

Miami County Probate Court Local Rules

Judge Scott Altenburger

Magistrate Rebecca Hall

Magistrate Katherine Severt

Magistrate J. Andrew Wannemacher

Effective January 2, 2019

PROBATE COURT LOCAL RULES

AMENDMENTS

November 21, 2005; September 1, 2015 - Previously amended

January 2, 2019 – Rules completely rewritten – became effective

November 1, 2019 – Amended 66.06 to require guardians to complete all educational requirements

**MIAMI COUNTY PROBATE COURT
LOCAL RULES, REVISED
EFFECTIVE January 2, 2019**

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PREAMBLE

The Probate Court of Miami County, Ohio adopts The Local Court Rules of Practice pursuant to Superintendence Rule (Sup.R.) 5 to facilitate the expeditious management of proceedings and the efficient performance of the Court's functions. The Court adopted the local rules after notice and an opportunity for comment on them. The court has filed a copy with the Clerk of the Supreme Court of Ohio. These rules of practice supersede prior rules of practice and have an effective date of January 2, 2019.

For ease of reference, and pursuant to Sup. R. 75, the numbering system used in these local rules and on the local forms follow that used by the Supreme Court of Ohio in the Rules of Superintendence, wherein, the Supreme Court has adopted rules having specific application to the administration of cases within the jurisdiction of Ohio's Probate Courts. Any exceptions to Sup. R. 53 to 79 are made pursuant to Sup.R. 76. All references to rules are to statewide rules governing the courts of Ohio adopted by the Supreme Court of Ohio, unless otherwise identified.

These Local Rules must be read in conjunction with the Superintendence Rules that they supplement.

These rules shall be known as Local Rules of Practice of the Probate Court of Miami County, Ohio and referred to as "Loc.R.____".

Pursuant to Ohio Revised Code Section 1.01, references to the "R.C." are to the Ohio Revised Code.

RULE 6 ATTORNEY OR PRO HAC VICE REGISTRATION NUMBER

Loc. R. 6.1

All attorneys who practice before this Court shall include their attorney registration number issued by the Supreme Court of Ohio on all documents filed with this Court.

This Court may grant permission to appear pro hac vice if any attorney has applied for registration with the Supreme Court Office of Attorney Services and been issued a certificate of pro hac vice registration pursuant to Gov. Bar R. X11.

If permission to appear pro hac vice is granted by this Court, the attorney shall include their pro hac vice registration number issued by the Ohio Supreme Court on all filed documents.

Scheduled trial or hearing dates will not be continued solely due to the unavailability or inconvenience of out-of-state counsel.

RULE 8 COURT APPOINTMENTS

Loc. R. 8.1

- (A) When the Court, on its own motion is appointing an attorney or a guardian ad litem, it will follow these guidelines. The Court will attempt to maintain separate master lists of persons who may be appointed as an attorney or a guardian ad litem. Appointees will be added to each list upon their request and a demonstration to the Court that they possess the requisite skill, expertise and any required licensure pursuant to these rules and the laws of the State of Ohio.

- (B) Appointments will be made from such lists taking into consideration the qualifications, skills, expertise, and caseload of the appointee, in addition to the type, complexity, and requirements of the case. The Court will periodically review the appointment lists to ensure the equitable distribution of appointments and that all potential appointees continue to meet the established qualifications.

- (C) Court appointees will be paid a reasonable fee with consideration given to the factors contained in §1.5 of the Code of Professional Responsibility, the Ohio Revised Code, and the Local Rules of Court relating to fees except where otherwise noted.

- (D) Guardian Ad Litem
 - a. A guardian ad litem may be an attorney who is not associated with an attorney of record for the proceeding in which the guardian ad litem has been appointed.

 - b. A guardian ad litem may be appointed upon the motion of either party or on the Court's own motion.

 - c. The Court may order a guardian ad litem appointed at any time that it deems necessary and essential to protect the interest of a minor child or to represent an incompetent person or incapacitated adult.

 - d. The guardian ad litem shall be selected and appointed solely by the Court in accordance with the qualifications and guidelines established by this Court.

- e. Unless otherwise provided, it is the responsibility of each party involved to timely contact the guardian ad litem and to provide the guardian ad litem with information relating to the case.
- f. Unless otherwise ordered by the Court, upon application and entry, guardian ad litem fees shall be based on a reasonable hourly rate for time expended. Fees may be charged as a court cost. The Court may require an advance deposit for costs.
- g. All applications for the allowance of guardian ad litem fees shall set forth an itemized statement of the services performed, the date services were performed, the time spent in rendering the services, and the rate charged per hour.
- h. Unless otherwise directed by the Court, the guardian ad litem shall prepare a guardian ad litem report and deliver the report to the Court with notice to the parties. The guardian ad litem report shall be confidential. There shall be no access without prior application to and approval by the Court.
- i. The guardian ad litem handling a probate matter is not bound by the regulations set forth in Rule 48 of the Rules of Superintendence.

RULE 9 SECURITY POLICY AND PROCEDURES

Loc. R. 9.1

The Court has implemented a Security Policy and Procedures Manual as required by Rule 9 of the Rules of Superintendence. This plan shall remain confidential and not be available for public access.

RULE 11 RECORDING OF PROCEEDINGS

Loc. R. 11.1

- (A) All matters heard by the Judge or Magistrate will be recorded via auto electronic device, which is the Court's official record of all Court proceedings.

- (B) Upon written request filed with the Clerk, a party to the case may request a typewritten transcript of the proceedings. Within five (5) days of the request, a court reporter shall prepare a written estimate of the cost of the deposit for the transcript and notify the requesting party of the same. Upon payment of a required deposit an official typewritten transcript of the proceedings shall be prepared from the digital recording. The deposit must be made within fourteen (14) days of the issuance of the written cost estimate or the request will be considered withdrawn. Transcripts shall be completed within a reasonable time, which shall be thirty (30) days from the date the deposit is made, unless otherwise ordered.

- (C) A request for preparation of a transcript does not extend or stay the time for the filing of objections to a Magistrate's Decision and Journal Entry in accordance with Rule 53 of the Ohio Rules of Civil Procedure. Any supplementation of Objections after the filing of the transcript shall be only at the Court's discretion for good cause shown.

- (D) Parties may obtain a copy of the recording on a compact disc by filing a written request with the Clerk and payment of costs. Compact discs will be made available within seven (7) days of the request.

- (E) The compact disc version of the hearing is not a substitute for the official typewritten transcript of the hearing. All appeals submitted to the Second District Court of Appeals require an accompanying typewritten transcript; compact disks will not be accepted for the appeals process.

RULE 12 CONDITIONS FOR BROADCASTING AND PHOTOGRAPHING COURT PROCEEDINGS

Loc. R. 12.1

In compliance with Rule 12 of the Rules of Superintendence, the Court shall permit the broadcasting or recording by electronic means and the taking of photographs in court proceedings that are open to the public as provided by Ohio law.

- (A) The taking of photographs and/or making of sound or video recordings, or live broadcasting by radio or television of judicial proceedings in a courtroom or the adjacent corridors shall not be permitted unless authorized by the Court in writing in advance. The written Order of the Judge shall be made a part of the record of the proceedings.
- (B) Request for permission to broadcast, televise, record or photograph shall be made in writing to the court administrator as far in advance as reasonable practicable but not later than twenty-four (24) hours prior to the proceeding, unless otherwise permitted by the judge. Request forms may be obtained from the court administrator's office.
(Probate – Media Request)
- (C) The court administrator shall immediately notify the judge, the attorneys for the parties, or the parties, if unrepresented of the media request. If the request is approved, the judge will file an entry setting forth the conditions of the broadcasting or photographing.
- (D) If the proceeding is continued for a period of more than thirty (30) days, a new media request is required.
- (E) In adoption hearings, the Court will allow the families to photograph the proceedings without advance written consent of the Court.
- (F) This rule shall not be construed to grant media representatives any greater rights than permitted by law.

RULE 16 MEDIATION

Loc. R. 16.1

(A) This rule incorporates by reference the R.C. 2170 “Uniform Mediation Act” (UMA), R.C. 3109.052 Mediation of Differences as to Allocation of Parental Rights and Responsibilities and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

(B) All definitions found in the “Uniform Mediation Act” (UMA) R.C. 2710.01 are adopted by this Court through this local rule including, but not limited to the following:

- (1) “Mediation” means any process in which a mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement regarding their dispute.
- (2) “Mediator” means an individual who conducts a mediation.
- (3) “Mediation Communication” means a statement, whether oral, in a record, verbal or non verbal, that occurs during a medication or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.
- (4) “Proceeding” means either of the following:
 - (a) Judicial, administrative, arbitral or other adjudicative process, including related pre-hearing and post-hearing motion, conferences, and discovery.
 - (b) A legislative hearing or similar process.

(C) To promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution of probate cases the Court has adopted this local mediation rule.

(D) At any time any action under the jurisdiction of this Court may be referred to mediation by the referring party(ies).

(E) The court, on its own motion, or the motion of any of the parties may refer disputed issues to mediation in whole or in part by “Notice of Scheduled Mediation” which shall, at a minimum indicate the date, time, place and contact information of the mediation. All parties and counsel shall advise the assigned Judge or Magistrate of any domestic violence allegations known to them to exist or to have existed in the past, or which become known to them following entry of the order but before conclusion of all mediation proceedings, which allegations involve any two or more persons whose attendance is required by the referral order.

(F) The Judge or Magistrate will determine the eligibility and appropriateness of each referral prior to the commencement of the mediation process and may decline any referral(s) deemed inappropriate.

(G) The following methods may be used to determine the mediator for the case:

- (1) The court mediator may facilitate the mediation.
- (2) The court randomly assigns a mediator to the case from the Court's roster of approved mediators.
- (3) Specific appointments may be made by the Court taking into consideration the qualifications, skills, expertise, and caseload of the mediator in addition to the type, complexity, and requirements of the case.
- (4) Parties may select a mediator from the court roster.

(H) In accordance with all applicable provisions of this rule, if a case is deemed appropriate by the Judge or Magistrate, mediation will be scheduled. A mediator may meet with the parties individually prior to bringing the parties together for any reason including, but not limited to further screening. A mediator may schedule multiple mediation sessions, if necessary and mutually acceptable for the resolution of the issues in party or in their entirety. The case will proceed as follows:

- (1) The Court shall utilize procedures for all cases that will:
 - (a) Ensure that parties are allowed to participate in mediation, and if the parties wish, that their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.
 - (b) Screen for domestic violence both before and during mediation.
 - (c) Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.
 - (d) Prohibit the use of mediation in any of the following:
 - (I) As an alternative to the prosecution or adjudication of domestic violence;
 - (II) In determining whether to grant, modify or terminate a protection order;
 - (III) In determining the terms and conditions of a protection order; and
 - (IV) In determining the penalty for violation of a protection order.

(2) Nothing in this division of this rule shall prohibit the use of mediation in a subsequent divorce or custody case even though that case may result in the termination of the provisions of a protection order.

(I) All mediation communications related to or made during the mediation process are subject to the governed by the “Uniformed Mediation Act” (UMA) R.C. 2710.01 to 2710.10, the Rules of Evidence and any other pertinent judicial rule(s).

(J) In accordance with R.C. 2710.08(A) and (B), the Mediator assigned by the Court to conduct a mediation shall disclose to the mediation parties, counsel, if applicable, and any nonparty participants any known possible conflicts that may affect the Mediator’s impartiality as soon as such conflict(s) become known to the Mediator. If counsel or a mediation party requests that the assigned Mediator withdraw because of the facts so disclosed, the assigned Mediator should withdraw and request that he assigned Judge or Magistrate appoint another Mediator from the list of qualified Mediators that is maintained by the Court. The parties shall be free to retain the mediator by an informed, written waiver of the conflict of interest(s).

(K) If the assigned Mediator determines that further mediation efforts would be of no benefit to the parties, he or she should inform all interested parties and the Court that the mediation is terminated using the procedure required by this Court.

(L) All remaining court orders shall continue in effect. No order is stayed or suspended during the mediation process except by written court order. Mediation shall not stay discovery, which may continue through the mediation process in accordance with applicable rules, unless agreed upon by the parties and approved by the Judge or Magistrate assigned to the case.

(M) The assigned mediator, parties or counsel, if applicable, as agreed by the parties, may immediately prepare a written memorandum memorializing the agreement reached by the parties. The “Mediation Memorandum” may be signed by the parties and counsel (if the “Mediation Memorandum” is signed it will not be privileged pursuant to R.C. 2710.05(A)(1)). The written “Mediation Memorandum of Understanding” may become an order of the court after review and approval by the parties and their attorney, if applicable. No oral agreement by counsel or with parties or an officer of the court will be regarded unless made in open court.

(N) At the conclusion of the mediation and in compliance with R.C. 2710.06 the court shall be informed of the status of the mediation including all of the following:

- (1) Whether the mediation occurred or was terminated;
- (2) Whether a settlement was reached on some, all of none of the issues;
- (3) Attendance of the parties; and
- (4) Future mediation session(s), including date and time.

(O) To be a court approved mediator, the individual must:

- (1) Possess a bachelor's degree, or equivalent education or experience as is satisfactory to the Court, and at least two years of experience including but not limited to mediation, counseling, casework, legal representation in probate matters, or such other equivalent experience satisfactory to the Court.
- (2) Complete at least twelve hours of basic mediation training or equivalent experience as a mediator that is satisfactory to the Court.

(Q) All costs shall be determined by the court, if applicable. The parties may agree between themselves to apportion the costs of the mediation. Unless otherwise agreed by the parties, the mediation costs shall be shared equally. In the event that the parties cannot agree, the Court shall determine the apportionment of the mediation costs to the parties. The Court may waive costs for the parties who are unable to pay. Mediation shall not be ordered where a party is indigent unless the mediation is available at no cost to the party.

(R) If any individual ordered by the court to attend mediation fails to attend mediation without good cause, the Court may impose sanctions which may include, but are not limited to, the award of attorney's fees and other costs, contempt or other appropriate sanctions at the discretion of the assigned Judge or Magistrate.

RULE 26 COURT RECORDS MANAGEMENT AND RETENTION

Loc. R. 26.1 Record Retention

The Court has a Schedule of Records Retention and Disposition, which will be followed in conjunction with the Rules of Superintendence for the Courts of Ohio.

Loc. R. 26.2 Exhibits, Depositions and Transcripts

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

At the conclusion of a case, including times for direct appeal, the court may destroy exhibits, depositions or transcripts if the party that tendered the exhibits, depositions or transcripts has been notified in writing and sixty (60) days have elapsed. Disposal of exhibits shall be pursuant to Rule 26 of the Ohio Rules of Superintendence.

RULE 45 COURT RECORDS – PUBLIC ACCESS

Loc. R. 45.1

- (A) The Miami County Probate Court adopts Rules 44 through 47 of the Rules of Superintendence for the Courts of Ohio as the Public Access Rules of this Court.
- (B) Sealing
 - a. Sealed Documents
 - i. Motions for a protective order, motion to file under seal, and proposed orders granting such motions shall include language designating a specific level of access.
 - ii. The designated levels of access are the following:
 - 1. No Access by Public; Access by Judge, Court Staff, and Attorneys of Record:

The docket may be accessed directly at the Clerk’s Office.
Documents may not be accessed directly at the Clerk’s Office.
Only the Judge, Court Staff, and attorney of record may access documents.
 - 2. Judge Access Only: No Access by Court Staff, Attorneys of Record, or the Public:

The docket may be accessed directly at the Clerk’s Office.
Documents may not be accessed directly at the Clerk’s Office.
Only the Judge and assigned Magistrate may access documents.
 - iii. Documents shall not be accepted for filing under seal unless there is a previously signed protective order or order to file under seal that includes a designated a level of access. If the protective order or order to file under seal does not include a designated level of access, the filer shall file a proposed order designating a level of access. Documents shall be accepted filing under seal once an order is entered that designates a level of access.
 - iv. Motions for protective order, motions to file under seal, and proposed orders granting such motions shall be filed using the following document types: Motion: Protective Order; Motion: Seal; Order: Protective

(Proposed): or Order: Seal (Proposed). Documents that are requested to be protected or sealed shall not be attached to such motions, as the motions themselves will not be sealed.

- v. Documents shall be submitted for filing under seal in a securely sealed envelope. The face of the envelope shall include a conspicuous notation that it contains “documents under seal.” It shall also include the case caption; a descriptive title of the document, unless such information has been included among the information ordered protected or sealed; and the date of the order authorizing the document to be protected or sealed.
- vi. The Clerk’s Office shall file stamp the face of the envelope, enter on the docket that the document was filed under seal and retain the envelopes in a secured location designated by the Judge.

b. In Camera Documents

- i. If the Judge or Magistrate orders that document shall be filed for in camera review, the filer shall follow the procedure set forth in Division B of this Rule, using the following designated level of access: Judge Access Only.
- ii. Otherwise, the filer shall submit, rather than file, documents for in camera review to the Judge or Magistrate.

(C) Personal Identifiers

- a. Any party submitting a document to this court for filing shall omit personal identifiers from the document.
- b. The term “personal identifiers” means social security numbers, financial account numbers, including but not limited to debit card, charge card and credit card numbers and employer and employee identification numbers.
- c. When personal identifiers are omitted from a document filed with this Court, the party shall submit the omitted information to the Court on the Ohio Supreme Court Standard Probate form 45(D) Confidential Disclosure of Personal Identifiers.
- d. The responsibility for omitting personal identifiers from a case document submitted to the Court shall rest solely with the party. The Court or clerk is not required to review the case document to confirm that the party has omitted personal identifiers.

RULE 51 STANDARD PROBATE FORMS

Loc. R. 51.1

Approved forms for use in the Miami County Probate Court are available at the Probate Clerk's Office and/or on the Court's website.

RULE 52 SPECIFICATION FOR PRINTING PROBATE FORMS

Loc. R. 52.1

This Court may accept computer generated forms created by third party providers, forms as adopted by this Court, or forms prepared by lawyers or others, provided the following conditions are met:

- (A) All forms shall comply with Rule 51 and Rule 52 of the Rules of Superintendence for the Probate Division of the Court of Common Pleas.
- (B) All forms shall be in the same format as those provided by this Court.
- (C) The individual presenting forms to this Court shall be responsible to ensure that such forms are in full compliance with the Rules of Superintendence and the Local Rules of this Court. All printed material shall be in the same words, sequence and location on the page as the standard probate form. In the event of multiple page forms or two-sided forms, the printed material shall be on the same side or same page as the standard probate form. Any interlineated information shall be in typeface or written legibly in ink.
- (D) The Court may reject forms that deviate from the format of the Standard Probate Forms provided by this Court or the Standard Probate Forms provided by the Ohio Supreme Court. Such forms may be rejected prior to filing or stricken from the record upon discovery.

RULE 53 HOURS OF THE COURT

Loc. R. 53.1

The Probate Court and its offices shall be open for the transaction of business from 8:00 a.m. to 4:00 p.m. Monday through Thursday, and 8:30 a.m. to 4:00 p.m. on Friday. The Probate Court shall be closed on Saturday, Sunday and legal holidays. Please refer to the Court's website for holidays and extraordinary closures. The Probate Court may be closed other times during the year for special events and at times where the Commissioners have authorized closure of the building. Check the Court's website for information on closures.

RULE 54 CONDUCT IN COURT

Loc. R. 54.1

- (A) Proper decorum, including attire, in the Court is necessary for the administration of court function. A person who does not appear in proper attire shall be subject to sanctions or removal from the Court.

- (B) In any preliminary Probate matter presented to the Court, the Court may restrict the attendance at said hearing to next of kin, interested parties and their counsel.

- (C) No audio or video recording device may be used in any proceeding or communication within the Court, unless expressly permitted by the Court.

RULE 55 EXAMINATION OF PROBATE RECORDS

Loc. R. 55.1

- (A) Probate Court public records may be examined at the Court and copies may be obtained at a reasonable cost.
- (B) Originals of Records shall not be removed from the Court, except when approved by the Judge. Violation of this rule may result in the issuance of a citation for contempt.
- (C) Adoption, mental illness/developmental disability and certain estate tax filings are confidential. Records of these proceedings, and other records that are confidential by statute, may be accessed as authorized by the Judge. Divulging information from confidential records without prior court approval will result in the issuance of a citation for contempt.
- (D) No alterations of forms or pleadings may be made after the form or pleading has been filed with the Court. If changes need to be made, an amended form or pleading must be filed. Violation of this rule may result in the issuance of a citation for contempt.

RULE 56 CONTINUANCES

All motions to continue citation hearings shall be done using the court form – CITATION HEARING CONTINUANCE FORM. Copies of the form can be found on the website or in the clerk's office.

RULE 57 FILINGS AND JUDGMENT ENTRIES

Loc. R. 57.1 Filings

- (A) All pleadings, motions, or other filings are to be typed or printed legibly in and correctly captioned. The Court reserves the right to reject or strike any pleadings in which the text or the signatures are illegible.
- (B) All original filings shall contain the name, address, telephone number, and attorney registration number of the individual counsel representing the fiduciary and, in the absence of counsel, the name, address, and telephone number of the fiduciary. Any filing not containing the above requirements may be refused.
- (C) Failure of the fiduciary to notify the Court of the fiduciary's current address shall be grounds for removal. Not less than ten (10) days written notice of the hearing to remove shall be given to the fiduciary by regular mail at the last address contained in the case file or by other methods of service as the Court may direct.
- (D) All filings, entries and orders which bear an endorsement of counsel per telephone or electronic authorization shall state the date of said authorization and shall also contain a certificate of service by the attorney who obtained authorization that a copy of the filing, entry or order has been delivered to the consenting counsel.
- (E) All motions shall be accompanied by a brief or memorandum stating the grounds thereof, citing the authorities relied upon, and providing proof of service in accordance with Rule 5 of the Ohio Rules of Civil Procedure.

57.2 Facsimile Transmissions

- (A) Pleadings and other papers may be filed with the Probate Court by facsimile transmission to the fax number listed on the Court's website.
- (B) However, the following documents will not be accepted for fax filing:
 - 1) Documentation necessary to open a new probate case;
 - 2) Any pleading that exceeds ten (10) pages, including attached exhibits;
 - 3) Consents to adoption;
 - 4) Any other pleading that the Court determines may not be faxed.

(C) ORIGINAL FILING

(1) A document filed by fax shall be accepted as the effective original filing. The person making a fax filing need not file any source document with the Clerk of Court but must, however, maintain in his or her records and have available for production on request by the Court the source document filed by fax, with original signatures as otherwise required under the applicable rules, together with the source copy of the facsimile cover sheet used for the subject filing.

(2) The source document filed by fax shall be maintained by the person making the filing until the case is formally closed by the Court and all opportunities for post judgment relief are exhausted.

(D) DEFINITIONS - As used in these rules, unless the context requires otherwise:

(1) A "facsimile transmission" means the transmission of a source document by a facsimile machine that encodes a document into optical or electrical signals, transmits and reconstructs the signals to print a duplicate of the source document at the receiving end.

(2) A "facsimile machine" means a machine that can send and receive a facsimile transmission.

(3) "Fax" is an abbreviation for "facsimile" and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

(E) COVER PAGE

(1) The person filing a document by fax shall also provide therewith a cover page containing the following information:

- (I) the name of the court;
- (II) the title of the case;
- (III) the case number;
- (IV) the assigned judge/magistrate;
- (V) the title of the document being filed (e.g. Defendant Jones' Answer to Amended Complaint; Plaintiff Smith's Response to Defendant's Motion To Dismiss; Plaintiff Smith's Notice of Filing Exhibit "G" to Plaintiff Smith's Response to Defendants' Motion to Dismiss);
- (VI) the date of transmission;
- (VII) the transmitting fax number;
- (VIII) an indication of the number of pages included in the transmission,

including a cover page;

(IX) if a judge/magistrate or case number has not been assigned, state that fact on the cover page;

(X) the name, address, telephone number, fax number, Supreme Court registration number, if applicable, and e-mail address of the person filing the fax document if available.

(2) If a document is sent by fax to the Clerk's Office without the cover page information listed above, the document will not be filed.

(3) The Clerk's Office is not required to send any form of notice to the sending party of a failed fax filing. Burden of confirming receipt of fax filing is on the sending party.

(F) SIGNATURE

(1) A party who wishes to file a signed source document by fax shall fax a copy of the signed source document.

(2) A party who files a signed document by fax represents that the physically signed source document is in his/her possession or control.

(G) EXHIBITS

(1) Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile transmission for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the Court otherwise orders, the missing exhibit shall be filed with the Court, as a separate document, not later than five (5) court days following the filing of the facsimile document. Failure to file the missing exhibits as required by this paragraph may result in the Court striking the document and/or exhibit.

(2) Any exhibit filed in this manner shall be attached to a cover sheet containing the caption of the case which sets forth the name of the court, title of the case, the case number, name of the judge/magistrate and the title of the exhibit being filed (e.g. Plaintiff Smith's Notice of Filing Exhibit "G" to Plaintiff Smith's Response to Defendants' Motion to Dismiss), and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this court.

(H) TIME OF FILING

(1) Subject to the provisions of these rules, all documents sent by fax and accepted by the Clerk shall be considered filed with the Probate Clerk's Office as of the date and time the Clerk time-stamps the document received, as opposed to the date and time of the fax transmission. The Probate Clerk's Office will be deemed open to receive facsimile

transmission of documents on the same days and at the same time the Court is regularly open for business.

(2) The Clerk's Office may, but need not, acknowledge receipt of a facsimile transmission.

(3) The risks of transmitting a document by fax to the Clerk's Office shall be borne entirely by the sending party. Anyone using facsimile filing is urged to verify receipt of such filing by the Clerk through whatever technological means are available.

(I) FEES AND COSTS

(1) No document filed by facsimile requiring a filing fee shall be accepted by the Clerk.

(3) No additional fee shall be assessed for facsimile filings.

(J) LENGTH OF DOCUMENT

(1) Facsimile filings shall not exceed ten (10) pages in length including attached exhibits. The filer shall not transmit service copies by facsimile.

RULE 58 DEPOSIT FOR COURT COSTS

Loc. R. 58.1

A deposit for court costs shall be paid at the time a case is opened. Costs incurred thereafter must be paid when an account, bank verification, or guardian's report is filed or before the case is closed. In cases in which an account is not required, costs shall be paid before the case is closed.

Costs incurred by parties other than the fiduciary shall be paid at the time of filing.

A schedule of costs is available at the Court and/or the Court's website.

RULE 59 WILLS

Loc. R. 59.1

- (A) Before an application is filed to admit a will to probate, to appoint an estate fiduciary, or to relieve an estate from administration, the applicant or the applicant's attorney shall inquire with the Clerk's office to see if the decedent has deposited a prior will with the Court for safekeeping. Prior wills so deposited shall be filed in the estate proceedings for record purposes only.

- (B) If a will presented to probate contains alterations, interlineations, or extraneous markings, the admission of the will may be set for hearing pursuant to Ohio Revised Code §2107.26.

- (C) All persons listed on the form 1.0 whose addresses are known shall be given Notice of Probate of Will by certified mail unless such notice is waived. An affidavit shall be filed for any person(s) whose addresses are unknown, listing three attempts to locate said person(s). The Court reserves the right to require service by publication.

- (D) Fiduciaries appointed to administer testate estates shall file a Certificate of Service of Notice of Probate of Will (Standard Probate Form 2.4) within two (2) months of their appointment or be subject to removal proceedings unless a notice to waive service is signed and filed in lieu of Form 2.4.

RULE 60 APPLICATION FOR LETTERS OF AUTHORITY TO ADMINISTER ESTATE AND NOTICE OF APPOINTMENT

Loc. R. 60.1

- (A) When a next of kin takes per stirpes, the name of the deceased parent and the parent's relationship to the decedent shall be stated on the standard probate form 1.0.
- (B) Service of notice pursuant to Rule 73 (E) of the Ohio Rules of Civil Procedure shall be without Court intervention.
- (C) No more than three (3) fiduciaries will be appointed unless there are special circumstances which shall be set forth in an application.
- (D) Minors who would have been entitled to priority to administer the estate except for their minority also shall be served notice pursuant to the Rules of Civil Procedure.

RULE 61 APPRAISERS

Loc. R. 61.1 Appraisers and Inventories

- (A) The market value of real estate as found in the Miami County Auditor’s property records will be accepted as the readily ascertainable value of the property and no further appraisal of such property shall be required except as provided in division (C) of this rule. A copy of said evaluation shall be attached to Schedule of Assets (Form 6.1) or Assets and Liabilities to be Relieved from Administration (Form 5.1), whichever is applicable.
- (B) The market value of any motor vehicle(s) as found in any nationally recognized valuation guide under the category “average retail” may be adopted as the readily ascertainable value of the vehicle(s) and no further appraisal shall be required except as provided in division (C) of this rule. A copy of the appropriate page from said guide shall be attached to Schedule of Assets (Form 6.1) or Assets and Liabilities of Estate to be Relieved from Administration (Form 5.1), whichever is applicable.
- (C) An administrator, executor, fiduciary, beneficiary, or creditor of a decedent’s estate may file a written request with the Probate Court no later than the date set for hearing on the Inventory and Appraisal pursuant to Ohio Revised Code §2115.16 that any property deemed to be appraised by readily ascertainable value shall be appraised by a suitable and disinterested appraiser.
- (D) Complete legal descriptions must be set forth in the inventory or attached thereto. Inventories must include the Auditor’s parcel number.
- (E) If, by reason of the special and unusual character of any assets of the estate, the fiduciary is of the opinion that the services of an appraiser qualified in the evaluation of that property is required, a qualified appraiser may be appointed and allowed compensation as provided in division (G) of this rule.
- (F) During the administration of the estate, no appraiser or broker shall directly or indirectly purchase or negotiate the purchase or sale of property that the appraiser has appraised.
- (G) An appraisal fee of two hundred-fifty dollars (\$250) or less may be paid from the estate without application to the Court. Fees in excess of two hundred-fifty dollars (\$250) will need to be approved by the Court by filing an application.

RULE 62 CLAIMS AGAINST THE ESTATE

Loc. R. 62.1

- (A) Every applicant not represented by counsel who seeks a summary release, a release of estate from administration or the administration of any estate shall file with the Court a completed Medicaid Recovery Acknowledgement. When applicable, the applicant or the fiduciary shall file and serve the Notice of Administrator of Medicaid Recovery Program and file the Certification of Notice to Administrator of Medicaid Recovery Program.

RULE 64 ACCOUNTS

Loc. R. 64.1

- (A) Guardianship and trust account disbursements shall be identified by consecutive numbers, and all vouchers shall bear the corresponding number and shall be presented in the same consecutive order. The date of judicial approval shall be listed next to the corresponding expenditures in guardianship and trust accounts. All payments that are not self evident, shall identify the nature of the payment. No other account vouchers are required.

- (B) For all accounts, printed statements of investment accounts may be certified by the financial institution in which case no vouchers shall be filed.

- (C) The fiduciary or his attorney shall disclose to the Court, in writing, any changes in the beneficial interest due to death, attainment of specified age, or the occurrence of any other event, on or before the filing of the next succeeding account.

- (D) For estate accounts, if the time for filing an account has been extended to thirteen (13) months or other appropriate time for the reasons set forth in Ohio Revised Code §2109.301(B) the filing of a thirteen (13) month status report shall be waived. In cases in which the fiduciary has not been discharged after filing a final account, a status report shall be filed after a fiduciary has remained in place for one (1) year after the filing of the final account.

RULE 65 LAND SALES – R.C. CHAPTER 2127

Loc. R. 65.1

(A) In every complaint for land sale filed in the Court, the party requesting the sale shall endorse the following certification:

“The undersigned hereby certifies that an examination of the public records of Miami County, Ohio has been made to determine the ownership of subject real estate and all parties who may claim an interest therein, and that, in the opinion of the undersigned, all parties have been named as parties to this action.”

The requesting party shall state as exceptions any interested party not so named.

(B) In every motion for an order of sale filed in the Court, the party requesting the sale shall endorse the following certification:

“The undersigned hereby certifies that an examination of title to subject real estate has been extended to [date] to determine if any parties have acquired any interest therein subsequent to said previous examination and said examination discloses that, in the opinion of the undersigned, there are no such parties except parties to whom the doctrine of lis pendens applies.”

The requesting party shall state as exceptions any such party not subject to lis pendens. With the motion, the requesting party shall also file an updated title examination.

(C) A purchaser of real estate through a land sale proceeding shall have thirty (30) days from the date of sale to obtain a title examination. The purchaser may waive any or all of this thirty day period by signing the confirmation order.

(D) A proposed order to confirm the sale and an order of distribution shall be submitted with the motion to confirm the sale. The distribution of sale proceeds shall be included with the confirmation order.

(E) In land sale proceedings that have not been concluded within one (1) year from the date of filing, the party requesting the sale shall file a status report.

(1) The status report shall detail the efforts being made to complete the sale of the real estate; the current physical status of the real estate; the amount and nature of any mortgages or liens; the amount and nature of any outstanding real estate taxes; the name and address of any real estate agency and real estate agent involved in listing the property; and the name, address, and telephone

number of the insurance company and insurance agent involved in insuring the property.

(2) Upon review of the status report, the Court may set the matter for hearing.

RULE 66 GUARDIANSHIPS

Loc. R. 66.01 Definitions

The terms defined in Supr.R. 66.01 have the same meaning when used in these rules.

Loc. R. 66.02 Application of Rules

The local rules on guardianships apply to all guardianships administered through this Court, unless otherwise indicated in a particular local rule or unless expressly waived by Court Order.

Loc. R. 66.03 (A) Emergency Guardianships

This rule governs emergency guardianships of a minor or mentally incompetent adult under R.C. 2111.02(B)(3).

A person desiring to be appointed emergency guardian must prepare and file necessary documents provided on the Court's website for emergency guardianship proceedings. All of the supporting evidence and other supporting documentation, proving that the proposed ward faces an imminent risk of serious injury to his person or estate and that no less intrusive means exists to prevent injury to the proposed ward, must accompany the application. If the physician is not testifying, a statement of expert evaluation and supplement must be submitted with the application for appointment.

At the time of filing, Counsel and/or applicant will be asked to wait for the Emergency Guardianship Application to be reviewed, ruled on and processed. You are advised to call the eCourt in advance to check on the judge's availability so as to lessen your wait time.

Since the Emergency Guardianship can only last for seventy-two hours (72), the Court automatically sets the matter for a hearing for a thirty (30) day extension of the emergency guardianship. In order to help ensure proper service, the Court will have the prospective ward (and if the prospective ward is in a facility, the administrator) served by Sheriff, as well as all next of kin living in Miami County, who have not signed a waiver. It is applicant's responsibility to have all next of kin residing outside Miami County personally served or sign a waiver of service.

If the extension is granted, it will only extend the emergency guardianship for an additional thirty (30) days, so it is imperative that the full guardianship is applied for in enough time to allow for a hearing within the thirty-three (33) days of the emergency guardianship.

If the application for emergency guardianship is denied, the underlying application for guardianship will be scheduled on the Court's regular docket.

Loc. R. 66.03 (B) Guardian Comments and Complaints

The Court Administrator is designated as the contact person to accept and consider written comments and complaints regarding the performance of a guardian. All written (hard copy or email) comments and complaints shall be forwarded to the Court Administrator for investigation. No anonymous complaints will be considered. A copy of comments and complaints submitted to the court shall be provided to the guardian who is the subject of the comment or complaint. The Court Administrator shall complete an investigation and forward a report to the Judge for consideration and appropriate action, including possible referrals to law enforcement. Disposition by the Court shall be made promptly and a copy provided to the person making the comment or complaint and the subject guardian of the disposition. The court shall maintain a written record in the guardian's file regarding the nature and disposition of any comment or complaint.

Loc. R. 66.04 Reserved

Loc. R. 66.05 (A) Guardian Background Checks

An applicant for appointment as a guardian must submit to a civil and criminal record check satisfactory to the Court and execute such consent, if any, as may be requested by the Court to authorize the Court to perform that record check. In place of a civil and criminal background check, an Ohio attorney applicant may obtain and submit to the Court a Certificate in Good Standing with disciplinary information, issued by the Supreme Court of Ohio.

(D) Guardian with Ten or More Adult Wards

In order to assist the Court in meeting its supervisory responsibilities under Sup.R. 66.05(B) and in satisfaction of the responsibilities arising under Sup.R. 66.08(H), by January 31st of each year, a guardian with 10 or more wards through the probate courts of Ohio shall register with this Court on the local Multi-Guardian Registration Form, or on a standard form adopted for that purpose by the Ohio Supreme Court. The registration shall include a listing of the guardian's wards, the case number and the appointing Court. The guardian in such cases shall advise the Court of any change in the guardian's name, address, telephone number and electronic mail address within ten (10) days of the change occurring.

If the guardian will be seeking compensation from the guardianship or from the Court, the guardian shall accompany the annual registration with a fee schedule that differentiates guardianship services fees as established by local rule from legal fees or other direct services.

A guardian with ten (10) or more wards shall include with the Multi-Guardian's Annual Registration form, a statement indicating whether the guardian is aware of any circumstances that may disqualify the guardian from continuing to serve as a guardian.

A guardian shall appropriately manage their caseload to ensure that they are adequately supporting and providing for the best interest of the wards in the guardian's care.

Loc. R. 66.06 Guardian Fundamentals Training Requirement

A Guardian holds a unique role with respect to the ward and the Guardian has an obligation to obtain an understanding of the fundamentals of that relationship. Formalized training is one means to gain that competency.

Every guardian for an adult must meet the guardianship fundamentals training requirements under Sup.R. 66.06 by completing prior to appointment or within six months thereafter, a six-hour guardian fundamentals course provided by the Supreme Court of Ohio, or with prior approval of that Court, another entity. Those failing to meet the requirement shall be subject to citation for being in contempt of court and subject to sanctions including, but not limited to imposition of a fine, denial of compensation, and removal. The guardian is responsible for providing to the Court, in a timely manner, documentation that establishes compliance with the guardian fundamental training requirement.

For a complete listing of trainings offered through the Ohio Supreme Court, go to their website at <http://www.sconet.state.oh.us/Boards/judCollege/adultGuardianship/default.asp>.

Loc. R. 66.07 Guardian Continuing Education

After completing the guardian fundamentals course, every guardian of an adult, unless exempted below, shall annually complete a three-hour guardian continuing education course provided by the Supreme Court of Ohio, or with prior approval of that Court, another entity.

If a guardian fails to comply with the guardian continuing education requirement, the guardian shall not be eligible for further appointment until the requirement is met. The guardian also may be subject to sanctions and/or removal.

By December of each calendar year, the guardian is responsible for providing this Court documentation demonstrating compliance with this guardian continuing education requirement, including the title, date, location and provider of the education, or a certificate of completion containing such information.

Guardians that are exempt from completing the annual continuing education requirements under Supr.R. 66.07 would be those guardians who are related to the ward by consanguinity (a blood relationship) or affinity (kinship by marriage) and are not receiving compensation for being a guardian and who at no time will receive compensation for being a guardian. If a guardian decides that they desire to receive compensation, they must start completing the annual continuing education course.

If it comes to the attention of the Court that an exempt guardian has acted inappropriately or contrary to the best interest of the ward, the court may require that the exempt guardian be subject to the educational requirements of this rule and as specifically ordered by the Court.

Loc. R. 66.08 General Responsibilities of the Guardian to the Court

The person seeking to be appointed as the guardian is expected to have met with the proposed ward at least once prior to appearing before the Court for the hearing on the application, unless the Court has waived the pre-appointment meeting for good cause.

If the guardian becomes aware of allegations of abuse, neglect or exploitation of the ward, the guardian shall immediately report the same to the appropriate law enforcement authorities and the Court.

A guardian appointed by this Court shall inform the Court as to any change of address for either the guardian or the ward. This notification must be made within ten (10) days of the address change and the reason for the change indicated. Failure to notify the Court, under this

rule, may result in the guardian being removed and/or the guardian's compensation being reduced or denied.

The guardian shall not move the ward from Miami County, Ohio or into a more restrictive setting without prior Court approval, unless a delay in obtaining authorization for the change or residence or setting would affect the health and safety of the ward.

A guardian shall seek to limit or terminate the guardianship authority and promptly notify the Court if any of the following occurs:

- A ward's ability to make decisions and function independently has improved;
- Less restrictive alternatives are available;
- A plenary guardianship is no longer in the best interest of the ward;
- A ward has died.

A guardian shall seek approval from the Court before filing a suit for the ward.

A guardian shall avoid conflicts of interest with the ward and endeavor to avoid the appearance of impropriety (perceived self-serving, self-dealing or perceived actions adverse to best interest decision) when dealing with the wards' assets and needs. A potential conflict for the guardian may arise if the guardian's immediate family is being employed or contracted by the guardian. A guardian shall report to the Court all actual or apparent conflicts of interest. Doing so facilitates a determination whether the conflict can be mitigated or eliminated through the use of a guardian ad litem, a limitation of the powers of the guardian, or other actions.

A guardian shall inform the Court and apply to close the guardianship of the estate if the principal income of the ward is from governmental entities, a payee for that income is identified, and no other significant assets or income exist.

A guardian of a person shall file annually with the Court a guardianship plan as an addendum to the guardian's report. This plan shall state the guardian's goals for meeting the ward's personal and financial needs.

A guardian, within three months of their appointment, 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 power of attorney, and the location of such legal papers, if known at the time of the filing. If it becomes known to the guardian that such information has changed or the existence of other important legal papers becomes known, the guardian shall report that new information to the Court in writing within thirty (30) days of discovery.

Loc. R. 66.09 General Responsibilities of the Guardian to the Ward

A guardian shall act in a manner above reproach, and treat the ward with respect and dignity.

A guardian shall strive to know a ward's preferences and belief system by seeking information from the ward and the ward's family and friends.

A guardian shall meet with the ward at least quarterly, unless otherwise approved by the Court.

A guardian, in an effort to assess the best interest of the ward, shall attempt to communicate privately with the ward; assess the ward's physical and mental conditions and limitations; assess the appropriateness of the ward's current living arrangements; and assess the need for additional services. The guardian shall document all complaints made by a ward and assess the need to report the complaints to the Court. The guardian shall notify the court if the ward's level of care is not being met.

A guardian, except as provided in Supr.R. 66.04(D), shall not provide any direct services to a ward, unless approved by the Court.

A guardian shall monitor and coordinate all services and benefits provided to a ward, by having regular contact with all service providers; assessing services to determine they are appropriate and continue to be in the ward's best interest; maintaining eligibility for all benefits; and where the guardian of the person and guardian of the estate are different individuals, consult regularly with each other.

A guardian, in regards to the extraordinary medical issues of the ward, shall seek ethical, legal, and medical advice, as appropriate, to facilitate those decisions, as well as strive to honor the ward's preferences and belief system concerning those extraordinary medical issues.

A guardian shall make every effort to be informed about the ward's preferences and belief system in making end of life decisions on behalf of the ward.

A guardian shall keep the ward's personal and financial information confidential, except when disclosure is in the best interest of the ward or upon order of the probate division of the Court.

Loc. R. 66.10 Deposit of Will by Guardian

The guardian shall file with the Court all Wills of the ward.

Loc. R. 66.11 Guardianship of Minors

Matters involving custody, visitation and/or support of a minor shall be filed in Juvenile Court.

The Court will not establish a guardianship solely for the purpose of school enrollment.

The Court will not establish any guardianship over the person of a minor where another Court has jurisdiction over custody of a minor.

The Court will not accept for filing an Application for guardianship, when the minor has not been in Ohio for six months, unless it is alleged that the minor has been abandoned for more than ninety (90) days; the child has a medical emergency; or the minor's home state has declined jurisdiction.

RULE 67 ESTATES OF MINORS OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS

Loc. R. 67.1

- (A) Upon the opening of a Court-ordered account under twenty-five thousand (\$25,000) (“restricted account”), the account shall be titled in the sole name of the minor. All interest and principal shall be impounded. Deposited funds shall not be released until minor reaches age 18 or upon further order of the Court. The verification of receipt and deposit from the bank filed with the Court shall contain the information required by the Court.

- (B) Certificates of deposit may be renewed without Court order, even if there is a change of interest rate or term. Funds may be moved from savings account to certificate of deposit (or vice versa) without a Court order and shall remain a restricted account. A transfer to any other bank product shall require a Court order.

- (C) Funds may be released to the account owner (the former minor) by the bank at the age of 18 without a Court order.

- (D) The minor’s parent or guardian shall provide a bank verification (Form 22.3(A)) to the Court every two years.

- (E) The attorney for the minor, or in case the applicant is not represented, the attorney for the payor, shall be responsible to immediately deposit said funds and thereafter file a completed Verification of Receipt of Deposit (Form 22.3) within seven (7) days of the issuance of the entry.

RULE 68 SETTLEMENT OF INJURY CLAIMS OF MINORS

Loc. R. 68.1 Settlement of Injury Claims for Injuries to Minors

- (A) Where there is a net settlement of a minor's claim in excess of twenty-five thousand dollars (\$25,000) a guardianship must be established. Once the guardianship is established, an application for settlement of a minor's claim shall be brought by the guardian. If the net amount of the claim for injuries does not exceed twenty-five thousand dollars (\$25,000), the application shall be brought by the parent(s) of the child or the person having custody of the child.
- (B) The application for settlement shall include a narrative and shall be set for hearing before the Judge. The applicant and injured minor shall be present at hearing unless attendance is waived by the Court upon application and good cause shown.
- (C) An application for approval of settlement of claim for injuries to a minor shall be accompanied by a current statement of the examining physician with respect to the injuries sustained, the extent of the recovery, and the physician's prognosis. Said statement shall be dated within ninety (90) days of the filing of the application for approval. If the net amount of the settlement for injuries does not exceed twenty-five thousand dollars (\$25,000) then the requirement of a physician's statement is waived.
- (D) A copy of the proposed release of claims shall be attached to the application for approval of settlement of claims for injuries to a minor.
- (E) The Court has the discretion to order the delivery of the funds to the minor's parent(s) or custodian(s).

Loc. R. 68.2 Structured Settlements

If the parties involved in claims desire to enter into a structured settlement, defined as a settlement wherein payments are made on a periodic basis, the following rules shall also apply:

- (A) The application shall include an affidavit from an independent certified public accountant or other competent professional, specifying the present value of the settlement and the method by which that value was calculated.
- (B) If the settlement is to be funded by an annuity, the annuity shall be provided by an annuity carrier who meets or exceeds the following criteria:

- 1) The annuity carrier must be licensed to write annuities in Ohio and, if affiliated with the liability carrier or the person or entity paying the settlement, must be separately capitalized, licensed and regulated and must have a separate financial rating.
- 2) The annuity carrier must have a minimum of \$100,000,000.00 of capital and surplus, exclusive of any mandatory security valuation reserve.
- 3) The annuity carrier must have one of the following ratings from at least two of the following rating organizations:
 - a) A.M. Best Company: A++, A+ or A.
 - b) Moody's Investor's Service (Financial Strength): Aaa, Aa1, or Aa2.
 - c) Standard & Poor's Corporation (Claims Paying/Solvency): AAA or AA.
 - d) Fitch Ratings: AAA, AA+, or AA.
- 4) In addition to the requirement of subsection (B)(3) immediately above, an annuity insurer must meet any other requirement the Court considers reasonably necessary to assure that funding to satisfy periodic-payment settlements will be provided and maintained.
- 5) A qualified insurer issuing an annuity contract pursuant to a qualified funding plan under these rules may not enter into an assumption reinsurance agreement for the annuity contract without prior approval of the Court, the owner of the annuity contract and the claimant having the beneficial interest in the annuity contract. The Court will not approve assumption reinsurance unless the reinsurer is also qualified under these rules.
- 6) The annuity insurance carrier and the broker procuring the policy shall each furnish the Court with an affidavit certifying that the carrier meets the criteria set forth in subsection (B)(3) above as of the date of the settlement and that the qualification is not likely to change in the immediate future. The broker's affidavit shall state that the determination was made with due diligence based on rating information which was available or should have been available to an insurance broker in the structured settlement trade.
- 7) If the parties desire to place the annuity with a licensed insurer in Ohio that does not meet the above criteria, the Court may consider approving the same, but only if the annuity obligation is bonded by an independent insurance or bonding company, licensed in Ohio, in the full amount of the annuity obligation.

- (C) The application shall include a statement of the actual cost to the defendant of the settlement. The actual cost shall be used to fix and determine attorney's contingent fees.

Loc. R. 68.3 Sale of Structured Settlement Payments

- (A) All applications for approval of sale of structured settlement payments shall be filed and set for hearing before the Judge.
- (B) The application shall include a statement of the income, living expenses, and other financial obligations of the person desiring to sell the structured settlement payments as well as a detailed statement as to how the sale proceeds will be applied and/or utilized by the applicant.

RULE 69 SETTLEMENT OF CLAIMS OF OR AGAINST ADULT WARD

Loc. R. 69.1

(A) Separate Case Number

The application to settle a claim of an adult Ward shall be a separate proceeding in the Court and shall not proceed under the case number assigned to the guardianship.

(B) Structure Settlements

The procedures, as set forth in Loc. R. 68.2, concerning structure settlements of minor's claims would also apply to the claims of adults.

RULE 70 SETTLEMENT OF WRONGFUL DEATH AND SURVIVAL CLAIMS

Loc. R. 70.1

- (A) All applications to settle claims for wrongful death shall be set for hearing. All interested parties to the distribution of the net proceeds of the settlement shall be listed by name, residence, and relationship to the decedent on the proposed entry approving settlement or distributing wrongful death proceeds.

- (B) The term “interested parties” who are subject to notice are those set forth in Ohio Revised Code §2125.02.

- (C) A guardian ad litem may be appointed to represent the interests of any minor or incompetent persons who are potentially interested parties.

- (D) When the Court is called upon to endorse an agreed entry of distribution or to adjust the shares of distribution, notice to or consents from the interested parties shall be required.

- (E) The applicant is required to appear at the hearing regarding an application to approve a wrongful death settlement or proposed distribution. An applicant shall have thirty (30) days following approval in which to file the report of distribution unless otherwise ordered by the Court.

- (F) The Judge shall approve the report of distribution of the wrongful death proceeds only after appropriate vouchers are presented.

RULE 71 COUNSEL FEES

Loc. R. 71.1 Fees

- (A) A computation of fees conforming to the guidelines shall be signed by the attorney and the fiduciary and attached as an exhibit with the final account or the application for allowance of partial payment. If attorney fees are being waived, the computation shall be marked "fees waived".
- (B) All attorney fees shall be based on the reasonable value thereof and shall be the subject of allowance on application by the fiduciary. Where application for attorneys' fees is required, such application shall separately list attorney time, non-attorney time and hourly rates for each.
- (C) Counsel fees in accordance with Local Rule 71.2 will be prima facie reasonable and be approved by the Court. The guidelines are not to be considered as minimum or maximum fees to be charged. If application of the guidelines results in an injustice, the Court may review the fees on its own motion or upon exception to an account.

Values upon which fees are computed shall be the values as finally determined by taxing authorities.

When the alternate valuation of the estate is chosen, attorney fees should be computed on the alternate valuation.

When the qualified farm property valuation is used, attorney fees should be computed on appraised (fair market) value.

- (D) Counsel fees under the guideline include the following services to be rendered by the attorney or his/her office staff:
 - 1) Preparing and filing all documents required by law for Probate Court administration or release of administration as appropriate.
 - 2) Assisting the fiduciary in the resolution of all just debts and obligations of the decedent including filing and processing of health insurance.
 - 3) Providing necessary tax releases and other documentation necessary for the transfer of non-probate assets to the designated beneficiaries.

- 4) Preparing the decedent's final income tax return unless the executor or other fiduciary desires preparation by an outside tax return preparer.
- 5) Preparing the estate income tax returns during the administration of the estate including the final 1041, passing on all appropriate deductions to the beneficiaries by providing them a Schedule K-1. An outside preparer may be used if the fiduciary desires.
- 6) Preparing any necessary Ohio or Federal Estate Tax returns and related forms. An outside preparer may be used if the fiduciary desires.
- 7) Assisting the fiduciary in the distribution of all assets in accordance with decedent's will or law including preparation and filing of certificates of transfer of real estate, and preparation of documents effecting the transfer of intangible personal property.
- 8) Preparing and recording an affidavit transferring joint and survivorship real estate or evidencing extinguishment of life estate.
- 9) Assisting the fiduciary in communicating important aspects of the estate administration to beneficiaries.

(E) The Court recognizes that if there are complex issues involving the administration of the estate, litigation, or complex Ohio or Federal Estate Tax issues involving extensive research and preparation of complex returns and extended audits, that the attorney may be entitled to extraordinary fees. However, matters involving routine issues are to be handled within the ordinary fee guidelines.

(F) The following out-of-pocket expenses should be considered overhead of a law firm not ordinarily recoverable for separate charges against the estate: photocopying expenses, fax transmissions within the United States, and automobile mileage within the State of Ohio. The Court will consider allowing reimbursement of extraordinary out-of-pocket expenses upon application.

(G) Contingent Fees – If the contingent fee agreement does not exceed 33 1/3% of the recovery, or 40% if an appeal is taken, no application for approval of the agreement need be filed and ratification of the contingent fee agreement may be done at the time of settlement. Should a proposed fee agreement exceed these amounts, prior to entering into any such contingent fee agreement, a fiduciary shall file an application with the Court for authority to enter into such fee agreement. A copy of the proposed fee agreement shall be attached to the application. All contingent fees are subject to review and approval by the Court at the time of settlement, notwithstanding the fact that the court previously approved a fiduciary's application for authority to enter into a contingent fee agreement. Attorneys are expected to be familiar with Prof. Cond. Rule 1.5, Sup. R. 66.08, Sup.R. 71 and Sup.R. 73. Upon review of the records, the court may set the fees for hearing, regardless of the

submission of consent(s) to fees, and must be prepared to provide supporting information for final approval.

(H) Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing the accounts required by ORC § 2109.30.

Loc. R. 71.2 Fee Guidelines for Attorneys

Fees charged by attorneys in accordance with the following guidelines will be prima facie reasonable.

Values upon which fees are computed will be finally determined by taxing authorities.

For full administration or release from administration if debts exceed valuation of proceeds from sale of personal property, fees on personal property shall be computed on the amount of debts and legacies paid through the estate and costs of administration (except attorneys fees on contributed portion) plus value of personalty distributed or exempted in kind. This provision does not apply to the extent that real estate sale proceeds are applied to payment of debts and legacies. If joint and survivorship property or other non-probate assets are advanced to pay debts or legacies, the fees on such advanced property shall be reduced proportionately by the amount so used.

(A) **Administration of decedents' estates** ... including estates relieved from administration:

1) On all personal property administered (including proceeds of sale of real estate under power of will or by consent pursuant to Ohio Revised Code §2107.01):

On first	\$ 75,000.....	4%
On next	\$275,000	3%
On balance	2%

2) On all non-probate property i.) included in the gross estate for Federal or Ohio Estate tax purposes or ii.) includible in determining if a Federal or Ohio Estate Tax return is required:

.....1%

(This amount would be limited to one-half joint and survivorship property where the surviving spouse is the co-owner)

- 3) On life insurance proceeds payable to a named beneficiary and included in Federal Estate Tax return:

.....1%

- 4) On all real estate transferred without sale (based on value as finally determined by taxing authorities):

.....2%

- 5) On land sales proceedings including election to take by surviving spouse at appraised value.

The value of the property on proceeds of sale:

On first \$25,0006%

On next \$25,0005%

On next \$25,0003%

On balance2%

When employment does not cover complete administration, fees will be allowed on application of fiduciary based upon the reasonable value thereof.

- 6) When an attorney is the sole fiduciary, and that attorney, or his partner, associate, attorney employed by the same corporation, attorney who is a member of the same association of independent attorneys as the fiduciary or attorney sharing office space with the fiduciary is hired to represent the fiduciary, the attorney's fees shall be deemed reasonable if equal to one-half (1/2) of what would otherwise be allowed for ordinary services. This rule shall not prevent an attorney from applying for extraordinary fees.
- 7) For low asset estates, attorneys should file a motion and entry for extraordinary fees.

RULE 72 EXECUTOR'S AND ADMINISTRATOR'S COMMISSIONS

Loc. R. 72.1 Fiduciary's Computation (Estates)

- A. A computation of fees shall be signed by the fiduciary and filed with the final account. If fiduciary fees are being waived, the computation shall be marked "fees waived".
- B. Additional compensation for extraordinary services may be allowed upon an application setting forth an itemized statement of the services rendered and the amount of compensation requested. The court may require the application to be set for hearing with notice given to interested person in accordance with Civil Rule 73(E).
- C. The court may deny or reduce commissions if there is a delinquency in the filing of an inventory or an account, or if, after hearing, the court finds that the executor or administrator has not faithfully discharged the duties of the office.
- D. The commissions of co-executors or co-administrators in the aggregate shall not exceed the commissions that would have been allowed to one executor or administrator acting alone, except where the instrument under which the co-executors serve provides otherwise.
- E. Where counsel fees have been awarded for services to the estate that normally would have been performed by the executor or administrator, the executor or administrator commission, except for good cause shown, shall be reduced by the amount awarded to counsel for those services.

RULE 73 GUARDIAN’S COMPENSATION

Loc. R. 73.1

- (A) A computation of fees shall be signed by the fiduciary and filed with an account. If fiduciary fees are being waived, the computation shall be marked “fees waived”.
- (B) When an attorney is serving as sole guardian/trustee, and the attorney or his or her i) partner, ii) associate, iii) attorney employed by the same corporation, iv) attorney who is a member of the same association of independent attorneys as the guardian/trustee, or v) attorney sharing office space with the guardian/trustee is hired to represent the guardian/trustee/attorney, then in such cases if the guardian/trustee/attorney imposes a charge for recordkeeping by a paralegal or secretary in the office, such charge shall be deducted from the guardian’s/trustee’s compensation. In a case where a non-attorney guardian requests the attorney’s office to manage the recordkeeping and maintain the checkbook, a separate fee will be allowed for this service and for preparing the account at the going paralegal rate.
- (C) The court may deny or reduce commissions if there is a delinquency in the filing of an inventory or an account, or if, after hearing, the court finds that the executor or administrator has not faithfully discharged the duties of the office.
- (D) In case of the appointment of co-fiduciaries, the division of fees should be pro-rata between fiduciaries unless agreement is noted on the application at the time of appointment, or as otherwise ordered by the Court.
- (E) Fees for corporate trustees are exempted from the fee guidelines set out for guardians and trustees. Their fees, however, will be subject to review as to reasonableness on application of any interested party. A schedule of current corporate trustee fees shall accompany each account.

Loc. R. 73.2 Guardian Fee Guidelines

- A. Fees charged by Guardians in accordance with the following guidelines will be prima facie reasonable.
- B. Values upon which fees are computed will be finally determined by taxing authorities.
- C. Fee Schedule For Guardians of the estate
 - 1. No separate fees for income from personal property.

2. On income from real estate – 11% of gross income during the accounting period when the trust or guardian actually manages the real estate and collects the rent.

3. On all other non-real estate assets of the trust or guardianship, an annual fee would be calculated as follows:
 - .75% on the first \$1,000,000 of assets
 - .50% on the next \$1,000,000 of assets
 - .25% on the assets over \$2,000,000

4. A distribution fee on the corpus, both real and personal, of 1% based upon the reasonable market value of the property at the time of distribution.

5. Minimum of \$50 per accounting.

6. Land Sale proceedings.
 - \$1,000.....6%
 - On excess of \$1,000 to \$5,000.....4%
 - On excess of \$5,000.....2%

7. When the foregoing schedule of fees is followed by a trustee or guardian, or when the fees do not exceed the amounts provided in the foregoing schedule, no application shall be necessary to the court for the determination of the fee of the trustee or the guardian, but the fee shall be shown in the account.

8. Costs for publications, appraisers and notary fees shall not be taxed as costs.

RULE 74 TRUSTEE COMPENSATION

Loc. R. 74.1 Trustee's Compensation

- (A) See guidelines on file in Court.
- (B) When an attorney is serving as sole trustee, and the attorney or his or her i) partner, ii) associate, iii) attorney employed by the same corporation, iv) attorney who is a member of the same association of independent attorneys as the trustee, or v) attorney sharing office space with the trustee is hired to represent the trustee/attorney, then in such cases if the trustee/attorney imposes a charge for record keeping by a paralegal or secretary in the office, such charge shall be deducted from the trustee's compensation. In a case where a non-attorney trustee requests the attorney's office to manage the record keeping and maintain the checkbook, a separate fee will be allowed for this service and for preparing the account at the going paralegal rate.
- (C) In case of the appointment of co-fiduciaries, the division of fees should be pro-rata between fiduciaries unless agreement is not application at the time of appointment, or as Otherwise ordered by the Court.
- (D) Fees for corporate trustees are exempted from the fee guidelines set out for guardians and trustees. Their fees however will be subject to review as to reasonableness on application of any interested party. A schedule of current corporate trustee fees shall accompany each account.
- (E) Except for good cause shown, neither compensation for a trustee nor fees to counsel representing the trustee shall be allowed while the trustee is delinquent in the filing of an account. The Court may deny or reduce compensation if there is a delinquency in the filing of an inventory or account, or after hearing, the Court finds the trustee has not faithfully discharged other duties of the office.

Loc. R. 74.2 Trustee Fee Guidelines

- A. Fees charged by Trustees in accordance with the following guidelines will be prima facie reasonable.
- B. Values upon which fees are computed will be finally determined by taxing authorities.
- C. Fee Schedule For Non-Corporate Trustees
 - 1. No separate fees for income from personal property.
 - 2. On income from real estate – 11% of gross income during the accounting period when the trust or guardian actually manages the real estate and collects the rent.
 - 3. On all other non-real estate assets of the trust or guardianship, an annual fee would be calculated as follows:

.75% on the first \$1,000,000 of assets
.50% on the next \$1,000,000 of assets
.25% on the assets over \$2,000,000

4. A distribution fee on property distributed, both real and personal, of 1% based upon the reasonable market value of the property at the time of distribution.
5. Minimum of \$50 per accounting.
6. Land Sale proceedings.
\$1,000.....6%
On excess of \$1,000 to \$5,000.....4%
On excess of \$5,000.....2%
7. When the foregoing schedule of fees is followed by a trustee or guardian, or when the fees do not exceed the amounts provided in the foregoing schedule, no application shall be necessary to the court for the determination of the fee of the trustee or the guardian, but the fee shall be shown in the account.
8. Costs for publications, appraisers and notary fees shall not be taxed as costs.

RULE 75 LOCAL RULES

Loc. R. 75.1 Fiduciary Bond

- (A) Personal property ordered impounded pursuant to Ohio Revised Code §2109.13 will be released only on sufficient bond or by direct disbursement by the depository pursuant to Court order. A reasonable fee will be allowed the depository for such services.
- (B) The fiduciary shall provide the Court with a statement of the property on hand and the current bond, when release to fiduciary from impoundment is sought.
- (C) A bond sufficiency form shall accompany each partial Court accounting.

Loc. R. 75.2 Delayed Birth Registrations

All applicants for a delayed birth registration shall provide the Court with a “no record letter” issued from Vital Statistics at the time of filing.

Loc. R. 75.3 Compliance with Americans With Disabilities Act

1. Persons with disabilities, special needs, or the need for an interpreter shall make request to the Court Administrator for reasonable accommodations no later than seven (7) days prior to any scheduled hearing or proceedings.
2. If the interpreter service is no longer required or if the parties continue the hearing, the person making the request shall immediately notify the Court Administrator to cancel or reschedule the service. Failure to notify the Court may result in the person paying any cancellation fee for the interpreter service.

RULE 78 CASE MANAGEMENT IN DECEDENT'S ESTATES, GUARDIANSHIPS, AND TRUSTS

Loc. R. 78.1 General estate items

- (A) Each fiduciary shall adhere to the statutory or court-ordered time period for filing the inventory, account, and, if applicable, guardian's report. The citation process set forth in §2109.31 of the Ohio Revised Code shall be utilized to ensure compliance. The attorney of record and the fiduciary shall be subject to the citation process. The Court may modify or deny fiduciary commissions or attorney fees, or both, to enforce adherence to the filing time periods.
- (B) If a decedent's estate must remain open more than six months pursuant to Ohio Revised Code §2109.301(B)(1), the fiduciary shall file an application to extend administration (Standard Probate Form 13.8).
- An application to extend the time for filing an inventory, account, or guardian's report shall not be granted unless the fiduciary has signed the application.
- (C) The fiduciary and the attorney shall prepare, sign, and file a written status report with the Court in all decedent's estates that remain open after a period of thirteen (13) months from the date of the appointment of the fiduciary and annually thereafter. At the Court's discretion, the fiduciary and the attorney shall appear for a status review.
- (D) The Court may issue a citation to the attorney of record for a fiduciary who is delinquent in the filing of an inventory, account, or guardian's report to show cause why the attorney should not be barred from being appointed in any new proceeding before the Court or serving as attorney of record in any new estate, guardianship, or trust until all of the delinquent pleadings are filed.
- (E) Upon filing of the exceptions to an inventory or to an account, the exceptor shall cause the exceptions to be set for a pretrial within thirty (30) days. The attorneys and their clients, or individuals if not represented by an attorney, shall appear at the pretrial. The trial shall be set as soon as practical after pretrial. The Court may dispense with the pretrial and proceed directly to trial.

Loc. R. 78.2 Jury Management Plan

I. Service

- (A) Jury service is an obligation of all qualified citizens of Miami County, Ohio.
- (B) The opportunity for jury service shall not be denied or limited on the basis of race, national origin, gender, age, religious beliefs, income, occupation, disability or any other factor that discriminates against a cognizable group in the jurisdiction.

II. Jury Source List - Random Selection Procedure

- (A) The Jury Commissioners shall receive a certified jury source list from the Board of Elections list of registered voters no later than December 31st of each year.
- (B) Pursuant to Court order, the Court shall fix the number of jurors to make upon the annual and supplemental jury list, to be selected from the list certified to the Jury Commissioners. The Court shall designate a key number based on the total number of registered voters and the number of jurors needed for a year of service and shall designate a starting number for the purpose of using the key number.
- (C) The annual and supplemental jury list shall be drawn no later than sixty days prior to the commencement of a jury year.
- (D) The jury year is hereby established from May 1 to April 30th of each year.
- (E) The jury year shall be divided into three terms, commencing May 1, September 1 and January 1.
- (F) By Court order petit and grand jurors shall be drawn no later than fourteen (14) or more than twenty-eight (28) days prior to the commencement of each term from the annual and supplemental jury list.
- (G) The Court further approves and adopts the use of magnetic tapes and/or disks and the use of an automated information retrieval system in randomly selecting the annual jury list and the jurors for each term.

III. Eligibility for Jury Service

- (A) All persons shall be eligible for jury service except those who:
 - (1) Are less than 18 years of age;

- (2) Are not citizens of the United States;
- (3) Are not residents of the jurisdiction of which they have been summoned to service, to-wit: Miami County; or
- (4) Have been convicted of a felony and have not had their civil rights restored.

IV. Term of Jury Service

- (A) The time that persons are called upon to perform jury service and to be available should be the shortest period consistent with the needs of justice.
- (B) Jurors shall be “on call” for a one month period. They do not report every day.

V. Exemption, Excuse and Rescheduling

- (A) There are no automatic excuses or exemptions, with the exception of statutory exemptions, from jury service.
- (B) Prospective jurors may be excused for the following reasons: service would be a continuing hardship for them or their families, or they are unable to receive and evaluate information to the extent that their ability to perform their duty as a juror is impaired. Prospective jurors may be rescheduled for the following reasons: vacation, financial, child care or employment problems, student, personal or family illness.
- (C) Requests for excuses, exemptions and rescheduling must be in writing and submitted to the Deputy Jury Commissioner who shall forward them on to the appropriate judge for decision.

IV. Notification and Summoning Procedure

- (A) The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person shall be:
 - (1) Combined in a single mailing;
 - (2) Phrased so as to be readily understood by an individual unfamiliar with the legal and jury system; and
 - (3) Delivered by ordinary mail.
- (B) All summons should clearly explain how and when the recipient must respond and the consequences of a failure to respond.

(C) The jury questionnaire should be phrased and organized so as to facilitate quick and accurate screening and should request only that information essential for:

- (1) Determining whether a person meets the criteria for eligibility;
- (2) Providing basic background information;
- (3) Efficiently managing the jury system.

VII. Juror Use

(A) The court shall employ the services of prospective jurors so as to achieve optimum use with a minimum of inconvenience to jurors.

(B) The Court shall determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury duty and the number assigned to jury panels.

VIII. Juror Compensation

(A) Persons called for jury service shall receive a reasonable fee for their service and expenses pursuant to statutory authority.

(B) Such fees shall be paid promptly.

(C) Employers shall be prohibited from discharging, laying off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.

IX. Jury Orientation and Deliberations

(A) The Court shall provide for all individuals summoned for jury service, a copy of the Ohio Guide for Petit (or Grand) Jurors, published by the Ohio Judicial Conference.

(B) The Court shall also provide preliminary instructions to all prospective jurors and, prior to the commencement of deliberations, instruct the jury on the law, on appropriate procedure to be followed during deliberations, and on the appropriate methods for reporting the results of its deliberations. Such instructions shall be made available to the jurors during deliberations.

(C) Jury deliberations shall take place under conditions and pursuant to procedures that are designed to ensure impartiality and to enhance rational decision-making and shall conform with existing Ohio law.

(D) A jury should not be required to deliberate after a reasonable hour unless the trial judge determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and such deliberations are required in the interest of justice.

X. In all other respects, the Management of Jury Resources in Common Pleas Court, Miami County, Ohio, shall be consistent with and conform to, the Ohio Trial Court Jury Use and Management Standards adopted August 16, 1993 and Rule for the Superintendence of the Courts of Ohio 5(D)(2).

Loc. R. 78.3 Jury Demands

An initial deposit of one thousand dollars (\$1,000.00) is required when a demand for a jury trial is filed. At an initial pretrial conference, which is to be held no later than four weeks before trial, the Court and parties shall set the number of days for trial. An additional minimum deposit of five hundred (\$500.00) is to be deposited for each additional day of trial. The additional deposit is due seven (7) days after the first pretrial conference, but in no event shall it be paid less than three (3) weeks before the first day of trial.