

RULES OF PRACTICE AND PROCEDURE

OF THE COURT OF COMMON PLEAS,

PROBATE DIVISION

JACKSON COUNTY, OHIO

STEPHEN D. MICHAEL, JUDGE

**RULES OF PRACTICE AND PROCEDURE OF THE
COURT OF COMMON PLEAS, PROBATE DIVISION,
JACKSON COUNTY, OHIO**

The following Local Rules are supplemental to the Rules of Superintendence for the Courts of Ohio and must be read in conjunction therewith.

RULE 5.1 JURY TRIALS

All jury trials in Jackson County Probate Court are governed by the jury management procedure of the general division of the Jackson County Court of Common Pleas. Any party requesting a trial by jury on a civil action shall be required to post a deposit in the amount of Five Hundred Dollars (\$500.00) no later than seven (7) days after the date of the entry scheduling the matter for jury trial.

RULE 9.1 SECURITY PLAN

Pursuant to a Supreme Court of Ohio resolution dated July 26, 1995, the Jackson County Probate Court has determined the entire Security Plan as submitted by the Supreme Court of Ohio, effective January 1, 2001, be maintained as confidential and not a matter of public record.

RULE 11.1 RECORDING OF PROCEEDINGS

- (A) The Court will make an audio recording of the proceedings as the record of the Court unless a stenographic record is requested. Parties who desire to have a stenographic record of the proceedings must make their own arrangements for a Court Reporter at least twenty-four (24) hours prior to the scheduled hearing. The requesting party shall pay the costs of the stenographic record unless otherwise ordered by the Court.
- (B) In all cases in which a party desires preparation of a transcript of a proceeding, such request shall be made in writing to the Court Reporter. Upon receipt of such request, the Court Reporter will

advise the party, in writing, of the estimated cost of the transcript. Upon receipt of a deposit in the amount of fifty percent (50%) of the estimated cost, the Court Reporter shall prepare the transcript. No transcript shall be delivered without payment in full for the transcript.

- (C) The Court will maintain discs of all electronically recorded proceedings. With advance notice, the Court may allow an applicant to listen to a copy of audio and/or electronic recording at a time and place as the Court prescribed. Any interested person desiring to preserve the record beyond that period must make arrangements to have the record transcribed.

SUP. R. 51 STANDARD PROBATE FORMS

LOC. R. 51.1 FORM AVAILABILITY

Forms for use in the Probate Court of Jackson County are available at the Probate Court office. The Standard Probate Forms also are available on the Supreme Court of Ohio website in generic form.

SUP. R. 52 SPECIFICATIONS FOR PRINTING PROBATE FORMS

LOC. R. 52.1

Each individually generated form must comply with the specifications and format mandated by the Rules of Superintendence. Each individually generated form must be created with the same blank lines and exact wording as on the printed Standard Probate Form it is replacing. The signature of the applicant or attorney constitutes a certification that the individually generated form on which the signature appears complies with the Superintendence Rules in every respect and that the only modifications or variations are those permitted by Sup. R. 51(C) and Sup. R. 52(M). The Court may reject any forms that deviate from the standards prescribed above. The Court may reject such forms prior to filing or strike them from the record upon discovery.

SUP. R. 53 HOURS OF THE COURT

LOC. R. 53.1 HOURS OF THE COURT

The Probate Court shall be open for the transaction of business from 8:00 a.m. to 4:00 p.m., Monday through Friday, **except** holidays, and as may be otherwise established by the Court.

SUP. R. 54 CONDUCT IN THE COURT

LOC. R. 54 CONDUCT IN THE COURT

- (A) Proper conduct is required by attorneys, parties, court personnel and other persons who appear before the Court. Conduct that interferes with the proper administration of justice is prohibited and may subject the offender to sanctions or removal from the Court.
- (B) In any probate matter presented to the Court, the Court may restrict the attendance of next of kin, interested parties and their counsel.
- (C) Proper attire is required of all parties who appear before the Court. A party who does not appear in the proper attire may be subject to sanctions or removal from the Court.

LOC. R. 55.1 INSPECTION OF PROBATE COURT RECORDS

- (A) No court file or other Court record may be removed from the premises of the Court without an order signed by the Probate Judge. Violation of this rule may result in the issuance of a citation for contempt.
- (B) Civil commitment case files, adoption case files and other filings and records designated by law or by the Probate Court as confidential shall not be examined by any person without the express authorization of the Probate Judge. When authorized, such examination shall take place within the presence of the Probate Judge, a Probate Court Magistrate, or a Probate Court Deputy Clerk. Violation of this rule may result in the issuance of a citation for contempt.

LOC. R. 57.1 ADDITIONAL FILING REQUIREMENTS

- (A) All documents presented for filing must be computer generated or typewritten and wholly legible. The Clerk may reject for filing any documents that are partially or wholly illegible or are not suitable for microfilming or digital imaging.

LOC. R. 58.1 COURT COSTS

Deposits shall be required upon the initial filing of any action or proceeding. The deposit may be applied as filings occur and additional deposits may be required. The Court shall maintain and make available a current list of costs.

LOC. R. 58.2 WITNESS FEES

Upon the filing of a praecipe for subpoena of witnesses, the party shall deposit, for each witness, an amount sufficient to pay the witness fee as prescribed by R. C. Section 2335.06.

SUP. R. 59 WILLS

LOC. R. 59.1 PROOF OF NOTICE OF PROBATE OF WILL

Proof of the Certificate of Service of Notice of Probate of Will as required by Section 2107.19(A)(4) of the Revised Code shall be provided by such manner as authorized by **CIV. R. 73(E)**.

LOC. R. 59.2 DEPOSIT OF WILLS

- (A) Before an application is made to admit the will to probate, to appoint an estate fiduciary, or to relieve an estate from administration, each applicant or the applicant's attorney shall cause the Clerk to examine the index of wills deposited pursuant to section 2107.07 of the Revised Code. Wills deposited pursuant to section 2017.07 of the Revised Code previous to the will offered for probate shall be filed in the estate proceedings for record purposes only.

LOC. R. 59.3 CERTIFICATE OF SERVICE

- (A) The applicant for the admission of a will to probate, or another person listed in R. C. 2107.19, shall file a Certificate of Service of Notice of Probate of Will (SPF 2.4) not later than two (2) months after the appointment of the fiduciary or, if no fiduciary has been appointed, not later than two (2) months after the admission of the will to probate. Proof of service shall consist of either waivers, photocopies of original signed certified mail return receipt cards, or when applicable, postal certificates of mailing, as provided under Civ. R. 73(E)(3). Neither a minor nor a person under disability may waive notice.

LOC. R. 59.4 WILL FOR RECORD ONLY

An application to file a Will for Record Only will be accepted when it is not necessary to have it admitted to probate. A case number shall be assigned and the case closed. Future activity shall require reopening of the estate.

When an estate is opened for purposes of admitting the will only or filing an estate tax only or both and no further administration is contemplated, the attorney shall so advise the Court in writing at the time of filing.

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LOC. R. 60.1 APPOINTMENT OF NON-RESIDENT FIDUCIARIES

A non-resident of Ohio requesting appointment as a fiduciary of a decedent's estate must comply with R. C. 2109.21 and have an attorney of record who is permitted to practice law by the Supreme Court of Ohio. To assure the assets remain in the State of Ohio, during the administration of the estate or trust, the applicant must meet one or more of the following criteria as required by the Court:

- (A) Place assets of an amount determined by the Court, in the custody of a depository account in Ohio, pursuant to R. C. 2109.13;
- (B) Have a co-fiduciary who is a resident of Ohio; or

- (C) Post a bond in compliance with R. C. 2109.04 or as ordered by the Court.

LOC. R. 60.2 ANNUAL REPORT OF OUTSTANDING ESTATE

The fiduciary of an estate or the attorney of record, shall file an Annual Report with the Court on the anniversary date of the estate opening, explaining the status of the estate and the reason for the continuation of administration.

SUP. R. 61 APPRAISERS

LOC. R. 61.1 APPROVED APPRAISERS

- (A) The following persons may be approved by the Court as qualified appraisers of real estate:
 - (1) State of Ohio licensed real estate brokers and similarly licensed real estate salespersons who are active in the trade or profession; or
 - (2) Members of National or State of Ohio-recognized appraiser associations who are active in the trade or profession.
- (B) The Court will maintain an alphabetical list of all such approved persons who are available to the general public in the selection of real estate appraisers for filings in this Court and may from time to time add to and delete from this list in its discretion based on the above qualifications.
- (C) When it is necessary to determine the value of a specialized property other than realty, including but not limited to coins, jewelry, stamps, antique automobiles, books and art, there shall be submitted to the Court the name, address, company and telephone number of the appraiser used in that particular field. A statement of his or her qualifications in such specialty shall be available upon request. The contact information for said independent appraiser, including name, address and telephone number shall be available upon request.

LOC. R. 61.2 APPRAISALS OF OUT-OF-COUNTY REAL ESTATE

- (A) When it is necessary to determine the value of real estate located outside of Jackson County, the attorneys for the fiduciary shall file an application for appointment of appraiser which includes an affidavit stating that the appraiser meets the standards set forth by the Probate Court of the county in which the real estate is located.

LOC. R. 61.3 READILY ASCERTAINABLE VALUE OF REAL ESTATE

- (A) Notwithstanding Local Rule 61.1, the market value of real estate as found in the Jackson County Auditor's property records may be acceptable as the readily ascertainable value of the property and no further appraisal of such property shall be required. A copy of said evaluation shall be attached to the appropriate form.

SUP. R. 66 GUARDIANSHIPS

LOC. R. 66.1 STATEMENT OF EXPERT EVALUTION

- (A) All applications for the appointment of a guardian on the grounds of mental incompetence or for dismissal of such guardianship shall be accompanied by a Statement of Expert Evaluation by a physician or a licensed clinical psychologist or a statement that the prospective ward refused to submit to an examination.
- (B) The Court will not accept a Statement of Expert Evaluation prepared more than ninety (90) days prior to the filing of an application for the appointment of a guardian.
- (C) A Statement of Expert Evaluation (SPF17.1) shall be maintained as a confidential record.
- (D) If a physician or a licensed clinical psychologist states on a Statement of Expert Evaluation that, to a reasonable degree of medical certainty, it is unlikely that the ward's mental competence will improve, the guardian may apply to the Court to dispense with the filing of an updated Statement of Expert Evaluation when filing subsequent annual Guardian Reports.

LOC. R. 66.2 EMERGENCY GUARDIANSHIPS

- (A) The Court may grant an application for emergency guardianship only by testimony, affidavit or other evidence showing that immediate action is required to prevent significant injury to the alleged ward or the property of the alleged ward and that an application for the appointment of a guardian of a person or estate or both has been filed with the Court.
- (B) For all applications for the appointment of an emergency guardian, a physician shall provide a Statement of Expert Evaluation and supplement to the Statement of Expert Evaluation stating why it is reasonably certain that immediate action is required to prevent significant physical injury to the person of the minor or alleged incompetent.

LOC. R. 66.3 PROBATE COURT INVESTIGATOR

- (A) A Probate Court Investigator shall personally serve the prospective ward within seven (7) days of the hearing date. The Probate Court Investigator shall file a report with the Court concerning the application for the appointment of a guardian on the grounds of mental incompetence. This report shall be maintained as a confidential record.
- (B) A court investigation shall be conducted on all incompetent guardianships and on minor guardianships with non-parent guardians.

LOC. R. 66.4 GUARDIANSHIP BACKGROUND CHECKS

- (A) Except for good cause shown, any applicant for guardianship who is not an attorney at law licensed by the Supreme Court of Ohio in good standing or a state agency, must complete the necessary form authorizing a criminal records check.

LOC. R. 66.5 REQUIREMENTS FOR ALL GUARDIANSHIPS

The following Local Rule applies to all guardianships:

- (A) A guardian shall deposit with the Court any and all wills of the ward for safekeeping in accordance with Ohio Revised Code Section 2107.07.
- (B) A guardian shall inform the Court as to any change of address of the guardian or the ward. This notification must be made within thirty (30) days of the address change. Failure to notify the Court under this rule may result in the guardian being removed.
- (C) Costs, fees, and expenses shall be assessed as determined by Court order. The Court may require a reasonable cost deposit in the event of appointment of an attorney or guardian ad litem for the prospective ward pursuant to the cost deposit schedule adopted by separate Court order.
- (D) In addition to those entitled to notice of the hearing on an application for the appointment of an incompetent adult under Section 2111.04 of the Revised Code, the applicant shall disclose to the Court the names and addresses of all adult children of the proposed ward. For such adult children known to reside in this State, service of Notice of Hearing shall be made as provided by law, unless waived. For such adult children, who may reside outside of the State, service of notice of hearing may be regular U. S. mail, unless waived.

LOC. R. 66.6 COMMENTS OR COMPLAINTS ON GUARDIANSHIPS

- (A) Any comment or complaint regarding the performance of any guardian appointed by this Court shall be submitted in writing to the Court's guardianship deputy clerk.
- (B) Upon receipt of the comment or complaint, the clerk shall forthwith send a copy of the comment or complaint by regular U. S. mail to the guardian who is the subject of the comment or complaint.
- (C) A copy of the comment or complaint shall be referred to the Judge of the Court for review to determine the action necessary to dispose of the comment or complaint, including, but not limited to a referral to the prosecuting attorney or other agencies for further

investigation or for further hearing by the Court. The Judge shall determine such course of action within seventy-two (72) hours of reference of the comment or complaint. If the Judge determines that a hearing is required to respond to the comment or complaint, such hearing shall be held within five (5) Court days of the Judge's determination. Notice of the hearing shall be provided to those entitled to Notice of the hearing shall be sent by regular U. S. mail to those identified in SPF 1.0 and such other interested persons as determined necessary by the Court, including the person submitting the comment or complaint, the guardian and the ward.

- (D) Upon making a Final Disposition of the comment or complaint, the Court shall prepare a written Final Disposition and provide a copy to the person making the comment or complaint and the guardian.
- (E) The Court shall maintain a separate record regarding the nature and disposition of comments or complaints concerning guardianships.

LOC. R. 75.1 ADOPTIONS

- (A) The original and a copy of all petitions, interlocutory decrees, and final decrees shall be filed in every adoption case. Additional copies of the petition may be submitted as required for service.
 1. In private placement adoptions, a pre-placement application in a form prescribed by the Court shall be filed by the proposed adopting parents not less than fifteen (15) days prior to placement if applicants are residents of Jackson County, Ohio, and not less than thirty (30) days prior to placement if applicants are not residents of Jackson County, Ohio.
 2. Upon approval of the application by the Court, a hearing for placement and consent by the birth parent(s) shall be held not less than seventy-two (72) hours after the birth of the child or after the birth parent(s) have met with the adoption assessor, whichever occurs later.
 3. If the birth parent of the child to be adopted is a minor, such birth parent shall be represented by counsel at a placement

hearing. Attorney fees for the birth parent shall be assessed as costs to the petitioner(s).

- (B) Married petitioners must be married for not less than one (1) year prior to the filing of the petition for adoption.
- (C) Upon the filing of the petition for adoption, the following items shall also be filed with the Court:
 - 1. A certified copy of the child's birth certificate.
 - 2. A criminal history record check from the Ohio Bureau of Criminal Identification and Investigation.
 - 3. Cost deposit as set by the Court.
- (D) The following additional items shall be filed with the Court at least one (1) week prior to the date of the adoption hearing:
 - 1. A medical statement concerning the child or children to be adopted, providing general information of the child's health and any recommendations.
 - 2. A medical report on the adopting parent, with a statement from the physician indicating the date of the examination, length of time the physician has known the parent and the results of the findings as to health and emotional stability.
 - 3. Six (6) letters of character reference in support of the adopting parent including the names, addresses, and telephone numbers of the references.
 - 4. Proof of marriage.
 - 5. Certified copies of all divorce decrees if parents or petitioners have previously been married.
 - 6. Proof of death if either parent is deceased.

7. Assessment report, including verification that the assessor is certified if the report is not prepared by a Court approved assessor.
8. Compliance with the requirements set forth in Ohio Administrative Code 5101:2-47 and 48.