee Approval**

Attorney fees are governed by the Rules of Professional Conduct and the Rules of Superintendence adopted by the Supreme Court of Ohio. Counsel fees for the administration of a decedent's estate shall be reasonable and beneficial to the estate. The attorney will not be compensated for either preparing the fee statement/application or for any of the hearings or proceedings thereon.



## **B. Prior Court Approval Not Required**

The Fiduciary may pay fees to the Fiduciary's attorney without prior application to or approval by the Court if all of the following conditions are satisfied.

1. The fees paid must be shown on a final and distributive account or certificate of termination that the Fiduciary files no later than 13 months after the date of appointment, and any permitted extension.
2. The estate must be solvent, and the account must show the full payment of all properly presented debts and claims against the estate.
3. The fee must be consistent with the written fee agreement between the Fiduciary and the attorney.
4. The Fiduciary must consent to the fee in writing, after full disclosure of all material facts relating to the fees. The original consent must accompany the account. Additionally, the attorney must, at minimum have the consent of either (1) any single beneficiary who is personally entitled to receive 50% or more of the estate, or (2) any collection of beneficiaries who, together, are jointly entitled receive 50% or more of the estate.

The amount of the fee must be reasonable but does not need to be within the attorney fee guidelines referenced in this Rule. The signature of the Fiduciary and the attorney on the account constitutes their joint representation that the attorney fee is fair and reasonable, and that the attorney's legal services were beneficial to the estate. The Court may require a hearing on the attorney fee if it appears to the Court that the fee is clearly excessive on its face. The Court's approval of the account also constitutes approval of the attorney fees. The fees are still subject to any exceptions to the final account by non-consenting beneficiaries or creditors.

The Court will not consider or grant any exceptions to the requirements of this Rule.

## **C. Prior Court Approval Required**

If one or more of the conditions in Rule 71.2(B) are not satisfied, the Fiduciary must first obtain the Court's approval before paying any fees to the attorney. Rule 71.2(D) through (G) provides the process for obtaining the Court's approval for the payment of attorney fees in decedent's estates.

## **D. Application**

An application for authority to pay attorney fees in a decedent's estate must be submitted, and a proposed entry must accompany the application.

## **E. Fee Guideline**

Appendix A at the end of these Rules is the Court's attorney fee guideline for probate administration of a decedent's estate. A completed guideline must accompany the attorney fee application. The fee guideline is a baseline against which the Court will evaluate each fee application for reasonableness. The fee guideline is based on a percentage of the value of probate assets and income in the estate and reflects a fee that the Court presumes is likely reasonable in comparison to fees in estates of similar values. The presumption of reasonableness is rebuttable. The fee guideline is not a minimum or maximum fee, and its reasonableness will depend on the facts and circumstances of the particular case.

**F. Fees Within the Guideline**

The attorney's signature on the application constitutes the attorney's representation that the proposed fee is consistent with the written fee agreement between the Fiduciary and the attorney and that he or she has provided a copy and explained the application to the Fiduciary before filing with the Court. An hourly billing statement and supporting narrative does not need to accompany the application. If approved, the fees are still subject to any exceptions to the final account by non-consenting beneficiaries or creditors.

**G. Fees Exceeding Guideline**

If the proposed attorney fee exceeds the amount computed under the fee guideline, an hourly billing statement, in compliance with Rule 71.1(D), and a summary narrative explaining the unique circumstances of the case that justify a higher fee, must accompany the application. The Court may require an oral or non-oral hearing on the attorney fee if it appears to the Court that the fee appears excessive in comparison to the guide for reasonableness. When determining whether to hold a hearing, the Court will consider any and all consents signed by the fiduciary and/or beneficiaries. The Court's approval of the fees is provisional and the Court's approval is not finalized until the account in which the distribution of the fees is shown is approved. Thus, the fees are still subject to any exceptions to the final account.

**H. Attorney Fees in Partial Accounts**

The Fiduciary's attorney may apply for authority to pay partial attorney fees upon filing a partial account. The proposed partial fee may not exceed a percentage of the maximum fee permitted under the fee guideline that is equal to a good faith estimate of the percentage of the work completed on the estate administration through the end of that partial accounting period.

**I. Attorney Fees in Insolvent Estates**

If the estate is insolvent, the attorney fee application must be filed with the insolvency filings. The Court will rule on the attorney fee application at the insolvency hearing.

**J. Attorney Fees in Summary or Release Cases**

No attorney fee application is required in summary or release from administration cases, unless the Court orders otherwise. The Court retains the right to examine, approve, modify or deny attorney fees in summary and release from administration cases on a case by case basis.

**K. Attorney Serving in Dual Capacities**

An attorney who is also serving as the executor or administrator of a decedent's estate must simultaneously file separate applications for authority to pay the attorney fee under this Rule and the executor or administrator fee under Rule 72. If the proposed attorney fee is less than or equal to the fee guideline, and the proposed executor or administrator fee does not exceed the statutory fee under R.C. §2113.35, the Court will rule on the applications without hearing, as long as each heir or beneficiary whose distribution the fees affect consents in writing to the payment of the proposed fees. Otherwise, the Court may require a hearing on the applications before ruling on the proposed fees.

The procedure in Rule 71.2(B) does not apply if the attorney is also serving as executor or administrator of the estate.

### **Local Rule 71.3 Attorney Fees in Wrongful Death and Minor's Settlements**

This Rule 71.3 governs attorney fees for representing any type of Fiduciary or beneficiary in potential or actual litigation for wrongful death, survival claims or minor's personal injury claims that require Court approval of settlement.

#### **A. Contents of Fee Agreement**

All fee agreements between a Fiduciary and an attorney in wrongful death, survival or minor's personal injury cases must be in writing. The fee agreement must clearly explain the scope of the attorney's services, the method of determining the fee and when payment of the fee is due.

#### **B. Prior Court Approval Not Required**

The Fiduciary is not required to apply for or obtain prior Court approval of a contingent fee agreement between the Fiduciary and the attorney in wrongful death, survival or minor's personal injury cases if the percentage fee charges do not exceed the contingent fee guideline shown on Appendix B at the end of these Rules. The Fiduciary must submit the fee agreement to the Court for review simultaneously with filing the application to approve the settlement.

#### **C. Prior Court Approval Required**

If the fee agreement between the Fiduciary and the attorney is a contingent fee that exceeds the limitations shown on Appendix B, or if the fee is computed by a method other than a contingent percentage fee, prior Court approval of the fee agreement is required. The Fiduciary must apply to the Court for approval of the written fee agreement within 15 days after the Fiduciary and the attorney have signed the proposed fee agreement. The Fiduciary and the attorney must show to the Court's satisfaction that reasonable cause exists to justify a higher percentage fee or different fee computation method in the particular case. Failure to obtain advance Court approval of the fee agreement within the required time may result in a reduction of the fee the Court approves upon final settlement of the matter.

#### **D. Application**

An application for approval of the attorney fee agreement in wrongful death, survival claims or minor's personal injury actions must be submitted and a proposed entry must accompany the application.

#### **E. Co-Counsel Fees**

All fees payable to co-counsel must be paid from the fee the Court approves at the settlement hearing. The Court will not approve additional fees for co-counsel.

#### **F. Fees for Processing Probate Approval**

All attorney fees for processing the claim settlement through probate must be paid from the fee the Court approves at the settlement hearing. The Court will not approve additional fees for processing the settlement through probate, even if a separate attorney performs those services.

## **Local Rule 71.4 Attorney Fees in Other Probate Matters**

This Rule 71.6 governs attorney fees for representing a party in other probate proceedings or contested probate cases.

### **A. Other Probate Proceedings**

The Court does not monitor or regulate attorney fees in other probate proceedings unless a statute or applicable rule requires the Court to do so.

### **B. Recovery of Fees in Contested Matters**

In contested probate matters, any party seeking recovery of attorney fees from an opposing party must show by clear and convincing evidence that a specific statute, case law or applicable rule permits or requires the recovery, or that a compelling equitable justification exists for awarding recovery of attorney fees. The Court may dismiss a claim for recovery of attorney fees without a hearing if the party seeking the recovery fails to cite in its pleadings adequate legal support for the claim. Otherwise, the Court will conduct a hearing on claims for recovery of attorney fees from an opposing party.

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### **Best Practice**

#### **Local Rule 71.1**

This Rule relates to attorney fee issues in all types of probate cases.

Our Court requires a written engagement and fee agreement between the attorney and client in all probate cases. Written agreements are the best way to avoid disputes with your client later. If you have a pending case at the time this Rule goes into effect and you do not have a written agreement, the Court suggests you get one in place as soon as possible.

Fee discussions are often awkward for the attorney and the client. However, this discussion should take place at the outset of the representation. This Rule does not require or endorse any particular method of computing a fee. The important point is that there should be a clear understanding of how the fee is computed and when payment is due. The attorney and client are free to contract in any manner they desire, subject to the requirements in the Code of Professional Responsibility.

Do NOT file your fee agreement with the Court (unless other provisions of this Rule require you to file it) because then it becomes a public record. Also, do not submit your agreement to the Court for review and pre-approval. The Court does not do that.

If you are charging on an hourly basis, be sure your billing format contains the necessary detail required in paragraph (D) of this Rule. Also, consider sending the client an interim billing statement every month, even though payment is not due until approved by the Court. This is often a good way of keeping the client informed of your charges as the case progresses to avoid “sticker shock” at the end of the case.

Even if you are computing your fee on a percentage, flat fee or other basis, it may be wise to also to track your work internally on an hourly basis. First, that is a good practice management tool to measure whether your alternative billing method is profitable, in comparison to other work you perform on an hourly fee basis. Second, it is good to have as backup evidence to substantiate the reasonableness of your fee if a dispute arises at some point in the case.

#### **Local Rule 71.2**

Perhaps the most important section of this Rule is paragraph 71.2(B). In essence, if you complete the administration of an estate within six months (or 13 months if the administration is extended), you do not have to get the Court’s approval of your fee. You do not even have to file a fee guideline computation. Simply put the fee on the final and distributive account. As long as it appears reasonable and everyone has consented, that is all you need to do.

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The remainder of this Rule only applies if you do not complete the administration within six or 13 months, whichever is applicable, or if you cannot obtain everyone's consent to your fee. There is built-in flexibility if your fee exceeds the fee guideline to reduce the instances in which a hearing on fees will be necessary. The Court's prescribed Local Forms make it easier and more uniform to process fee applications.

**Local Rule 71.3**

If a fee agreement seeks contingent compensation within the percentage guidelines in Appendix B, the Court does not need to approve the agreement in advance. Just file it with the application to approve the settlement at the end of the case. If the fee agreement exceeds the Appendix B guidelines, or if the fee is computed in a method other than a contingent percentage, you need to submit it to the Court for approval up front.

If you are ever in doubt regarding the acceptability of your contingent fee agreement, the best route is to submit it to the Court for approval immediately upon commencing the case.

**Local Rule 71.4**

It is common practice in contested matters for one or both sides to seek recovery of attorney fees from the other side. Generally, the request is unsupported by any authority. This Court normally will not consider awarding attorney fees in a contested matter without specific statutory, case law or rule authority. If you seek recovery of attorney fees, be prepared to thoroughly and clearly substantiate your claim. The burden is on the party seeking recovery to prove the right to an award of fees.

## **Superintendence Rule 72**

### **Executor's and Administrator's Commissions**

#### **Local Rule 72.1 Determination of Fees**

This Rule governs the determination of the compensation to which an executor or administrator in a decedent's estate is entitled.

##### **A. Normal Fees**

An executor or administrator is entitled to a fee in the amount computed under R.C. §2113.35 for fiduciary services in settling a decedent's estate. The Court will not require a hearing on the payment of normal statutory fees, unless a beneficiary or creditor who is financially impacted by the fee files an objection to the fee before the Court approves the account in which the fee is charged. The Fiduciary is not required to submit an application and proposed entry under Rule 72.1(C) if the fee does not exceed the statutory amount. A completed statutory fee computation must accompany the account for the period in which the fee is paid.

##### **B. Additional Compensation**

An executor or administrator who believes the compensation provided in R.C. §2113.35 is inadequate under the facts and circumstances in the particular case may apply to the Court for allowance of additional compensation under R.C. §2113.36. The application must be supported by a summary narrative explaining the unique circumstances of the case that justify a higher fee, and an itemized statement for all services, showing the dates services were performed, a description of the services, the time expended, the hourly rate charged and the total charge for each entry.

If an executor or administrator requests compensation that exceeds the amount allowed in Rule 72.1(A), the itemized statement must cover all of the executor or administrator's services for that period, not just those exceeding the allowable amount.

##### **C. Application**

An application for authority to pay executor or administrator's additional compensation in a decedent's estate must be submitted along with a proposed entry and a completed statutory fee computation. Additionally, the application must be supported by the narrative and itemized statement described in Rule 72.1(B).

The Court may require a hearing on the payment of the additional compensation, unless all beneficiaries whose distribution the fee affects have consented in writing to the additional compensation and the Court finds that no creditor would be prejudiced.

##### **D. Fees in Partial Accounts**

The Fiduciary may pay partial Fiduciary compensation upon filing a partial account. The proposed partial compensation may not exceed a percentage of the maximum statutory

amount that is equal to a good faith estimate of the percentage of the work completed on the estate administration through the end of that partial accounting period.

**E. Fees in Insolvent Estates**

If the estate is insolvent, the executor or administrator fee application must be filed with the insolvency filings. The Court will rule on the executor or administrator fee application at the insolvency hearing.

**F. Fees in Summary or Release Cases**

No application for fees is required in summary or release from administration cases unless the Court orders otherwise. The Court retains the right to examine, approve, modify, or deny fees in summary and release from administration cases on a case by case basis.

**G. Co-Executors or Administrators**

The total fee charged by co-executors or administrators may not exceed the fee that the Court would allow to one executor or administrator. The co- executors or administrators will share the fee in proportion to the services each provided. In the absence of an agreement on the fee allocation or a waiver signed by the co-executor or administrator who agrees to take a smaller share, the co- executors or administrators will share the fee equally.

**H. Voluntary Reduction**

The Court encourages executors and administrators to voluntarily reduce the fee they charge if the fee permitted in this Rule would clearly be excessive considering the circumstances of the case.

**Local Rule 72.2 Limitations**

The Court will not consider, approve or permit the payment of any executor or administrator fee during any period in which the executor or administrator is delinquent in performing any obligation within the time required by law or in which the executor or administrator is otherwise not in full compliance with the requirements in these Rules. The Court may reduce or deny executor or administrator fees if the Court determines that the executor or administrator has not faithfully discharged the duties of the office.

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**Best Practice**

**Local Rule 72.1**

As with legal fees, it is always best to have a discussion about Fiduciary compensation at the earliest possible moment of the case. If the estate appears to be fairly routine, the Fiduciary will likely be entitled to the statutory compensation, at most. Perhaps they may even intend to waive the Fiduciary compensation.

However, if there is any possibility that the estate may be more difficult than normal, the Fiduciary should keep track of their time from the very beginning in case they later want to request additional compensation. It is no longer acceptable to just submit a narrative explaining why the case required more effort. The application for additional compensation must also be supported by an itemized statement of services from the beginning of the case to the end.

Most people are not used to tracking their time and do not understand the detail that the itemized statement requires. It is important to keep accurate records throughout the course of the case. Otherwise, it is nearly impossible to reconstruct an accurate statement after the fact.

## **Superintendence Rule 73 Guardian's Compensation**

### **Local Rule 73.1 Determination of Compensation for Non-Indigent Cases**

This Rule governs the determination of the compensation to which a guardian is entitled.

#### **A. Guardian of Person**

A guardian of the person may charge a fee annually in an amount not exceeding \$5000.00 at a rate not in excess of \$75.00 per hour, unless the Court authorizes a higher fee after proper application and a hearing. This fee must be supported by an itemized hourly statement showing the dates services were performed, a description of the services, the time expended, the hourly rate charged and the total charge for each separate entry.

#### **B. Guardian of Estate**

A guardian of the estate may charge a fee annually in an amount not exceeding the total of the following percentages:

1. 5% of all income, including without limitation earnings from intangible investments and money on deposit, Social Security, veterans' or other government benefits, and gross rentals from real estate managed by a person or entity other than the guardian; plus
2. 3% of all annual expenses; plus
3. 10% of gross rentals from real estate actually managed by the guardian without the assistance of another person or entity; plus
4. 1% of the value of all tangible and intangible personal property remaining in the guardian's hands at the conclusion of the last accounting period, or as shown on the inventory if the guardian has not yet filed a first accounting.

#### **C. Guardian of Person and Estate**

A guardian of the person and estate may charge a fee annually in an amount not exceeding the total of the fees described in Rule 73.1(A) and 73.1(B).

#### **D. Alternative Fee Computation**

In the alternative to computing the guardian of the estate fee by percentages, a guardian may charge for his or her services on an hourly basis. Guardians may not charge a rate in excess of \$75.00 per hour, unless the Court approves a higher rate in advance due to the guardian's special skills or training that are beneficial to the ward. All of the guardian's services must be itemized in a statement showing the dates services were performed, a description of the services, the time expended, the hourly rate charged and the total charge for each separate entry.

If a guardian requests a fee that exceeds the amount allowed in Rule 73.1(A), (B) or (C), the application must be on an hourly basis. The itemized statement must cover all of the guardian's services for that period, not just those exceeding the allowable amount.

#### **E. Guardians of Veterans**

All applications for compensation for guardians of wards who are veterans must comply with R.C. Chapter 5905 and all other applicable rules and regulations of the Department of Veterans' Affairs.



## **F. Application**

An application for authority to pay guardian's compensation must be submitted along with a proposed entry. Additionally, if the application requests compensation on an hourly basis, the application must be supported by the itemized statement described in Rule 73.1(D).

## **G. Co-Guardians**

The total fee charged by co-guardians of a person, estate or both may not exceed the fee that the Court would allow to one guardian. The co-guardians will share the fee in proportion to the services each provided. In the absence of an agreement on the fee allocation, the co-guardians will share the fee equally.

## **H. Dual Capacity**

An attorney who is also serving as the guardian must file separate applications for authority to pay the attorney fee and the guardian fee. The attorney fee must comply with Rule 71.3. The guardian fee must comply with Rule 73.1. The Court may require a hearing on the applications before ruling on the proposed fees.

## **I. Voluntary Reduction**

The Court encourages guardians to voluntarily reduce the fee they charge if the fee permitted in this Rule would clearly be excessive considering the circumstances of the case.

## **Local Rule 73.2 Limitations**

The Court will not consider, approve or permit the payment of any guardian compensation during any period in which the guardian is delinquent in performing any obligation within the time required by law or in which the guardian is otherwise not in full compliance with the requirements in these Rules. The Court may reduce or deny guardian's compensation if the Court determines that the guardian has not faithfully discharged the duties of the office.

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### **Best Practice**

#### **Local Rule 73.1**

This Rule provides two alternative ways to compute compensation for a guardian of the estate: percentage and hourly methods. The percentage method is much easier to calculate. The hourly method is more reflective of the actual level of services provided during any particular year, and may result in compensation less or more than the percentage method.

As with other Fiduciary compensation, it is important to understand the level of detail needed to substantiate hourly charges, if that method is used. It is important to keep accurate records throughout the course of the case. Otherwise, it is nearly impossible to reconstruct an accurate statement after the fact.

# **Superintendence Rule 74**

## **Trustee's Compensation**

### **Local Rule 74.1 Determination of Compensation**

This Rule governs the determination of the compensation to which a trustee of a testamentary trust or other trust that is subject to probate court jurisdiction is entitled.

#### **A. Computation of Fee**

A trustee may charge a fee annually in an amount not exceeding the total of the following percentages:

1. 5% of all income, including without limitation earnings from intangible investments and money on deposit, Social Security, veterans' or other government benefits, and gross rentals from real estate managed by a person or entity other than the trustee; plus
2. 3% of all annual expenses; plus
3. 10% of gross rentals from real estate actually managed by the trustee without the assistance of another person or entity; plus
4. 1% of the value of all tangible and intangible personal property remaining in the trustee's hands at the conclusion of the last accounting period, or as shown on the inventory if the trustee has not yet filed a first accounting.

#### **B. Alternative Fee Computation**

In the alternative to computing a fee by percentages, a trustee may charge for his or her services on an hourly basis. Trustees may not charge a rate in excess of \$50.00 per hour, unless the Court approves a higher rate in advance due to the trustee's special skills or training that are beneficial to the trust. All of the trustee's services must be itemized in a statement showing the dates services were performed, a description of the services, the time expended, the hourly rate charged and the total charge for each separate entry.

If a trustee requests a fee that exceeds the amount allowed in Rule 74.1(A), the application must be on an hourly basis. The itemized statement must cover all of the trustee's services for that period, not just those exceeding the allowable amount.

#### **C. Corporate Trustee**

A corporate trustee exempt from bond pursuant to R.C. 1111.21 may charge a fee annually according to its published fee schedule for services it performs as trustee of a irrevocable living trust. The corporate trustee must first file its fee schedule with the Court. Any amendments to the fee schedule must be filed with and approved by the Court before the corporate trustee may apply for compensation based on the amended schedule.

#### **D. Application**

An application for authority to pay trustee's compensation must be along with a proposed entry. Additionally, if the application requests compensation on an hourly basis, the application must be supported by the itemized statement described in Rule 74.1(B).



**E. Co-Trustees**

The total fee charged by co-trustee may not exceed the fee that the Court would allow to one trustee. The co-trustees will share the fee in proportion to the services each provided. In the absence of an agreement on the fee allocation, the co-trustees will share the fee equally.

**F. Dual Capacity**

An attorney who is also serving as the trustee must file separate applications for authority to pay the attorney fee and the trustee fee. The attorney fee must comply with Rule 71.4. The trustee fee must comply with Rule 74.1. The Court may require a hearing on the applications before ruling on the proposed fees.

**G. Voluntary Reduction**

The Court encourages trustees to voluntarily reduce the fee they charge if the fee permitted in this Rule would clearly be excessive considering the circumstances of the case.

**Local Rule 74.2 Limitations**

The Court will not consider, approve or permit the payment of any trustee compensation during any period in which the trustee is delinquent in performing any obligation within the time required by law or in which the trustee is otherwise not in full compliance with the requirements in these Rules. The Court may reduce or deny the trustee’s compensation if the Court determines that the trustee has not faithfully discharged the duties of the office.

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**Best Practice**

**Local Rule 74.1**

Trustee compensation is calculated in the same manner as compensation for a guardian of the estate. Please refer to the Best Practice section in Rule 73 for more information.

## **Superintendence Rule 75**

### **Local Rules**

#### **Local Rule 75.1 Self-Representation**

This Rule applies to all persons who represent themselves in any probate matter in our Court without an attorney.

##### **A. Right to Self-Represent**

Unless the use of an attorney is expressly required in another rule, all persons desiring to represent themselves in any probate proceeding are permitted to do so.

##### **B. Application of Rules**

In order to assure the fair and impartial administration of justice, the Court will hold self-represented persons to the same standards as apply to attorneys and persons represented by attorneys in probate proceedings. All applicable statutes, rules, regulations and policies apply equally to self-represented persons and to persons represented by attorneys.

##### **C. Acknowledgement**

All self-represented persons must sign and file a self-representation acknowledgement ([LC Form 75.1](#)) verifying that they understand their rights and responsibilities when engaging in a probate proceeding without legal representation. In particular, but without limitation, the acknowledgement will confirm the self-represented person's understanding that the Court and its deputy clerks are not permitted to provide any legal advice to any person under any circumstances. Self-represented persons must file the acknowledgement form with the initial filings.

##### **D. Later Representation**

Self-represented persons may retain an attorney to represent them at any point during a probate proceeding. Upon receiving a notice of appearance from the attorney, the Court will grant accommodations that are reasonably necessary to enable the attorney to become familiar with the case, to the extent that the accommodations do not prejudice the rights of any other person or entity with an interest in the proceeding.

#### **Local Rule 75.2 Fiduciary Bonds**

All Fiduciaries must post a bond with the Court in compliance with R.C. §§2109.04 – 2109.20, unless otherwise provided in this Rule or by specific order of the Court in a particular case. All bonds must be issued by a reputable insurance or bonding company acceptable to the Court.

##### **A. Amount of Bond**

The amount of the Fiduciary bond must be at least double the value of the personal property, plus annual real property rentals, plus other annual income that will come into the possession or under the control of the Fiduciary.

##### **B. Preliminary Determination**

All applications for Fiduciary appointment must contain a good faith estimate of the value of all assets and annual income the applicant anticipates being involved in the case. These estimates are the basis from which the Court will determine the initial bond amount.

1. **No Missing Information**

The Court will not accept for filing any application in which the value estimates are blank, listed at \$0.00, stated as “unknown,” or otherwise fail to reflect any positive value.

2. **Minimum Bond**

Except as provided in subparagraph (3) below, if the applicant truly cannot determine an estimate of asset values at the time of application, the applicant must post a minimum bond of \$100,000.00 before the Court will issue letters.

3. **Exceptions**

Valuation estimates may be excluded only in cases filed for the sole purpose of pursuing wrongful death or survival claims where there are no other probate assets to administer, or in guardianship cases in which the proposed ward truly does not have any assets or income.

**C. Proof of Qualification**

Unless an exception applies in Rule 75.2(B)(3) or Rule 75.2(G), the applicant must file with the application for Fiduciary appointment a written bond commitment or other proof that the applicant qualifies for the issuance of a bond in the amount required by this Rule if the Court appoints the applicant as the Fiduciary.

**D. Bond before Letters**

The Court will not issue letters to any Fiduciary until the Fiduciary has filed the actual bond in the amount set by the Court, or the Fiduciary has qualified for an exception to bonding under this Rule.

**E. Bond Adjustment**

The Court may order an additional bond, an increase in the bond amount, or may order a reduction of the bond if the actual valuations on the inventory warrant a bond adjustment to comply with this Rule. Thereafter, the Court may order an appropriate adjustment in the bond amount based upon the value of the assets remaining in the Fiduciary’s hands at the end of each accounting period.

**F. Reduction of Bond on Application**

A Fiduciary may apply for a reduction in the bond amount at any time upon showing adequate proof that the value of the assets and income has substantially declined since filing the inventory or the most recent account.

**G. Dispensing with Bond**

Notwithstanding anything in this Rule 75.2 to the contrary, a Fiduciary may apply to the Court to dispense with the bond requirement in any of the circumstances in the subparagraphs below. Unless the bond waiver is already addressed, an application to dispense with bond, together with a proposed entry, must be filed with the application for appointment of the Fiduciary.

1. Controlling Instrument

The Court will dispense with the bond requirement if the controlling instrument nominating the Fiduciary for appointment expressly dispenses with bond. This exception may not apply to non-resident Fiduciaries.

2. Consent

The Court may dispense with the bond requirement if the Fiduciary files with the Court the written consent of all heirs or beneficiaries. This exception only applies if the estate is solvent.

3. Minimal Assets

The Court may dispense with the bond requirement if the total value of personal property, annual income and annual real property rentals is less than \$10,000.00.

4. Direct Payee

The Court will dispense with the bond requirement in a guardianship of the estate if there is no personal property and the Fiduciary provides proof that all income is paid directly to a lawful representative payee or to a health care facility providing for the long-term care of the ward.

5. Impounded Funds

The Court will dispense with the bond requirement on any funds that the Fiduciary deposits into a restricted account at a financial institution in compliance with R.C. §2109.13. The Fiduciary must provide a written verification of deposit restrictions to the Court.

6. Approval of Court

A Fiduciary may apply to the Court to dispense with bond upon a showing of other special circumstances in which bond is clearly unnecessary and the absence of a bond will not prejudice any person or entity having a financial interest in the matter.

**H. Court Discretion**

Even if an exception to the bond requirement applies in Rule 75.2(G), the Court may order bond if the Court finds it necessary under the circumstances, or if an interested party, after notice and hearing, establishes that bond should be required in that case.

**Local Rule 75.3 Contact Information**

All applicants and other parties must at the commencement of any probate proceeding file with the Court the complete contact information for the applicant, party and their respective attorney, including mailing address, daytime telephone number, fax number (if any) and email address.

**A. Sufficiency of Address**

The mailing address must be a street mailing address. Post office box numbers are not sufficient in case service is required by certified mail or personal service. The mailing address of an attorney may be the attorney's business office address. The mailing address of all other persons must be their personal residence address.

**B. Telephone Numbers**

The telephone number of an attorney for an applicant or party may use their business

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telephone number. All other persons must use their residence, work or mobile telephone number, whichever is most accessible to them during the Court's normal hours.

### **C. Update of Information**

All applicants, other parties and their attorneys must inform the Court in writing of any changes in their contact information within 30 Calendar Days after the changes occur by filing an amended contact information.

## **Local Rule 75.4 Disabilities Accommodations**

Individuals with disabilities, special needs or language barriers requiring the need for an interpreter must notify the Court at least five Court Days before any hearing, conference or other proceeding to request reasonable accommodations. Individuals who are imprisoned must notify the Court at least five Court Days before any hearing, conference or other proceeding and request appearance and participation by video conferencing if possible.

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### **Best Practice**

#### **Local Rule 75.1**

The Court always encourages persons involved in any type of probate proceeding to seek the assistance of an attorney with appropriate knowledge and experience in probate law. There is no requirement that you must be represented by an attorney. However, self-represented individuals must understand that probate cases are serious, complex legal proceedings that require a thorough understanding of the law. The Court and its Deputy Clerks are not permitted to assist you with your case or to provide any legal advice. If you choose to represent yourself in any probate proceeding, you are on your own to figure out how to do it.

It is also important to understand that the Court holds self-represented individuals to the same standards and requirements as apply to persons represented by an attorney. There is no leniency or special exceptions for self-represented individuals. The Court is obligated to be fair and impartial. It can only do that if it treats everyone the same.

The self-representation acknowledgement that unrepresented persons must file with the Court is intended to confirm their understanding of the consequences of their decision to not use the services of an attorney. It is required in every type of probate proceeding in which a person is not represented by an attorney.

**Local Rule 75.2**

A bond is simply an insurance policy that protects against the loss of financial assets due to intentional misconduct or unintentional mistakes of a Fiduciary. Our Court requires bond in all cases in which a Fiduciary is appointed to handle the financial assets of another person unless an exception is provided by law. The Court will not permit a Fiduciary to begin exercising his or her authority until an appropriate bond is posted, or an exception is proven to apply.

It is important to address bond requirements as early as possible in a case. The bond amount may need to be adjusted periodically during the course of the case. If the value of assets turns out to be more than originally estimated, the bond will need to be increased. If the value decreases for any reason, the bond amount may be reduced.

This Rule contains a new requirement – a bond commitment before the Court will even accept a case for filing. The reason for this is that not everyone will qualify to be bonded. It is important to determine whether a person applying for a fiduciary appointment will be able to obtain a bond if the Court does appoint them as Fiduciary. If the person cannot qualify for a bond, it would be a waste of time and money to proceed with the appointment process, only to learn that they cannot serve because they cannot secure a bond.

If you have questions about bond requirements in a particular case, it is always advisable to discuss the issue with the Court before filing any documents to begin the case.

**Local Rule 75.3**

It is crucial for the Court to be able to communicate with the parties involved in any probate proceeding. The only way to do this is for the Court to have complete and current contact information for each party and their attorney, if any. Each party has an obligation to update their contact information if any changes occur.



## **Superintendence Rule 76 Exception to Rules**

### **Local Rule 76.1 Exceptions by Court**

The Court may make exceptions to these Rules and to Sup. R. 53 to 79 on its own motion in circumstances in which the Court determines that strict application of a particular Rule would be prejudicial to a party or otherwise would not facilitate the fair administration of justice.

### **Local Rule 76.2 Exceptions by Party**

Upon application of any party, the Court may grant exceptions to these Rules and to Sup. R. 53 to 79 upon a showing of exceptional circumstances that would make strict application of a particular Rule prejudicial to the party. The Court may require a hearing on the application or may rule on the application without hearing.

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#### **Best Practice**

It is never a good idea to assume that the Court will grant you an exception to these Rules or to the Rules of Superintendence. Every case is different, and some are more difficult than others. The fact that a case is more difficult does not mean it warrants an exception.

The Court will rarely grant exceptions to the Rules. You must be able to show that your case has truly unique and exceptional circumstances that make it all but impossible to comply with the Rules. You must also be able to show a real and significant prejudice if the Court applies the Rules as written. That is a very high standard to overcome.

# **Superintendence Rule 77**

## **Compliance**

### **Local Rule 77.1 General**

This Rule applies in all instances in which a Fiduciary is delinquent in filing an account, inventory, certificate of notice of probate of will, report or any other mandatory filing within the time required by law, by these Rules or by Court order.

#### **A. Purpose of Rule**

The purpose of this Rule is to encourage timely performance of the Fiduciary's legal obligations and to assure the prompt and uniform administration of probate cases.

#### **B. Who is Subject to Rule**

This Rule applies to all Fiduciaries. If the Fiduciary is represented by an attorney, this Rule also applies to the Fiduciary's attorney of record. (See Sup. R. 78(A)).

#### **C. Reminders**

Our Court does not provide advanced reminders of upcoming filing deadlines to any Fiduciary or attorney. It is the Fiduciary and the attorney's responsibility to determine filing dates and to make the filings within the required time.

#### **D. Extensions**

Fiduciaries may apply for an extension of time to file a required document in the manner provided in Rule 56.1. If the Court grants the extension, the Fiduciary and attorney will not be out of compliance as long as the filing is made by the new filing due date stated in the Court's entry granting the extension.

### **Local Rule 77.2 Citation Process**

The Court will issue a notice of non-compliance to the Fiduciary and the Fiduciary's attorney if any required filing becomes overdue. This notice of non-compliance will automatically convert into a citation if the required filing is not submitted into the Court during the grace period.

#### **A. Timing**

The Court will issue the notice of non-compliance promptly after expiration of the required due date. The Court will not send any prior notice that the filing will be due or is overdue.

#### **B. Contents of Notice**

The notice of non-compliance will identify the filing that is overdue and will order the Fiduciary to file the document immediately. The notice of non-compliance will specify a grace period of 30 Court Days from issuance of the notice, in which time the Fiduciary may file the overdue document without the notice turning into a citation, or with good cause shown, request that the Court extend the time to file the required document. The date and time of a citation hearing will be included in the event the filing is not made before the grace period expires. The citation hearing will be automatically cancelled if the filing is submitted to the Court within the grace period. The notice of non-compliance will also state that the Court will not grant any extensions of the due date during the delinquency, except as the Court may order after the citation hearing under Rule 77.3.

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### **Local Rule 77.3 Citation Hearing**

The Court will conduct a hearing on all citations in which the Fiduciary fails to file a required document before expiration of the grace period stated in the notice of non-compliance unless the filing is submitted to the Court 3 Court Days prior to the citation hearing.

#### **A. Continuance of Hearing**

The Court will only grant a continuance of the citation hearing upon a showing of exceptional circumstances. An application for a continuance of the citation hearing must be filed at least three Court Days before the scheduled citation hearing.

#### **B. Who Must Appear**

The Fiduciary and the attorney of record must appear in person at all citation hearings. In cases in which there are Co-Fiduciaries, all of the Fiduciaries must attend. The attorney of record may not send any other attorney in his or her place.

#### **C. Failure to Appear**

Failure of the Fiduciary and the attorney of record to appear in person at the citation hearing constitutes contempt of court.

#### **D. Citation Hearing Order**

At the conclusion of the citation hearing, the Court will issue an order imposing sanctions consistent with this Rule 77. The order will also set a deadline by which the Fiduciary must file the required documents in order to avoid additional per diem sanctions. The Court may also issue further orders as the Court deems necessary under the circumstances.

### **Local Rule 77.4 Sanctions**

The Court will assess the following costs and sanctions against the Fiduciary and the attorney if the Court issues a citation.

#### **A. Assessment of Costs**

The Court will assess costs of \$5.00 against the Fiduciary and the attorney for issuance of a notice of non-compliance, regardless of whether the Fiduciary files the required documents before expiration of the grace period stated in the notice of non-compliance. The cost will increase to \$25.00 each if the Fiduciary fails to file the required documents before expiration of the grace period. Costs are payable upon filing the required documents during the grace period, or at the time of the citation hearing if the filing is not made during the grace period.

#### **B. Initial Sanction**

In addition to the cost assessments, if a citation hearing goes forward, the Court may impose a \$100.00 sanction against the Fiduciary and the attorney at the citation hearing for failing to timely file the required documents. The Fiduciary and the attorney must pay the sanction at the time of the citation hearing.

#### **C. Per Diem Sanction**

If the Fiduciary fails to file the required documents before expiration of the deadline set in the Court's citation order under Rule 77.3(D), the Court will automatically assess against the Fiduciary and the attorney an additional sanction of \$10.00 per day until the required

documents are filed. This additional sanction must be paid simultaneously with filing the required document.

**D. Further Sanctions**

The Court may impose further sanctions pursuant to R.C. §2109.31(C) as the Court deems warranted under the circumstances of the case.

**E. Multiple Violations**

If a Fiduciary is delinquent in filing more than once in the same case, then in addition to the sanctions described above, the Court may impose any sanction under R.C. §2109.31(C) that the Court deems necessary or appropriate in that case.

**F. Who is Liable**

All costs and sanctions the Court imposes under this Rule 77 are the personal responsibility of the Fiduciary and the attorney, each of whom must separately pay the full amount of the stated cost and sanction from their personal funds. No costs or sanctions under this Rule may be paid from, reimbursed by or charged against the estate or trust.

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**Best Practice**

**Local Rule 77.1**

There is a simple concept to remember about compliance and sanctions: if you complete your work correctly within the time required by law, you will never be subject to sanctions. Therefore, you should not have to worry about this rule. Attorneys should discuss this and emphasize it to their Fiduciary clients at beginning of the representation to avoid surprises and misunderstandings.

It is your responsibility to manage and monitor your calendar for due dates. You need to create your own calendars and alerts. The Court does not send you reminders.

This Rule applies to attorneys, too. If an attorney is concerned that a filing will be delinquent because the client is not being cooperative, the attorney needs to immediately request a status conference (Local Rule 78.1(C)) to address the issue with the Court. If you do not seek the Court's assistance in advance, you likely will not get the Court's mercy after your filing becomes delinquent.

**Local Rule 77.2**

The Court will generally issue a citation the day after the due date has passed. If you find that you are running out of time, apply for an extension (Local Rule 56.1) before the due date. The Court will not grant extensions after the due date.

The citation will give you 30 Court Days to file your delinquent documents. Make good use of that grace period because the Court will not extend it. If the grace period expires without filing the delinquent documents, you must attend the citation hearing.

**Local Rule 77.3**

The prior practice of cancelling the citation hearing if you file the documents before the citation hearing date is eliminated. The only way to avoid the citation hearing is to file the documents no later than the last day of the 30 day grace period. Once the grace period expires, the citation hearing will go forward without exception.

The Court views compliance, and citations for non-compliance, as serious matters. Therefore, all Fiduciaries and their attorney of record must appear in person at citation hearings.

#### **Local Rule 77.4**

It is important to understand the difference between “costs” and “sanctions.” Costs are charges to reimburse the Court for the time and expense it incurs in preparing, mailing and managing compliance and citations. Sanctions are monetary fines intended to punish noncompliance and to deter future delinquent actions on the case.

If the Court issues a citation, a \$10.00 cost is automatically assessed against the Fiduciary. If there is an attorney on the case, the attorney is also assessed with a \$10.00 cost (meaning the total cost in that instance is \$20.00). Those costs must be paid no later than the end of the grace period.

If the delinquent documents are not filed by the end of the grace period, an additional \$15.00 cost is automatically assessed against the Fiduciary and the attorney, if any. That means the total cost is now \$25.00 each (\$50.00 total if there is an attorney). Those costs must be paid at the citation hearing. Be sure to bring your checkbook to the hearing.

The Court will impose a separate \$100.00 sanction against the Fiduciary and the attorney (if any) at the citation hearing. It is very unlikely that the Court will waive the sanction. The Court will also impose additionally sanctions if the delinquency is not resolved promptly, or if there is repeated noncompliance in the same case. Be sure to study R.C. §2109.31(C) to understand the full scope of remedies the Court has to deal with delinquent activity in a case.

Costs and sanctions are both the personal responsibility of the Fiduciary and the attorney. That means they have to pay those amounts out of their own pocket. They cannot pay those amounts from the estate. They also cannot be reimbursed for those amounts from the estate. The “estate” itself did not cause the non-compliance, so it is not proper to charge these costs and sanctions against the estate as administrative expenses.

# **Superintendence Rule 78**

## **CaseManagement**

### **Local Rule 78.1 General**

This Rule governs case management of all proceedings in this Court that are not addressed elsewhere in these Local Rules.

#### **A. Multiple Fiduciaries**

In cases in which more than one Fiduciary is serving simultaneously, all documents filed in Court that require the Fiduciary's signature must be signed by all Co-Fiduciaries.

#### **B. Extensions and Continuances**

The Court's policies regarding extensions of filing deadlines is addressed in Rule 56.1. The Court's policies regarding continuances and extensions in civil litigation cases is addressed in Rule 56.2.

#### **C. Status Conference**

A Fiduciary or the Fiduciary's attorney in any estate, guardianship or trust case may request a status conference with the Court to discuss unique issues or unanticipated problems with the case. The request may be orally in person or by written application. The Court may schedule a status conference on its own motion at any time and for any reason by written notice to the Fiduciary and the Fiduciary's attorney. A status conference is not a formal hearing for purposes of these Rules.

#### **D. Hearings**

This Rule applies to all hearings in this Court.

##### **1. When Hearing Conducted**

The Court will conduct a hearing on all matters in which the law requires, or when the Court orders a hearing. Any party may request a hearing in other circumstances in its pleadings, or by separate application or motion, stating the reason that the party believes a hearing is necessary or would be beneficial. If a hearing is not required by law and is not requested by a party, the Court may rule on any matter without hearing.

##### **2. Notice of Hearing**

Prompt notice of all hearings must be provided to all persons having a legal or equitable interest in the subject matter. The Court may direct that notice of the hearing be given to other persons or entities. Unless the Court is required by law or rule to provide the notice, the proponent in the hearing is responsible for providing notice. If the Court provides notice of the hearing, it will do so by email, unless a different method is required by law or rule.

##### **3. Commencement of Hearing**

The Court will begin all hearings at the designated time. All participants, attorneys and witnesses should be present and check in with one of the Court's deputy clerks at least 10 minutes before the designated hearing time. The Court will not delay starting a hearing due to the absence of a participant, attorney or witness, unless there is a clear showing of exceptional circumstances that justify the delay.

4. Record of Hearing

Rule 11 provides the Court's policies on making a formal record of hearings.

**E. Publication**

In all cases in which publication is required or permitted for service of summons or service of notice, the party obligated to make the service must cause the publication.

1. Procedure

Unless a different procedure is specified by law or the Ohio Rules of Civil Procedure, a party requesting service by publication must file a motion and proposed entry with the Court. The motion must contain a copy of the proposed publication notice. The motion must also be supported by an affidavit stating that service by other methods has failed, or that service by other methods cannot be made because the residence address of the person to be served is unknown and cannot be ascertained with reasonable diligence.

2. Service Complete

Within 10 Calendar Days after the final publication, the party requesting the publication must file with the Court a publisher's affidavit showing the published notice and the dates of publication. Service will be deemed complete as of the date of final publication indicated on the publisher's affidavit.

**F. Objection to Magistrate's Decision**

A party may file objections to a Magistrate's decision in the manner provided in Civ. R. 53 and in this Rule.

1. Objection

The objection must be accompanied by a supporting memorandum, clearly and specifically stating all grounds for the objection. The Court may dismiss a broad objection that lacks the required particularity.

2. Transcript

If a transcript is necessary to support the objections, the objecting party must promptly request the transcript from the Court.

3. Supplementing Objections

The objecting party will have 10 Calendar Days after the date of filing the transcript in which to supplement its objections with additional information in or citations to the transcript. The opposing party will have 10 Calendar Days after the objecting party files its objections, or supplement to objections, in which to file a memorandum in opposition to the objections.

#### 4. Hearing

The Court will only hold a hearing on the objections if a party specifically requests a hearing in its memorandum in support or in opposition to the objections. The Court may set the matter for hearing on its own motion, even if not requested by any party.

### **Local Rule 78.2 Decedent's Estates**

This Rule addresses case management issues in decedent's estate cases.

#### **A. Pre-Estate Applications**

The following Applications may be filed as a miscellaneous case prior to the filing of an estate. Both Applications require the Applicant to file a Next of Kin form, consents from all persons listed as Next of Kin, and contact information.

##### 1. Application to Verify Deposit Account(s)

This application, if approved, provides the Applicant with the authority to receive basic account information for accounts held in the decedent's name at a financial institution.

##### 2. Application to Enter Safe Deposit Box

This application, if approved, provides the Applicant with the authority to access a safe deposit box held in the decedent's name. Applicant may only document and inventory the contents of the deposit box and may not remove any item from the box, except the Applicant must remove any document purporting to be the decedent's Last Will and Testament and provide a copy of that document to all next of kin.

#### **B. All Cases**

The following requirements apply to all types of estate administration cases.

##### 1. Statement of Intent (LC Form 78.2)

A statement of intent is must accompany the original filing to notify the Court as to the type of proceeding that is intended to be initiated.

##### 2. Death Certificate

A true and accurate copy of the decedent's death certificate must accompany all initial estate filings. The decedent's social security number must be redacted.

##### 3. If a person who is the decedent's next of kin or a beneficiary under the decedent's will is deceased, the name and date of death of that person must be shown on the Next of Kin form.

##### 4. Real Estate Valuation

If the value of real estate is based on the Auditor's tax valuation in lieu of a formal appraisal, a copy of the Auditor's tax valuation must accompany the filing in which the real estate value is being established. In full administration cases, if the real estate was appraised, the appraiser must sign the appraiser's certificate on the inventory, or on a separate page containing the same language as on the inventory and filed with the inventory.

##### 5. Automobile Transfers

The appropriate Lawrence County prescribed form must be used for all automobile transfers that require Court approval. All portions of the form must be completed,



including the bottom portion.

**C. Summary Release from Administration**

In addition to the requirements in subparagraph A of this Rule, the following requirements apply to all summary release from administration cases.

1. Funeral Bill

A copy of the funeral bill with proof that it has been paid, or if not yet paid, a copy of the signed funeral services contract showing who is responsible for payment, must be filed with the application for summary release.

2. Bond

The Court does not require any bond in summary release cases.

**D. Release from Administration**

In addition to the requirements in subparagraph (A) of this Rule, the following requirements apply to all release from administration cases.

1. Funeral Bill

A copy of the funeral bill with proof that it has been paid, or a copy of the signed funeral bill contract showing who is responsible for payment, must be filed with the application for summary release.

2. Bond

No bond is required in release from administration cases, unless the Court orders otherwise in a particular case.

3. Insolvency

A release from administration may not be filed if the estate is insolvent, or if the estate is likely to be determined to be insolvent by the end of the claims presentation period.

4. Publication

Notice by publication is not required in release from administration cases, unless the Court orders otherwise in a particular case.

5. Report of Distribution

The commissioner must file a report of distribution in all release from administration cases within 30 Calendar Days after completing all distributions, but not longer than 90 Calendar Days after filing of the entry relieving the estate from administration.

**E. Full Administration**

In addition to the requirements in subparagraph (A) of this Rule, the following requirements apply to all full administration cases.

1. Inventory

On the schedule of assets, if the decedent owned less than the entire interest in a particular asset, the asset description must reveal the fractional interest the decedent owned and the actual value of that fractional interest. The description of all real estate must include the street address, legal description and the tax parcel identification number. The legal description must be approved by the Lawrence County Auditor if the property is located within Lawrence County.

2. Exceptions

In all instances in which a person files exceptions to the inventory or an account, the Court will set the matter for a pretrial conference within 30 days after the exceptions are filed. The procedures in Rule 78.10 for civil litigation will apply to all exceptions to inventories or accounts, unless the Court directs otherwise.

**Local Rule 78.3 Guardianships and Conservatorships**

The Court’s policies on guardianships and conservatorships are addressed in Rule 66.

**Local Rule 78.4 Trusts**

The Court’s policies on testamentary trusts are the same as in guardianships. See Rule 66. Trustee compensation is addressed in Rule 74.

**Local Rule 78.5 Adoptions**

This Rule addresses case management issues in adoption cases.

**A. Required Checks**

The Ohio Job and Family Services child abuse registry checks and BCI/FBI background checks must be filed in all adoption cases. If this documentation is not included with the initial petition, the Court will not set the matter for final hearing until filed.

**B. Putative Father Registry**

In all cases in which a putative father registry certification is required, that certification must be filed with the initial petition for adoption. If this supporting documentation is not included, the Court will not accept the petition for filing.

**C. Hearings**

The sequence of hearings on an adoption depends upon whether the case is contested or not contested.

1. Contested Adoptions

If the adoption is contested with respect to whether the consent of an individual is required, the Court will conduct a separate hearing on the consent issue, and if the Court determines that consent is not required, the Court will conduct a separate best interest hearing.

2. Uncontested Adoptions

If the adoption is not contested with respect to a determination of required consents, the Court will consolidate the consent and best interest issues into a single hearing. The child that is the issue of the adoption is required to be present at the consolidated hearing.

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#### **D. Completeness of Filings**

All documentation required by statutes, Rules of Superintendence or Local Rules for adoptions, including without limitation the home study and all necessary proofs of service, must be filed with the Court no later than 10 Court Days before the scheduled hearing date. If a case file is incomplete in any respect by that deadline, the Court may continue the hearing to a future date.

#### **Local Rule 78.6 Name Change Proceeding**

This Rule governs special issues in name change proceedings.

##### **A. Who Must Attend Hearing**

The person whose name is proposed to be changed must attend the hearing on the name change application. If the hearing is contested and the person whose name is proposed to be changed is a minor, the Court may excuse the minor from presence during the hearing if the circumstances may create unnecessary emotional distress for the minor.

##### **B. Confidentiality**

If an applicant for a change of name desires the proceeding and the record to be confidential, the applicant must file a request for confidentiality supported by an affidavit or other sufficient proof that publication of notice of the hearing required under R.C. §2717.01(A)(2) would jeopardize the applicant's personal safety. A proposed entry must accompany the request. If the Court grants the applicant's request, the Court will waive notice and seal the file during the pendency of the case. The file will remain sealed if the Court grants the name change.

#### **Local Rule 78.7 Withdrawal or Removal of Fiduciary**

This Rule governs the withdrawal or removal of a Fiduciary.

##### **A. Voluntary Withdrawal**

A Fiduciary may not voluntarily withdraw without prior Court approval. The application or motion to withdraw must demonstrate reasonable cause for the withdrawal. A proposed entry must accompany the application or motion to withdraw.

###### **1. Condition for Withdrawal**

As a condition of approving the Fiduciary's withdrawal, the Fiduciary must be current with all filings required by law or by these Rules. The Fiduciary must also submit a complete accounting for the period from the last accounting through the effective date of the withdrawal. The Court will not approve the withdrawal until the Court has appointed a successor Fiduciary.

2. Notice

Before ruling on the application or motion, the withdrawing Fiduciary must certify to the Court that he or she has provided notice of the proposed withdrawal to all other attorneys, unrepresented parties and all other persons with an interest in the proceeding. The Fiduciary must also provide notice of the proposed withdrawal to any bonding agencies acting as surety for the Fiduciary.

3. Time Limitation

No Fiduciary may withdraw within 30 Calendar Days before any filing deadline, trial or dispositive hearing, unless the Fiduciary shows to the Court's satisfaction that exceptional circumstances exist.

**B. Involuntary Withdrawal**

Upon written notice to the Court, a Fiduciary will be considered to have involuntarily withdrawn if the Fiduciary dies, becomes disabled, becomes seriously ill or if other similar circumstances beyond the Fiduciary's control occur that make it impossible or impractical for the Fiduciary to fulfill his or her duties.

1. Successor Fiduciary

The Court will appoint a suitable person or entity as successor Fiduciary as promptly as possible. In its appointment of the successor Fiduciary, the Court may make any further orders as the Court deems necessary or appropriate.

2. Notice

The successor Fiduciary must provide notice of the substitution to all attorneys, unrepresented parties and all other persons with an interest in the proceeding.

3. Accommodations

Upon receiving a notice of the involuntary withdrawal of the Fiduciary, the Court will grant accommodations that are reasonably necessary to enable the successor Fiduciary to become familiar with the case, to the extent that the accommodations do not prejudice the rights of any other person or entity with an interest in the proceeding.

**C. Removal by Court or Others**

If the Court or any person with an interest in the probate proceeding moves to have the Fiduciary removed, the Court will set the matter for hearing at the earliest possible date.

**Local Rule 78.8 Withdrawal or Removal of Counsel**

This Rule governs the withdrawal or removal of an attorney for any party to a probate proceeding in our Court.

**A. Voluntary Withdrawal**

An attorney may not voluntarily withdraw as legal counsel for a Fiduciary or any other party to a probate proceeding without prior Court approval. The application or motion to withdraw must demonstrate reasonable cause for the withdrawal. A proposed entry must accompany the application or motion.

1. Certification of Withdrawing Attorney

The application or motion to withdraw must certify that the attorney has provided the client with a complete list of all deadlines and other critical dates in the case, and that the attorney has or will promptly upon the Court's approval of withdrawal deliver all of the case files to the client.

2. Notice

Before ruling on the application or motion, the withdrawing attorney must certify to the Court that he or she has provided notice of the proposed withdrawal to the client, to all other attorneys, unrepresented parties and all other persons with an interest in the proceeding. If the attorney represents a Fiduciary, the attorney must also provide notice of the proposed withdrawal to any bonding agencies acting as surety for the Fiduciary.

3. Time Limitation

No attorney may withdraw within 30 Calendar Days before any trial or dispositive hearing, unless the attorney shows to the Court's satisfaction that exceptional circumstances exist.

## **B. Involuntary Withdrawal**

Upon written notice to the Court, an attorney will be considered to have involuntarily withdrawn if the client terminates the attorney's services, or if the attorney dies, becomes disabled, becomes seriously ill or if other similar circumstances beyond the attorney's control occur that make it impossible or impractical for the attorney to continue the representation.

1. Substitution of Counsel

The attorney's client may promptly engage the services of another attorney, who must file a notice of appearance with the Court.

2. Notice

The new attorney must provide notice of the substitution to all other attorneys, unrepresented parties and all other persons with an interest in the proceeding.

3. Accommodations

Upon receiving a notice of the involuntary withdrawal of the attorney, the Court will grant accommodations that are reasonably necessary to enable substituted attorney to become familiar with the case, to the extent that the accommodations do not prejudice the rights of any other person or entity with an interest in the proceeding.

## **Local Rule 78.9 Civil Litigation**

This Rule governs the management of probate civil litigation cases, except uncontested land sale proceedings. A land sale proceeding in which any party objects to, or asserts rights adverse to, the Plaintiff's prayer for relief will be subject to this Rule as a contested civil litigation case, unless the Court directs differently.

### **A. Scheduling Order**

The Court will issue a preliminary scheduling order before the initial pretrial conference. The preliminary scheduling order will provide a comprehensive structure for management of the case. The Court may modify the scheduling order from time to time during the course of the

case as needed.

## **B. Pretrial Conferences**

The Court will use periodic pretrial conferences to maintain control of the case and to facilitate the prompt resolution of the case according to the following guidelines.

### 1. Initial Pretrial Conference

The Court will set the initial pretrial conference within 30 days after all parties have answered or are in default of answering. All unrepresented parties and the lead attorney for all represented parties must attend the initial pretrial conference in person or by video. All participants must be prepared to discuss all aspects of the preliminary scheduling order.

### 2. Interim Pretrial Conferences

The Court may schedule periodic interim pretrial conferences during the pendency of the case as the Court deems necessary. Any party may request an interim scheduling conference at any time to discuss problems or issues that have arisen in the case. All unrepresented parties and an attorney from the firm representing any other party must attend each interim pretrial conference. The Court prefers attendance in person at all interim pretrial conferences but may grant permission to participate by telephone upon request. All attorneys participating in an interim pretrial conference must have authority to bind their client to commitments made at the conference.

### 3. Final Pretrial Conference

A final pretrial conference will occur within two weeks before the trial date. All unrepresented parties and the lead attorney for all represented parties must attend the initial pretrial conference in person or by video. The participants must be prepared to discuss and resolve all outstanding issues so that the trial may go forward without delay.

## **C. Motion Practice**

This Rule governs time requirements relating to motions, unless a different time requirement is specifically stated in the Ohio Rules of Civil Procedure or unless the Court orders otherwise.

### 1. Filing of Motion

A party desiring to file a motion must do so within the time required by law, by the Rules of Civil Procedure or by Court order.

### 2. Opposing Response to Motion

The opposing party must file its response in opposition to a motion within 14 Calendar Days after the filing date of the Motion.

### 3. Reply to Opposing Response

If the moving party desires to reply to the opposing response, it must do so within seven Court Days after the filing date of the opposing response.

### 4. Extensions

Rule 56.2 describes the process for obtaining an extension of a filing deadline in litigation cases. The Court will grant a motion for extension, not to exceed seven Calendar Days, once to each party during the course of a case without the need to show reasonable cause.

All other motions for extension must be supported by a showing of reasonable cause for the delay.

5. Filing Out of Time

Failure to file any motion, response or reply within the required time may result in the Court not considering the filing prior to ruling, unless the party late in filing can establish that the delay was a result of exceptional circumstances and that the opposing party will not be prejudiced by the filing delay.

6. Contents

All motions, responses and replies should present a clear, concise argument of the party's position, properly cited and referenced supporting legal authority and a succinct statement of the relief sought. A copy of each unreported or out-of-state case cited as authority must accompany the pleading.

7. Request for Hearing

Any party may request a hearing on any motion. The request must be made in the motion or in the response in opposition. If a hearing is not requested, the Court may rule on the motion without hearing, or may on its own motion set the matter for hearing.

**D. Exhibits**

All Exhibits prepared or offered as evidence at a hearing or a trial must comply with the following requirements.

1. Identification

All exhibits must be labeled by party name and sequential number or letter in the order they are offered as evidence at the hearing or trial. Proper identification must be completed before the hearing or trial begins.

2. Substitution

Upon agreement of the parties, or by order of the Court, true and accurate copies of some or all exhibits may be substituted for originals at the conclusion of the hearing or trial.

3. Disposition

All exhibits admitted as evidence at a hearing or a trial will be filed in the Court's case file, unless the Court orders otherwise.

**E. Jury Management Plan**

The Court adopts the jury management plan used by the General Division of the Lawrence County Common Pleas Court as the jury management plan for the Probate Division of the Lawrence County Common Pleas Court.

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## **Best Practice**

### **Local Rule 78.1**

This Rule clarifies the difference between a “status conference” and a “hearing.” A status conference is more like an internal discussion of issues in the case. Normally, a status conference only involves the Court, the Fiduciary and the Fiduciary’s attorney, if any.

A status conference is a great way to resolve problems or issues in an informal setting before they get out of hand. The Court encourages proactive steps, and is always willing to discuss and assist in solving problems. A status conference is an underused tool. It could help avoid compliance problems by addressing issues early.

### **Local Rule 78.2**

This Rule is fairly self-explanatory. It contains many tips for details in estate filings that are often overlooked. One of the most important things is to be sure that you are filing the correct type of proceeding – full administration, release from administration, summary release, or short form release. Filing the wrong type of proceeding will likely result in unnecessary costs, delays, and embarrassment.

### **Local Rule 78.5**

Try to anticipate in advance whether or not a particular adoption is likely to be contested. If it is likely to be contested, the Court can schedule separate hearings early on. Otherwise, there may be a significant gap between the consent hearing and the best interest hearing.

### **Local Rule 78.8**

Keep in mind that a Fiduciary cannot just quit on a moment’s notice and expect to escape any more responsibility for a case. There must be someone available to step into the withdrawing Fiduciary’s shoes. That may take a little time. If it appears that withdrawal is likely imminent, it would be good to first schedule a status conference with the Court.

### **Local Rule 78.9**

Attorneys should carefully review the Code of Professional Responsibility regarding their withdrawal from a case. The Court is not inclined to force people to work together, but it also cannot permit a client to be left hanging. If it appears that withdrawal is likely imminent, it would be good to first schedule a status conference with the Court.

### **Local Rule 78.10**

Our Court moves litigation cases along without unreasonable or unnecessary delay. If you are a plaintiff, be prepared to prosecute your case diligently. If you are a defendant, be prepared to defend the case in an equally diligent manner. The Court is not naive to delay tactics, and does not view their use kindly.

In all litigation cases, the parties should seriously consider whether mediation may aid in resolving the dispute more quickly and economically.



## **Schedule of Appendices**

### **APPENDIX**

### **DESCRIPTION**

A	Attorney Fee Guideline in Decedent's Estates
B	Contingent Fee Limitations

**Appendix A**  
**ATTORNEY FEE GUIDELINE IN DECEDENT'S ESTATES**

**Section A: Value of Probate Estate**

- |   |           |
|---|-----------|
| 1. Total tangible and intangible personal property: | \$ _____. |
| 2. Total real estate:                               | \$ _____. |
| 3. Total probate income:                            | \$ _____. |
| Total Probate Value:                                | \$ _____. |

**Section B: Fee Guideline on Personal Property and Income (Section A #1 + #3)**

- |                              |           |
|------------------------------|-----------|
| Combined Value on Inventory: | \$ _____. |
| 5% of first \$50,000.00:     | \$ _____. |
| 4% of next \$50,000.00:      | \$ _____. |
| 3% of next \$300,000.00:     | \$ _____. |
| 2% of balance:               | \$ _____. |

**Section B Fee:** \$ \_\_\_\_\_.

**Section C: Fee Guideline on Real Estate**

Check each box that applies and complete the appropriate computations.

- There is no real estate in the probate estate
- Real estate transferred by Certificate of Transfer  
 \$500.00 x \_\_\_\_\_ (number of separate tax parcels + number of exceptions): \$ \_\_\_\_\_.

- Real estate sold by Power of Sale
- |                               |           |
|-------------------------------|-----------|
| Appraised value on Inventory: | \$ _____. |
| 4% of first \$50,000.00:      | \$ _____. |
| 3% of next \$50,000.00:       | \$ _____. |
| 2% of balance:                | \$ _____. |
| Subtotal:                     | \$ _____. |

- Real estate sold by Land Sale Proceeding
- |                               |           |
|-------------------------------|-----------|
| Appraised value on Inventory: | \$ _____. |
| 6% of first \$50,000.00:      | \$ _____. |
| 5% of next \$50,000.00:       | \$ _____. |
| 4% of balance:                | \$ _____. |
| Subtotal:                     | \$ _____. |

**Section C Fee:** \$ \_\_\_\_\_.

**Section D: Total Attorney Fee Guideline**

Section B Fee + Section C Fee: \$ \_\_\_\_\_.

**Total Requested Attorney Fee:** \$ \_\_\_\_\_.

## **Appendix B**

### **CONTINGENT FEE GUIDELINE**

A contingent fee agreement for representing a Fiduciary in wrongful death, survival claims or minor's personal injury actions may not exceed the following percentage limitations without the Court's prior approval:

33 $\frac{1}{3}$ % if settlement is reached before commencement of trial, and without arbitration or mediation

36% if settlement is reached during mediation

40% if settlement or verdict is achieved after commencement of trial or arbitration

Trial is deemed to commence in a jury trial after a jury is selected. Trial is deemed to commence in a bench trial after opening statements begin.

The Court encourages attorneys to voluntarily reduce the fee they charge if they reach a settlement of all claims before filing a lawsuit and if the full permissible fee would clearly be excessive considering the circumstances of the case.

