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## **Rule 5.1 – Local Rules**

Conduct and operations in the Common Pleas Court of Preble County, Ohio, Probate Division are governed by the Ohio Revised Code (O.R.C.), the Rules of Superintendence of the Supreme Court of Ohio (Sup.R.) and by these Local Rules. All persons before this Court should familiarize themselves with all applicable law. The numbering of these Local Rules corresponds with the numbering of the Rules of Superintendence. References to “this Court” or “the Court” are to the Common Pleas Court of Preble County, Ohio, Probate Division. These rules provide for the efficient and expeditious management of business before the Court with due regard to local practices and requirements. These rules are effective December 31, 2022 and shall supersede all previous rules and amendments. However, these rules are not meant to supersede the Rules of Superintendence or the Ohio Rules of Civil Procedure. Any previously ordered local rules of practice that conflict with the following rules shall be rendered void and of no force and effect. These rules shall be known as the “Local Rules of Practice of the Preble County Common Pleas Court, Probate Division.” These rules may be cited as “Loc. Probate R. \_\_\_\_.” The Judge or Magistrate presiding over a matter may permit exception from a rule upon specific request and/or for good cause shown.

## **Rule 6 – Address and Telephone Number**

Common Pleas Court for Preble County, Ohio, Probate Division  
Courthouse, Second Floor  
101 East Main Street  
Eaton, OH 45320  
Telephone: 937-456-8137  
Facsimile: 937-456-5803

## **Rule 7 – Court Security**

All persons entering the Preble County Courthouse must enter through the Main Street entrance and will be subject to security screening. Screenings will occur for each visit to the Preble County Courthouse regardless of the purpose or the hour. Any Security Plan previously submitted to the Supreme Court of Ohio, or as hereafter amended, is to be maintained as confidential and is not available as a public record.

## **Rule 8.1 – Court Appointments**

Court appointed attorneys and Guardians Ad Litem, as well as others such as appraisers, fiduciaries, and investigators shall be selected from a list kept by the Court Administrator. Appointees shall be selected on a rotating basis taking into account the complexity and seriousness of each case and each person’s qualifications and experience. The list shall be reviewed quarterly to ensure equitable distribution of appointments. The fee schedule shall be in accordance with that set by the Preble County Commissioners with consideration given to Rule 1.5 of the Ohio Rules of Professional Conduct. To be placed on the list, an individual should

contact the Court Administrator and provide a resume containing his or her experience and a listing of the types of cases that the person is willing to handle.

In order to be considered and approved for, and to maintain placement of the Court's appointment list (Attorney and GAL), attorneys must be in good standing with the Supreme Court of Ohio, must inform the Court of any prior disciplinary complaints against the attorney which resulted in sanctions, maintain a working telephone number with staff or working service to be able to respond to calls from the Court or client, maintain professional liability insurance, and must report any change in their status, address or telephone number.

## **Rule 9 - Photographing, Recording and Broadcasting of Court Proceedings**

No radio or television transmission, voice-recording device (other than the device used in making a record of the proceedings for the Court), or making or taking of pictures shall be permitted, without prior approval of the Judge or Magistrate.

## **Rule 11.1 - Record of Proceedings**

The Court records all hearings electronically. Electronic recordings are the official record. Electronic recordings, audio tapes, and any stenographer notes shall be maintained by the Court for three (3) years from the date of the particular recording. Any interested party or non-party desiring to preserve the record beyond that period must make arrangements with the appropriate Court personnel to have the record transcribed or designated for permanent storage.

As to recorded proceedings as prepared by official Court reporters of the Court, the following fees shall apply:

When a party or counsel in an action pending in this Court requests a transcript, or when ordered by the Court, any portions of oral hearings reported in stenotype or preserved by digital recording, fees shall be fixed at the rate of Three Dollars and 50/100 (\$3.50) per page for an original and twenty-five cents (\$.25) per page per copy. A deposit approximate to the Clerk's estimate for completion of the transcript shall be made at the time of the request. The Clerk shall prepare a Notice to the Court which shall be sent to all parties upon completion of the transcript.

Hearings ordered to be transcribed from any digital recordings shall be transcribed only by official Court reporters of the Court.

## **Rule 12 – Request for Jury Trial**

In all cases where a jury trial is required in this Court, the Court and parties shall comply with Civ. R. 38 and Civ. R. 39. The Court adopts the procedure of the Preble County Common Pleas Court, General Division, and the use of automated data processing for the selection of prospective jurors. The Court further adopts and incorporates the Ohio Trial Court Jury Use and Management Standards pursuant to Rule 5(B) of the Rules of Superintendence, as amended from time to time, and which are maintained in the office of the administrative judge.

### **Rule 16.21.1 - Local Mediation Rule (ADR)**

To promote greater efficiency and to facilitate the earliest possible resolution of cases, the Preble County Common Pleas Court, Probate Division, encourages the use of alternative dispute resolution in any probate matter. The Court may suggest settlement negotiations, “eldercaring coordination,” and/or the use of Mediation. The Court adopts and incorporates by reference the provisions of the “Ohio Uniform Mediation Act” under R.C. Chapter 2710.

### **Rule 16.21.2 - Confidentiality/Privilege**

1. All mediation communications related to or made during the mediation process are subject to and governed by the “Ohio Uniform Mediation Act,” the Rules of Evidence and any other pertinent judicial rule(s).
2. In furtherance of the confidentiality set forth in this rule, parties and non-parties desiring confidentiality of mediation communications shall execute a written “Agreement to Mediate” prior to the mediation session.

### **Rule 16.21.3 - Case Selection/Procedure**

#### **A. Referral Process**

A case in the Probate Division may be referred to mediation services in the following manner:

1. For formal proceedings in the Probate Division, the Court may order parties to participate in the mediation process;
2. For formal proceedings in the Probate Division, upon written or oral motion to the Court, the Court may order parties to participate in the mediation process;
3. For informal cases in the Probate Division, a referral to mediation services may be made by Court personnel.
4. The Court Administrator shall direct individuals to resources to obtain legal representation or other services as requested.

#### **B. Notice**

The mediation shall be communicated via a “Notice of Scheduled Mediation” Magistrate’s Decision or Judgment Entry which shall, at a minimum, indicate the date, time, place and contact information for the mediation.

#### **C. Stay of Proceedings**

All remaining Court orders shall remain in effect. No Order is stayed or suspended during the mediation process except by written Court Order.

#### **D. Conclusion of Mediation**

At the conclusion of the mediation and in compliance with O.R.C. 2710.06, the Court shall be informed by the mediator of the following:

1. The attendance of the parties at the scheduled mediation sessions(s);
2. If an agreement was reached on all or some of the issues;
3. If no agreement was reached;
4. Any future scheduled mediation dates;

5. Any additional information the parties mutually agree they wish to be disclosed to the Court.

### **Rule 26.1 – Court Records Management and Retention Schedule**

This Court adopts the retention schedule for administrative records and judicial records contained in Rules 26.01 and 26.04 of the Rules of Superintendence for the Courts of Ohio.

### **Rule 51.1 - Standard Probate Forms**

The applicable Standard Probate Forms shall be used for all filings in this Court, except that computer-generated forms may be used subject to the limitations in Rule 52.1.

### **Rule 52.1 - Specifications for Printing Probate Forms (Computer-Generated Forms)**

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. Such forms shall comply with the provisions of Rule 51 and Rule 52 of the Rules of Superintendence for the Probate Division of the Court of Common Pleas.
- B. 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.
- C. The Court may reject forms that deviate from the format of the Standard Probate Forms provided by this Court. Such forms may be rejected prior to filing or stricken from the record upon discovery.

### **Rule 53.1 - Hours of the Court**

The sessions of the Court generally shall be daily Monday through Friday from 8:00 a.m. to 4:00 p.m. The Court shall be closed on Federal/National holidays, the day after Thanksgiving and at other times as deemed by the Judge. The Court shall be in session at such other times and hours as the Judge shall prescribe to meet special situations or conditions.

### **Rule 54.1 - Conduct in the Court and Court Attire**

Public access to hearings shall be governed by the Ohio Revised Code and the Superintendence Rules. Persons committing any violation of proper conduct may be removed from any courtroom,

waiting area, Clerk area or any other Court location by Court and/or security personnel charged with the enforcement of this rule and may be subject to being found in contempt of Court.

Food, beverages and the use of cell phones and other electronic transmission devices are prohibited in the Courtrooms and other areas of the Court.

All persons must dress in proper attire when entering a courtroom. No attorney, party or witness shall be permitted to appear in the courtroom or offer testimony while dressed inappropriately. It shall be the duty of counsel to advise the parties and witnesses of this rule prior to their appearance in Court.

### **Rule 55.1 - Probate Files**

The inspection of Court records shall be governed by the Superintendence Rules and the O.R.C. Court files, both open and closed, shall not be removed from the Clerk, unless written Court authorization has been given or unless a file is being taken directly to or from the Court or Clerk.

Copies of case documents can be obtained from the Clerk for \$.25 per page for 1-50 pages and \$.10 per page for 51 pages and greater. A certified copy shall be charged at the rate of \$2.00. Court records that are not case documents are not public records and may not be obtained from the Clerk.

Certain probate files are confidential and may only be accessed by authorization of the Judge or Magistrate. A Citation for Contempt may be issued against a person who divulges or receives confidential information without authorization of the Court.

### **Rule 56.1 – Continuances**

The decision to grant or deny a continuance is discretionary and it should not be assumed that the Court will grant the motion automatically. A motion to continue due to conflicting court hearing dates must be filed at least seven (7) days before the scheduled hearing date and must contain the assignment notice of the conflicting hearing date from the other court. All motions to continue shall state on the face of the motion that the opposing party has been notified (or what efforts were made to notify) and shall state the position of the opposing party to said continuance request. Said motion will most likely:

1. Not be granted if a hearing date was set in this Court prior to another court designating a hearing date for the same time.
2. Be granted where a hearing date was set in this Court after another court had set a hearing for the same date.

The Court shall not grant continuances because a hearing previously scheduled in this Court conflicts with the scheduled appearance of the attorney in another case when that conflict was apparent when the attorney took the case. The aforementioned provision shall not apply to any hearing dates conflicting with another hearing that is set in the appellate courts, the federal district courts or the Ohio Supreme Court.



## **Rule 57.1 - Motions and Entries**

- A. All motions shall be accompanied by a memorandum in support of the motion. The memorandum shall include a brief statement of the grounds for the motion, with citations to authorities relied upon, and proof of service in accordance with Civil Rule 5. Authorities cited shall be attached.
- B. All motions that require oral argument shall be accompanied by a proposed entry setting the motion for hearing. The Court shall set a date for the hearing or pretrial conference.
- C. All entries and orders presented to the Court for approval should include the date of the hearing, the names of those present, and the specific motion or application heard by the Court on that date. The caption shall state the subject matter of the Court's decision with reasonable specificity. The use of the terms "entry" or "order" without more specificity may cause such proposed entry to be rejected.
- 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 pleadings, motions, applications and other filings presented to the Court shall be correctly captioned and shall either be in typeface or written legibly in ink. All pleadings filed by an attorney shall be typed. Applicants appearing pro se are encouraged to type all filings. Any information interlineated on pleadings, motions, applications and other filings shall be in typeface or written legibly in ink. The Court reserves the right to reject or strike any pleadings in which the text or the signatures are illegible.
- F. Application for leave to withdraw as counsel shall be made by written motion filed with the Court, with copies served upon the fiduciary and all other attorneys or parties of record in accordance with Civil Rule 73. If such Application is granted and the fiduciary does not appear at such hearing, the withdrawing attorney shall notify such fiduciary or other party in accordance with Civil Rule 73. Proof of compliance with Civil Rule 73 shall be filed with the Court.
- G. Filings in response to a Citation must be made at least forty-eight (48) hours in advance of the citation hearing. If the filing is not made timely, the attorney and the fiduciary MUST appear at the citation hearing.
- H. An attorney may submit a letter to the Court indicating that an estate is under the amount of five hundred dollars (\$500.00) along with the decedent's name and address, date of death, assets to be released, and the name of the next of kin and the Court may issue a letter authorizing release of the assets.

## **Rule 57.2 - Motions to Restrict Public Access to Information Contained Within Court Records**

- A. A request to restrict public access to information contained within a court record shall be made by written motion. If the motion is filed simultaneously with the information that is the subject of the motion, then the subject information shall be restricted from public access pending the Court's ruling on the motion. If the motion is filed after the filing of the information that is the subject of the motion, then the subject information shall remain open to the public pending the Court's ruling on the motion.
- B. Any party to a judicial action or proceeding or other person who is the subject of information in a case document may, by written motion to the Court, request that the Court restrict public access to the information or, if necessary, the entire document. Additionally, the Court may restrict public access to the information in the case document or, if necessary, the entire document upon its own order. The Court shall give notice of the motion or order to all parties in the case. The Court may schedule a hearing on the motion. If a hearing is scheduled, the filing party shall complete a "Written Request for Service on Motion to Seal or Unseal Records" (P.C. Form 200.47) that lists the names and addresses of all persons who are to receive service of the motion. Notice shall be served via certified mail.
- C. The Court shall restrict public access to information in a case document or, if necessary, the entire document, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering each of the following:
  - (a) Whether public policy is served by restricting public access;
  - (b) Whether any state, federal, or common law exempts the document or information from public access;
  - (c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.
- D. When restricting public access to a case document or information in a case document pursuant to this division, the Court shall use the least restrictive means available, including but not limited to the following:
  - (a) Redacting the information rather than limiting public access to the entire document;
  - (b) Restricting remote access to either the document or the information while maintaining its direct access;
  - (c) Restricting public access to either the document or the information for a specific period of time;
  - (d) Using a generic title or description for the document or the information in a case management system or register of actions;
  - (e) Using initials or other identifier for the parties' proper names.
- E. If the Court orders the redaction of information in a case document pursuant to this division, a redacted version of the document shall be filed in the case file along with a copy of the Court's order. If the Court orders that the entire case document be restricted from public access, a copy of the Court's order shall be filed in the case file. A journal entry shall reflect the Court's order. Case documents ordered restricted from public access or

information in documents ordered redacted shall not be available for public access and shall be maintained separately in the case file.

### **Rule 57.3 - Motions to Obtain Access to Information Contained Within Court Records That Has Been Granted Restricted Public Access**

- A. Any person, by written motion to the Court, may request access to a case document or information in a case document that has been granted restricted public access pursuant to division 57.2 of these rules. The Court shall give notice of the motion to all parties in the case and, where possible, to the non-party person who requested that public access be restricted. The Court may schedule a hearing on the motion. If a hearing is scheduled, the filing party shall complete a “Written Request for Service on Motion to Seal or Unseal Records” (P.C. Form 200.47) that lists the names and addresses of all persons who are to receive service of the motion. Notice shall be served via certified mail.
- B. The Court may permit public access to a case document or information in a case document if it finds by clear and convincing evidence that the presumption of allowing public access is no longer outweighed by a higher interest. When making this determination, the Court shall consider whether the original reason for the restriction of public access to the case document or information in the case document pursuant to division 57.2 of these rules no longer exists or is no longer applicable and whether any new circumstances, as set forth in that division, have arisen which would require the restriction of public access.
- C. The information that has been granted restricted public access that is the subject of the motion will remain under seal pending the Court's ruling on the motion.
- D. If the motion is granted, the Court shall release only the specific information that warrants release and shall keep the remainder under restricted public access.

### **Rule 57.4 - Filings by Mail**

Pleadings, motions, applications and other filings as set forth below may be filed with the Court by U.S. Mail or other delivery services subject to the conditions set forth by the Local Rules or by the Court.

Any filing commencing a proceeding for which the Court must collect an initial case deposit against costs and all estate tax returns must be filed in person. Any pleading referenced below will be accepted for filing through the U.S. Mail or other delivery services. However, a filing that requires the payment of a fee will only be accepted if the correct filing fee is enclosed or has been paid. If there is a deficiency in the proposed pleadings, motions, applications, filings or payment of costs, such items will be returned to the sender without being filed.

The Court will accept by U.S. Mail or other delivery services only the following pleadings, motions, applications and other filings set forth as follows:

A. ***Decedent's Estates.*** Subject to the conditions as set forth in this Local Rule, the Court will accept the following filings through the U.S. Mail or other delivery services for a decedent's estate:

1. Inventories, Amended Inventories, entries setting such matters for hearing and proposed entries approving the same
2. Certificates of Service of Notice of Probate of Wills
3. Waivers of Notice of Hearing
4. Affidavits of Service with Proof of Service attached
5. Attorney Fee Applications, consents and Waivers of Notice of Hearing
6. Appointments of Appraisers
7. Applications to Transfer Motor Vehicles
8. Applications for Certificates of Transfer, entries approving such Applications, and the proposed Certificates of Transfer
9. Claims against the Estate
10. Exceptions to Inventories and Accounts
11. Consents to sell Real Estate
12. Fiduciary Bonds
13. Motions and entries setting such Motions for hearing
14. Suggestions of Death
15. Affidavits and Entries Finding that a Person is One and the Same
16. Notification of Change of Address
17. Initial Application to Extend Time of Administration
18. Certificates of Fee Agreement

B. ***Guardianships.*** Subject to the conditions as set forth in this Local Rule, the Court will accept the following filings through the U.S. Mail or other delivery services for a guardianship:

1. Inventories and Amended Inventories
2. Applications to Release Funds
3. Guardian's Reports
4. Expert Evaluations
5. Attorney Fee Applications
6. Guardian Fee Applications
7. Guardian Bonds on SPF 15.3
8. Notifications of Change of Address
9. Motions and entries setting such Motions for hearing
10. Applications to Extend Time

C. ***Trusts.*** Subject to the conditions as set forth in this Local Rule, the Court will accept the following filings through the U.S. Mail or other delivery services for a Trust:

1. Inventories
2. Lists of Beneficiaries
3. Attorney Fee Applications
4. Trustee Fee Applications
5. Trustee Bonds
6. Notifications of Change of Address
7. Motions and entries setting such Motions for hearing

## 8. Requests for Notification

D. ***Adoptions.*** Because adoption proceedings are sealed by statute, subject to the conditions as set forth in this Local Rule, the Court will accept the following filings relating to adoptions through the U.S. Mail or other delivery services provided that the pleadings are sealed in an envelope, that is prominently labeled “**ADOPTION – FILE UNDER SEAL**”:

1. Home Studies
2. Pre-Finalization Reports
3. Proofs of Service of Notice
4. Petitioners Final Account
5. Petitions for Identifying Information
6. Social and Medical History Updates
7. Motions, Responsive Pleadings and Entries Setting Hearings

E. ***Sale of Structured Settlement Payments.*** Subject to the conditions as set forth in this Local Rule, the Court will accept the following filings through the U.S. Mail or other delivery services for a Sale of Structured Settlement Payments:

1. Financial Statements.

If a file-stamped copy of the pleadings, motions, applications and other filings is desired to be returned to the sender, a copy of such pleadings and a self-addressed, postage pre-paid envelope must be enclosed or clear written instructions must be given to place such file-stamped copies in the sender’s mailbox at the Court.

Any pleading, motion, application or other filing which is to be set for hearing must be accompanied by the appropriate entry setting the matter for hearing. The Court will set such matters for hearing at its sole discretion. A proposed entry for the Court’s consideration must accompany any pleading, motion, application or other filing that requires an entry.

## **Rule 57.5 - Electronic Transmission Filings**

***Facsimile Filings.*** In conformity with Civil Rule 5(E), pleadings, motions, applications and other filings may be filed with the Court by facsimile transmission subject to the following conditions:

1. ***Definitions.*** The following terms in the Rule shall be as follows:
  - (a) *Facsimile transmission* – means the transmission of a source document by a facsimile machine that encodes a document into signals, transmits and reconstructs the signals to print a duplicate of the source document at the receiving end.
  - (b) *Facsimile machine* – means a machine that can send and receive a facsimile transmission either as a stand-alone device or as a part of a computer system.
  - (c) *Fax or faxes* – an abbreviation for “facsimile” and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.
  - (d) *Source document* – means the document transmitted to the court by facsimile machine.
  - (e) *Original document* – means the facsimile copy of the source document received by the Court and maintained as the original document in the Court’s file.

2. ***Application of Rules and Orders.*** This Local Rule has been instituted solely for the convenience of those filing documents with the Court. The Court does not assume any new or additional responsibilities, obligations or liabilities by virtue of this Local Rule, except as expressly provided in this Rule. The sender assumes all responsibilities, obligations and liabilities for using this method of filing. This Local Rule pertains only to the method of filing and does not override, alter, amend, revoke or otherwise change any Local Rule or Civil Rule respecting the requirements of any filings such as obtaining the consent of parties or counsel or obtaining signatures or the authorization to sign for opposing counsel.
3. ***Filings Not Accepted.*** The following documents may **NOT** be filed by facsimile transmission:
  - (a) Any filing commencing a proceeding for which the Court must collect an initial case deposit against costs or a specific filing fee and/or for which the Court is required to effectuate service of summons; or
  - (b) Any entry not requiring the Court's signature but for which a party is obligated to pay costs to the Court. Notices of dismissal, stipulated entries of dismissal and other filings not requiring a Judge's signature and not requiring payment of costs to the Court may be filed by facsimile subject to the other provisions of this Local Rule; or
  - (c) Pleadings, motions, applications or other filings in matters involving an adoption;
  - (d) Applications for Certificates of Transfer.
4. ***Filings Accepted.*** Except as provided in Local Rule 57.5(3), all pleadings, motions, applications or other filings permitted to be filed with the Court by mail pursuant to Local Rule 57.4 may be filed with the Court electronically. See Local Rule 57.5(11) as to maintenance of original documents that were filed with the Court electronically.
5. ***Facsimile Cover Page.*** All filings by facsimile shall be accompanied by a cover page that states all of the following information: 1) date of transmission; 2) name, telephone number, and facsimile number of the person transmitting the document; 3) case number and caption of the case in which the document is to be filed; 4) title of the document to be filed; and 5) number of pages being transmitted. (P.C. Form 200.95)
6. ***Facsimile Machine.*** The telephone number of the facsimile machine available for receiving fax filings for the Court is **937-456-5803**. This line is available twenty-four (24) hours per day seven (7) days per week for fax filings.
7. ***Document Restrictions.*** A "fax transmission" as referred to in this Local Rule, may contain more than one document but may not apply to more than one case number per transmission. Motions and other filings making reference to or incorporating other documents attached to the motion or other filing as an exhibit thereof shall be considered as being part of a single filing for purposes of this rule. If exhibits are impossible or burdensome to send by facsimile transmission, the original exhibits may be separately filed if done so within seventy-two hours of the related facsimile transmission. If the exhibits are filed separately, then an insert page describing the exhibit being filed separately must

be included in the facsimile transmission. Regardless of the number of documents being sent, facsimile transmissions may not be in excess of twenty pages each excluding the Facsimile Cover Page.

8. **Fees.** There are no specific costs related to facsimile transmissions except to the extent that the filings are taxed as cost to any case. It is the sender's responsibility to ensure that there is sufficient deposit posted with the Court with which to satisfy the cost relating to the filing.
9. **Filing Acceptance or Rejection.** The Court is authorized to reject any facsimile transmission filing if the sender fails to provide the Facsimile Cover Page required under Section Five (5) of this Rule or if the transmission contains a filing not acceptable under Section Three (3) of this Rule.
10. **Date and Time.** Subject to the other provisions of this Local Rule, all documents filed by fax shall be considered filed with the Court as of the date and time the Clerk time-stamps the document received, as opposed to the date and time of the facsimile transmission. The risks of transmitting a document by fax to the Court shall be borne entirely by the sender. Anyone using facsimile filing is urged to verify receipt of such filings by the Court through whatever technological means are available.
11. **Original Filing.** A document filed by fax shall be accepted as the "original" if the person sending the fax complies with all of the requirements set forth in this Local Rule. The person making a fax filing need not file any source document with the Court. However, until the case is closed and all opportunities for post-judgment relief are exhausted the filer must maintain in their records and have available for production on request by the Court the source document of any document filed by fax, with original signatures as otherwise required under the applicable rules, together with the original copy of the facsimile cover sheet used for the subject filing.
12. **Signatures.** Facsimile filings shall contain a signature followed by the printed name of the person signing the source document.
13. This rule also applies to email/electronic filing.

### **Rule 58.1 - Court Costs**

- A. Deposits ordinarily 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.
- B. The Court accepts only the following methods of payment of court costs:
  1. Cash
  2. Money Order
  3. Checks, as follows:
    - a. Law Firm Checks from attorneys authorized to practice law in Ohio or who are admitted pro hac vice

- b. Fiduciary Checking Account Checks for decedent's estates, guardianships, and testamentary trusts
- c. Certified Checks
- d. Cashier's Checks

C. Case Deposits

1. 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.
2. All pre-paid but unearned costs \$25.00 or less upon final disposition of the case shall be transferred to the Indigent Guardian Fund.

D. Counsel of record for the party charged with paying court costs shall be responsible for paying the same. This rule does not prohibit counsel from seeking reimbursement from their clients for such costs. In pro se proceedings, the fiduciary/applicant/party shall be responsible for paying all court costs.

E. In cases where a filing incurs the payment of a filing fee, payment of the fee is due when the filing is presented. The Court will not hold the filing until payment of the fee is tendered at a later time. The filing will be returned unfiled to the filing party. Any entry which may have been signed in connection with the filing will be retained by the Court and destroyed.

This rule does not apply if:

1. There are sufficient funds in the case deposit to pay the filing fee and the filing party is the party who paid the initial case deposit.
2. The filing is a final entry which disposes of a civil case type. In these instances, the Court will accept the entry for filing and contact the appropriate party(ies) to pay the costs as set forth in the entry.
3. The Court determines, in its discretion, that the filing should be filed in the absence of the payment of the filing fee.

**Rule 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 (and the cost of service) as prescribed by R.C. §2335.06. Any party wishing to subpoena witnesses shall prepare the subpoena in accordance with Civil Rule 45 and deliver same to the Clerk no later than three (3) days after receipt of notice of hearing, or ten (10) days prior to the hearing, whichever date comes later. It is the responsibility of the requesting party to ensure that there is sufficient time for service to be effectuated.

**Rule 59.1 - Wills**



- 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 examine the index of wills to determine 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. Upon presentation of a will, the Court shall make an initial determination as to whether the purported will shall be admitted to probate.
- C. If a will presented to probate contains alterations, interlineations or extraneous markings, the admission of the will may be set for hearing pursuant to RC §2107.26.
- D. All persons listed on Form 1.0 whose addresses are known shall be given Notice of Probate of Will by certified mail unless such notice is waived. Notice by publication shall be required if the identity and/or address of any next of kin and/or beneficiary is unknown, unless the Court otherwise orders.
- E. Certificates of Service of Notice of Will (SPF 2.4) shall not be filed without first being approved.
- F. Where the will names a living trust as a beneficiary, a copy of the trust shall be displayed to the Court, but the trust agreement need not be filed with the Court. Except for good cause shown, this requirement must be met before the inventory or entry relieving the estate from administration is filed with the Court.

### **Rule 60.1 - Application for Authority to Administer Estate and Notice of Appointment**

- A. Any person filing an Application for Authority to Administer Estate shall give notice to the decedent's surviving spouse and to all next of kin unless such notice is waived.
- B. Before filing an Application for Authority to Administer Estate, the attorney or the proposed fiduciary shall determine if there is a will of the decedent on deposit with the Court by checking the index of wills. Prior wills so deposited shall be filed in the estate proceedings for record purposes only.
- C. Upon the filing of an Application for Authority to Administer Estate, the applicant shall file a copy of the decedent's death certificate or other evidence of death acceptable to the Court. This requirement may be waived by the Court for good cause shown.
- D. Any applicant who is not represented by an attorney may be required to display photographic identification.
- E. Whenever an applicant resides outside Preble County, all estate assets shall remain in Preble County. This restriction shall not apply to an applicant who resides in an Ohio County contiguous to Preble County.

- F. All Executors/Administrators and their attorneys are required to inform the Court, in writing, within 30 days of a change of their address and/or telephone number.

### **Rule 61.1 - Appraisals**

- A. Where the probate estate includes assets which are of a special or unusual character, the fiduciary may hire one or more qualified persons to appraise those assets.
1. All probate assets shall be included in the Inventory, but assets whose value are readily ascertainable need not be appraised.
  2. With regard to real estate, the fiduciary may use the property's fair market value as determined by the County Auditor for real estate tax purposes in lieu of a formal appraisal. The County Auditor's value shall be documented by written evidence which shall be attached to the Inventory.
  3. With regard to household goods and other tangible personal property, no formal appraisal shall be required unless the estimated value exceeds \$5,000.00. Where the fiduciary chooses to dispose of tangible personal property by public auction, the gross proceeds from the auction may be used in lieu of a formal appraisal.
  4. With regard to motor vehicles, the fiduciary may use values obtained from any nationally recognized valuation guide.
- B. Notwithstanding the foregoing, the Court may order a formal appraisal of any asset for good cause shown. Such an order may be issued upon the Court's own motion or at the request of any interested party.
- C. The Court will maintain a list of persons whom the Court will approve, prima facia, as suitable and disinterested appraisers. In any proceeding in which the fiduciary or attorney desires an appraiser not on the list, the fiduciary or attorney may make application for the appointment of such person. Such application should set forth the reasons for such appointment and the qualifications of the proposed appraiser. Furthermore, such appraisals shall be in writing and shall include the appraiser's original signature.
- D. The following persons shall be disqualified from being such an appraiser:
1. A person related by blood or marriage to the decedent;
  2. A beneficiary of the estate;
  3. A person related by blood, marriage or employment to the attorney of the estate; and
  4. A person related by blood, marriage or employment to the fiduciary of the estate.
- E. No appraiser or broker shall be permitted to purchase or acquire, directly or indirectly, any of the property he or she appraises, except at public auction.

## **Rule 61.2 - Inventory and Appraisal**

- A. Prior to filing an Inventory, counsel shall examine record title to the decedent's real estate for the sole purpose of confirming the decedent's ownership interest.
- B. Upon filing an Inventory, the executor or administrator shall serve notice of the hearing upon the decedent's next of kin and all beneficiaries of the estate listed on SPF 1.0 and their attorneys of record, unless such notice is waived. Notice may be served by ordinary mail or by personally delivering a copy of the notice to the person entitled to receive it. Evidence of notice shall be documented by the filing of an "Affidavit of Service" which sets forth the manner of service. The Court may require that any inventory be supported by evidence that the inventory is true and accurate.
- C. In addition to notice, the executor or administrator shall send a copy of the Inventory and Appraisal to the decedent's next of kin and all beneficiaries of the estate listed on Form 1.0 and their attorneys of record. This requirement may be modified or waived by the Court for good cause shown.
- D. Where the name or address of an interested party is unknown, and where a prior notice by publication for that person or class of persons has not already been made in the estate proceedings, the fiduciary shall publish notice of the hearing once each week for three consecutive weeks.
- E. On the date set for hearing, the Inventory/Appraisal will be approved Pro Forma unless timely exceptions are filed.
- F. Upon discovering one or more new probate assets, the fiduciary or his attorney shall file a Report of Newly Discovered Assets. Unless otherwise ordered by the Court, Reports of Newly Discovered Assets shall not be set for hearing, and notice to interested parties shall not be required. Real estate and tangible personal property that are included in a Report of Newly Discovered Assets shall be valued pursuant to Local Rule 61.1.
- G. Upon discovering that the Inventory contains any other error which cannot be corrected by filing a Report of Newly Discovered Assets, the fiduciary shall file an Amended Inventory. At the discretion of the Judge or Magistrate, the Amended Inventory may be approved upon filing, or may be set for hearing. If set for hearing, notice shall be given to all interested parties unless waived.

## **Rule 62.1 - Claims and Bond Premiums**

- A. No estate, guardianship, or trust shall be closed until all claims filed with the Court have been resolved. If a claim has been rejected, a copy of the rejection and the proof of service shall be filed with the Court.

- B. Bond premiums shall be regarded as administrative expenses, and they shall be paid when due. No application need be made for authority to pay bond premiums.
- C. When an estate appears to be insolvent, the fiduciary shall file Representation of Insolvency utilizing forms SPF 24.0 through 24.6.
- D. Whenever a decedent was 55 years of age or older at the time of death and had been the recipient of Medicaid, P.C. Form 7.0 shall be filed with the Court and a copy of P.C. Form 7.0 shall be sent by certified mail to the Administrator of the Estate Recovery Program.

### **Rule 64.1 - Fiduciary Accounts**

- A. Every account presented to the Court shall be examined by the Clerk and shall include:
  - 1. An itemized statement of all receipts of the fiduciary.
  - 2. An itemized statement of all disbursements and distributions made by the fiduciary referenced by number or letter and date.
  - 3. An itemized statement of all funds, assets, and investments on hand at the end of the accounting period.
  - 4. Where real estate has been sold, a copy of the closing statement.
  - 5. The signature of the fiduciary. All fiduciaries must sign the account where multiple fiduciaries have been appointed, unless otherwise ordered by the Court.
- B. A partial account shall have an accounting period which ends not more than six (6) months prior to the time it is presented and approved by the Court, and it shall specify the number of the account using ordinal numbers (e.g., Third Partial Account).
- C. When presenting an account for audit, the fiduciary shall, upon request of the Court, provide copies of all bank statements for the entire accounting period. In addition, the fiduciary shall, upon request of the Court, provide documentation showing the net proceeds from any sales of personal property.
- D. With regard to disbursements and distributions made during the accounting period, all fiduciaries shall, upon request of the Court, provide vouchers or other proofs. Acceptable vouchers or proofs shall include but not be limited to the following:
  - 1. Signed receipts.
  - 2. Invoices that have been marked paid by the creditor.
  - 3. Cancelled checks.
  - 4. Check substitutes issued by financial institutions.
  - 5. Account statements that list the date, name of payee, and amount transferred.
- E. With regard to assets remaining in the hands of the fiduciary at the end of the accounting period, all fiduciaries shall, upon the request of the Court, provide the following supporting documentation:
  - 1. For stocks and bonds, original certificates where they exist.

2. Brokerage statements where investments are held by a broker.
3. Dividend reinvestment statements where dividends are being reinvested.
4. Statement of the transfer agent where securities are in book entry form.
5. Other satisfactory evidence of the existence of the assets on hand.

F. Subsections C, D, and E of this Rule shall not apply to corporate fiduciaries who are subject to RC §1111.28.

**G. With regard to accounts filed by Executors and Administrators pursuant to RC §2109.301:**

1. At the time of filing, a copy of the account shall be provided to each heir of an intestate estate and each beneficiary of a testate estate. However, copies need not be provided where the address of an heir or beneficiary is unknown or where the beneficiary of a specific bequest has received his or her distribution.
2. In the case of a Final Account, the executor or administrator shall give notice of the hearing to the following persons whose addresses are known:
  - a. In an intestate estate, to all heirs.
  - b. In a testate estate, to the residuary beneficiaries.
  - c. To counsel of record representing the above.
  - d. When a will creates a charitable trust, to the Ohio Attorney General, Charitable Trusts Division.
3. When presenting a Partial Account, Waiver of Partial Account or Affidavit and Entry in Lieu of Partial Account, the executor or administrator shall also file the following:
  - a. Application to Extend Administration; and
  - b. Certificate of Service of Account to Heirs and Beneficiaries.
4. Status Reports shall not be required unless ordered by the Court.
5. Where an heir or beneficiary is a minor, a guardianship must be established either in Preble County or elsewhere before any distribution is made unless:
  - a. The decedent's will specifically provides otherwise; or
  - b. The value of the distribution is \$10,000.00 or less in which case the distribution may be made to a custodian under the Uniform Transfers to Minors Act.

**H. With regard to accounts filed by Guardians and Conservators pursuant to RC §2109.302:**

1. Partial Accounts shall be rendered at least annually.
2. A guardian shall not be required to give notice of hearings for Partial Accounts except in the case of Veteran's Guardianships where notice shall be given to the Veteran's Administration.

3. Unless waived, a guardian shall give notice of the hearing on the Final Account to the following persons whose addresses are known:
  - a. In the case of an incompetent, to the Ward's next-of-kin, or in the discretion of the Judge or Magistrate, to the fiduciary of the Ward's estate.
  - b. In the case of a minor, to the Ward if the Ward has reached the age of majority. Otherwise to the Ward's next-of-kin.
  - c. In all cases, to counsel of record for any represented party.
4. Check substitutes or credit card statements may not be sufficient to evidence payment of debts. Receipts showing specific expenditures may be requested.

**I. With regard to accounts filed by Trustees and other Fiduciaries pursuant to RC §2109.303:**

1. Partial Accounts shall be rendered at least biennially.
2. When presenting an Account, the trustee shall file a current list of the names and addresses of all persons interested in the trust. (P.C. Form 24.0)
3. Unless waived, the trustee shall serve notice of the hearing on an Account to the following persons whose addresses are known:
  - a. All income beneficiaries.
  - b. Counsel of record for any represented party.
  - c. The Ohio Attorney General, Charitable Trusts Division for charitable trusts.
4. Check substitutes or credit card statements may not be sufficient to evidence payment of debts. Receipts showing specific expenditures may be requested.

J. Service of notice of hearings for all accounts may be made by ordinary mail or by personally delivering a copy of the notice to the person entitled to receive it. Evidence of notice shall be documented by the filing of an "Affidavit of Service" which sets forth the manner of service.

K. If an account is not timely filed and no arrangement has been made for an extension of the due date, a Citation to Appear shall be issued compelling the attendance of both the attorney and the fiduciary. Failure to appear at the Citation Hearing may result in the Court issuing a body attachment and writ of arrest for the attorney and/or fiduciary.

L. Special Administrators shall file an account within 30 days from the date of appointment.

**Rule 64.2 - Show Cause Hearings**

A fiduciary and attorney who have been cited for a show cause hearing shall personally appear. Counsel shall not appear in lieu of a cited fiduciary unless the Court grants leave for the attorney to appear in that capacity.

**Rule 65.1 - Land Sale Proceedings**

- A. In land sales proceedings, the Court shall appoint one suitable and disinterested person as an appraiser. Compensation for such appraiser shall be determined by the Court.
- B. Prior to closing, counsel shall furnish to the Court a Letter of Protection from the title company for the buyer insuring that all sales proceeds will be properly distributed in accordance with the closing statement.
- C. All land sales that have not been concluded within one year from the date of filing shall be set for a pre-trial conference. The attorney of record shall appear and describe the efforts being made to complete the case, and the fiduciary shall be present or available by telephone. A written status report shall be filed at least seven days prior to such status conference.
- D. Attorney fees for real estate sold by judicial proceedings shall be collected and paid into the court as costs from the net sales proceeds. The guideline fee for attorney compensation shall be set by the Court as follows:
  - 1. The first \$10,000.00 of the purchase price at the rate of 6%, and;
  - 2. All above \$10,000.00 at the rate of 2%

In the event the real estate is not sold by judicial proceedings, the above guideline shall not apply and the attorney may include time spent on the sale in an application for attorney fees. The Court will consider whether the work benefitted the estate in determining such fee application.

### **Rule 65.2 - Relieving Estates from Administration**

- A. Estates of One Hundred Thousand Dollars (\$100,000.00) or less may be relieved from administration if they statutorily qualify pursuant to ORC § 2113.03. Use of standard forms which shall include in all cases SPFs 5.0, 1.0, 5.1 and 5.6 is encouraged. All applications shall be accompanied by a waiver or paid-in-full receipt signed by the funeral director.
- B. If real estate is to be transferred, SPF 12.1 must be submitted. When filing, a copy must be included for purposes of recording.
- C. No appraiser will be appointed in any release not containing real estate, unless granted by the Court. If an appraiser is necessary, SPF 3.0 should be attached to SPF 5.0.
- D. All applications to relieve an estate from administration shall be accompanied by a “certificate of service” to all of the next of kin of the decedent and legatees or devisees if the decedent died testate and any unpaid creditors. Said certification shall affirm that the applicant has mailed a copy of the application to release from administration and a copy of the proposed judgment entry to be submitted to the court. Service shall be made by certified mail.

### **Rule 66.1 - Guardianships**

All Guardians appointed by the Court shall submit to the Court information documenting compliance with the guardian qualifications pursuant to Sup.R. 66.06 or 66.07, as applicable, unless specifically waived by the Court. In addition, each Guardian shall submit a background check or certificate of good standing prior to appointment.

The Guardian shall follow all requirements outlined in Sup.R. 66.08 and 66.09 including an annual report to the Court which includes a Statement of Expert Evaluation.

### **Rule 66.2 - Applications to Expend Funds and for Attorney Fees**

- A. An application to expend funds shall not be granted if an inventory has not been filed or if an account is overdue. The guardian of a minor ward's estate must demonstrate that the ward's parent(s) are unable to fulfill their responsibility to support the ward before the Court will consider allowing an expenditure from the ward's estate for the purpose of that ward's support, maintenance, medical care or education.
- B. Attorney fee applications in a guardianship may be filed as follows:
  - 1. In cases establishing guardianship of an estate or of person and estate, fees shall be considered at the time of filing of the inventory and subsequently at the time of the filing of each required annual account.
  - 2. For indigent guardianship proceedings, fees shall be considered at the time of the appointment of guardian, or dismissal of the application, subject to the court's rules regarding payment of fees from the indigent guardianship fund. Guardian Fee Application from the indigent fund must set forth the amount of any compensation the guardian received from third parties during the period covered by the Application.
  - 3. All applications for fees in excess of \$5,000 shall be set for hearing before the Judge.
- C. Funds shall not be released to a guardian except upon an order of the Court.
- D. All applications for release of funds shall specify the exact amount to be released, the financial institution holding the fund, its address, and the person in whose name the fund is held.
- E. None of a ward's assets may be accessed through an automated teller machine, debit card, or the ward's credit cards. Electronic payment of routine and recurring expenses is permitted upon receiving approval of an Application for Authority to Expend Funds.
- F. All guardians and their attorneys are required to inform the Court, in writing, within 30 days of a change of address and/or change of telephone number for either the ward or the guardian.
- G. The Judgment Entry Appointing Guardian for Incompetent Person (SPF 17.5) shall indicate whether the provisions of Sup.R. 66.01 through 66.09 shall apply to the individual who is appointed guardian if that person is related to the ward by consanguinity or affinity.



### **Rule 66.03.1 - Emergency Guardianships**

Pursuant to Sup.R. 66.03(A) this Court has adopted the following process for emergency guardianships. Every application for the appointment of an Ex Parte emergency guardianship shall be accompanied by:

- a. A statement of Expert Evaluation;
- b. A completed Next of Kin form;
- c. A narrative statement signed by the applicant setting forth anecdotal information describing the imminent risk of significant injury to the person or property of the minor or incompetent that justifies an Ex Parte emergency appointment;
- d. Compliance with this Court's requirement with respect to background checks and credibility; and
- e. Photo identification of the applicant.

The applicant shall attend the 72-hour hearing to determine whether to extend the emergency guardianship for up to thirty (30) additional days. The applicant is expected to file an application for appointment of guardian within seven (7) days of the completion of a hearing extending the guardianship beyond the initial 72-hour appointment, if it is expected the need for continued guardianship will exist longer than the emergency guardianship.

### **Rule 66.03.2 - Guardian Comments and Complaints**

- A. Comments or complaints regarding the performance of guardians appointed by this Court may be submitted in writing via ordinary mail or fax. The fax filing rules set forth herein apply. Anonymous comments or complaints will not be accepted for filing.
- B. The court will provide a copy of the comment or complaint to the guardian who is the subject of the comment or complaint and to the guardian's attorney, if any. The Court will allow fifteen (15) days for a response.
- C. The comment or complaint will be filed in the guardianship case and will be reviewed and considered by the Court for appropriate action. The Court may, in its discretion, set a hearing on the matter. Notice of the hearing shall be served to both the guardian and person who filed the comment or complaint. The Court may also refer the complaint to a Court investigator for an investigation to be conducted within fifteen (15) days.
- D. The Court will issue a written decision or order regarding the comment or complaint. The decision or order shall be filed in the guardianship case and a copy shall be served upon the guardian and person who filed the comments or complaint. The Court may refer the complaint to the appropriate law enforcement agency and take such emergency action as is necessary to protect the interest of the ward.

### **Rule 66.05.1 – Guardian with Ten or More Adult Wards**

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 31 of each year, a guardian with ten or more wards through the probate court shall file with this Court a document that includes 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 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 10 or more wards shall include with the Guardian's Report form, a statement indicating whether the guardian is aware of any circumstances that may disqualify the guardian from continuing to serve as guardian.

### **Rule 67.1 - Estates of Minors and Incompetents Not Exceeding Ten Thousand Dollars**

- A. Applications relating to minors shall be by the parent or parents or by the person having custody of such minor, and shall be captioned in the name of the minor. Any parent who is not the applicant, as well as minors fourteen (14) years of age or over, shall consent in writing to the application.
- B. If either or both parents are deceased, or their whereabouts unknown, such facts shall be noted in the caption. If parents are divorced or separated, and custody has been awarded to the applicant, the application shall so state.
- C. A separate application shall be filed for each minor and the application shall indicate the amount of money or property to which such minor is entitled, and to whom such money or property shall be paid or delivered.
- D. Where no guardian is appointed for either the receipt of an estate of a minor or the receipt of a settlement for injury to a minor, the attorney representing the interest of the minor shall prepare an entry ordering the deposit of said funds in a local banking institution in the name of the minor, impounding both the principal and interest and releasing said funds to the minor on his eighteenth birthday. Said attorney shall further be responsible for depositing said funds within seven (7) days of the entry's approval. The attorney must provide a copy of said entry to the bank. Furthermore, the attorney must file the bank receipt with the Court.
- E. All applications shall be accompanied by a child custody affidavit as required by ORC § 3127.23 and § 2111.06.

### **RULE 68.1 - Settlement of Claims for Injuries to Minors**

- A. Applications involving the payment of ten thousand dollars (\$10,000.00) or less shall be by the parent or parents or by the person having custody of the minor, and shall be captioned in the name of the minor. If either or both parents are deceased, or their whereabouts unknown, such facts shall be noted in the caption. If the parents are divorced or separated, and custody has been awarded to the

- applicant, the application shall so state. A parent who is not the applicant must consent to the application in writing or be given notice of the hearing thereon.
- B. The parents of any ward residing in the county shall be entitled to seven (7) days' notice by certified mail of the hearing of any application by a guardian for approval of a settlement of an action for personal injuries to his ward. This requirement exists regardless of the amount of the settlement
  - C. All applications may be accompanied by a current statement of the examining physician in respect to the injuries sustained, the extent of recovery thereof and the physician's prognosis.
  - D. The presence of the injured minor and the parent may be required at the hearing on all applications.
  - E. All applications shall state what additional consideration, if any, is being paid to persons other than the guardian.
  - F. All applications shall state what arrangement, if any, has been made in respect of counsel fees. All counsel fees shall be subject to review by the Court.
  - G. Where no guardian is appointed for either the receipt of an estate of a minor or the receipt of a settlement for injury to a minor, the attorney representing the interest of the minor shall prepare an entry ordering the deposit of said funds in a local banking institution in the name of the minor impounding both the principal and interest and releasing said funds to the minor on his eighteenth birthday. Said entry shall be presented at the time the entry waiving appointment of a guardian or approving settlement is approved. Said attorney shall further be responsible for depositing said funds within seven (7) days of the entry's approval. The attorney must provide a copy of said entry to the bank. Furthermore, the attorney must file the bank receipt with the Court.

## **Rule 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 four ratings from the following rating organizations:
    - a. A.M. Best Company: A++, A+, or A.
    - b. Moody's Investors 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 (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 the 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 re-insurer 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 (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.

### **Rule 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 should 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. If this statement is not filed with the application, it must be filed no later than 10 days before the hearing. If it is not filed by that time, the hearing shall be reset.

### **Rule 70.1 - Settlement of Claims for Wrongful Death**

- A. Application for approval of a settlement of a claim for wrongful death shall contain a concise statement of facts including the amount to be received in settlement of the claim and the portion of the settlement allotted for conscious pain and suffering. The statement shall also include the proposed allocation of settlement funds.
- B. The application shall also state the arrangements for payment of counsel fees. Said counsel fees are subject to review by the Court.
- C. The application and proposed allocation shall be set for hearing. Written notice to all interested parties shall comply with rules regarding beneficiaries of different degrees of consanguinity.

### **Rule 71.1 - Attorney Fees in Decedent's Estates**

- A. Attorney fees in all matters shall be governed by Rule 1.5 of the Ohio Rules of Professional Conduct. All counsel fees are subject to approval by the Court.
- B. Counsel fees will be approved at the time of final accounting so long as attorney fees are computed in accordance with the guidelines of the Court and no exceptions thereto are received. A hearing will be held in those instances where fees exceed the guidelines, unless proper consents are given.
- C. In addition to those fees permitted by ORC § 2113.35, the Court shall permit allowances for an executor or administrator that are just and reasonable for actual and necessary expenses incurred in the administration of the estate. See ORC §2113.36.
- D. The Court has not and will not establish either maximum fees or minimum fees for services performed, but has established guidelines which are to be considered just and reasonable. Said guidelines are attached to these rules as Appendix B.
- E. Where all of the primary residual beneficiaries of the estate have consented in writing to the amount requested as the attorney fee in an estate, no application for allowance of fees shall be required, providing however:
  1. The consent to fees or agreement of fees shall state that all persons signing the same have been made aware of all of the guidelines of the Court as to attorneys' fees prior to their signing the consent or agreement;
  2. Such consents or agreements for attorney fees shall be filed in the probate file of the estate or filed with the final account in the estate.

If consents are not obtained, the matter will be set for hearing.

- F. In those instances where extraordinary compensation for legal services is to be charged to an estate, such extraordinary legal services shall be requested in an application in writing by the fiduciary and the attorney. Said application shall detail the extraordinary services, the additional time required of the attorney in connection therewith, and a statement as to the necessity therefore.
- G. In cases where the date of death is prior to January 1, 2013, the Executor or Administrator of an estate may pay to the attorney up to 50% of the total attorney fees to be charged for the services in connection with the administration of an estate at the time of filing of the federal estate tax return, if required, or the Ohio Estate Tax Return.

- H. Attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing an account as required by ORC § 2109.30, except for good cause shown.
- I. It shall be the responsibility of the attorney for the Executor or Administrator to file a statement regarding attorney fees and fiduciary fees with the final account. Said statement shall be in conformance with Appendix C attached hereto.
- J. The sale price of real estate sold shall be used for computation of attorney fees. The appraised value shall not be used in the computation of attorney fees. Deed in lieu of foreclosure shall be figured as transferred not sold. A copy of the closing statement for sale of real estate must be attached to the account.

Attorney fees to be allowed as counsel fees rendered to a guardian, trustee or other fiduciary shall be computed within the guidelines set forth in Appendix B attached to these rules. Said fees shall be paid in connection with the filing of periodical accountings and the attorney shall have the responsibility of filing with the account a form setting forth the manner of computation of the attorneys' fees upon a form similar in the nature to that form attached to these rules as Appendix C.

### **Rule 71.2 - 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.

### **Rule 72.1 - Executor's and Administrator's Commissions**

- A. Compensation for executors and administrators for ordinary services are provided in ORC § 2113.35. All commissions are subject to the approval by the Court.
- B. In those instances where extraordinary fees are to be charged by an executor or administrator, such extraordinary services, the time represented in the execution of said services, and the necessity for said extraordinary services on the part of the executor or administrator shall be outlined in an application to the Court. The Court may require the application to be set for hearing and all interested parties given seven-day notice as to the time and place of said hearing.
- C. Executor's and administrator's commissions will not be allowed for those who are delinquent in filing their accounts, except for good cause shown.
- D. In instances where there are multiple executors and administrators, the total fee of all such fiduciaries shall not exceed the commission due an executor or administrator as set forth in ORC § 2113.35.
- E. In cases where the date of death is prior to January 1, 2013, the executor or administrator may pay to himself 50% of the total commission chargeable to the

estate at the time of filing the federal estate tax return, if required, or the filing of the Ohio Estate Tax Return.

### **Rule 73.1 - Guardian's Compensation**

- A. Unless otherwise provided by law, a guardian may charge for his ordinary services on an annual basis in an amount computed in accordance with the attached schedule marked Appendix C. All compensation is subject to the approval of the Court.
- B. In those instances where extraordinary fees are to be charged by a guardian, such extraordinary services, the time represented in the execution of said services, and the necessity for said extraordinary services on the part of the guardian shall be outlined in an application to the Court. The Court may require the application to be set for hearing and all interested parties given seven-day notice as to the time and place of said hearing.
- C. A guardian shall not be permitted a fee on balances carried forward from prior accounting periods. Final distribution of funds from a guardianship shall not be considered an expenditure for the purpose of computing guardian's compensation.
- D. For the purpose of computing a guardian's compensation as herein approved, the fair market value of the principal shall be determined as of the date of the guardian's appointment and as of each anniversary date thereafter. The compensation so determined may be charged during the ensuing year. The annual principal valuation shall be adjusted from time to time to reflect additions to and withdrawals from the principal of the estate and the compensation for the remaining portion of the annual period shall be similarly adjusted to reflect such revised valuation.
- E. The compensation of co-guardians in the aggregate shall not exceed the compensation which would have been payable if only one guardian had been serving.
- F. It shall be the responsibility of the attorney for the guardian to attach to each guardian's account a form similar to that set forth in Appendix C setting forth the method of computation of the guardian's compensation.

### **Rule 74.1 - Trustee Compensation**

- A. Except where the instrument creating a trust makes provision for compensation, a testamentary trustee may charge annually for the ordinary services performed by the Trustee in connection with the administration of each separate trust estate a fee as established by Appendix B attached hereto. All compensation is subject to approval by the Court.
- B. A testamentary trustee shall not be entitled to charge for services in connection with balances in the trustee's account carried forward from a prior accounting period.
- C. In those instances where extraordinary fees are to be charged by a trustee, such extraordinary services, the time represented in the execution of said services, and the necessity for said extraordinary services on the part of the trustee shall be outlined in an application to the Court. The Court may require the application to be set for

- hearing and all interested parties given seven-day notice as to the time and place of said hearing.
- D. A trustee shall not be permitted a fee on balances carried forward from prior accounting periods. Final distribution of funds from a trust shall not be considered an expenditure for the purpose of computing trustee's compensation.
  - E. For the purpose of computing a trustee's compensation as herein approved, the fair market value of the principal shall be determined as of the date of the trustee's appointment and as of each anniversary date thereafter. The compensation so determined may be charged during the ensuing year. The annual principal valuation shall be adjusted from time to time to reflect additions to and withdrawals from the principal of the estate and the compensation for the remaining portion of the annual period shall be similarly adjusted to reflect such revised valuation.
  - F. The compensation of multiple trustees in the aggregate shall not exceed the compensation which would have been paid if only one person were serving as trustee, except where the instrument under which the co-trustees are acting provides otherwise.
  - G. Compensation for a trustee or fees to the counsel representing such trustee will not be allowed while such trustee is delinquent in his account or accounting as required by ORC § 2109.30, except for good cause shown.
  - H. It shall be the responsibility of the attorney for a trustee to file with each account a form similar to that attached to these rules designated Appendix C setting forth the method of compensation of the fees of the attorney and the trustee.

### **Rule 78.1 - Case Management**

For the purpose of ensuring the readiness of civil cases in the Probate Division for pre-trial, final pre-trial and trial, the following procedures shall be in effect:

Estates - Issuance of citations shall be given to fiduciaries on delinquent filings by certified mail. No extensions will be granted after the issuance of the citation. Appearance of the fiduciary and attorney is required at the hearing. Said hearing will be waived only after proper filings are made.

A) Civil Actions - A pre-trial conference shall be conducted in all cases prior to the case being scheduled for trial, except for land sale proceedings. Pre-trial shall be set within thirty (30) days after the answer date. The following decisions shall be made at the pre-trial conference: A) Discovery schedule, B) Exchange of witness lists, C) Definite date for filing of all motions, D) Date for final pre-trial.

At final pre-trial, all counsel attending must have full authority to enter into a binding final pre-trial order. The Court will rule on pre-trial motions. Briefs on legal issues shall be submitted. Clients shall be present.

B) Land Sales - All land sales which have not been concluded within one (1) year from the date of filing shall be set for pre-trial.



C) Wrongful Death Settlements - All hearings shall be held within thirty (30) days of filing provided, however, if either a guardian or guardian ad litem is necessary, the hearing shall be held within thirty (30) days of the filing or fifteen (15) days after the appointment, whichever is later.

D) Motions - Oral arguments of motions may be permitted on application and proper showing. The moving party shall serve and file with the motion a brief written statement in support of the motion and a list and copies of citations of authorities in support. All responses to motions shall be filed within fourteen (14) days. The Court shall set a hearing within thirty (30) days after receipt of the request if the Court deems a hearing is necessary. If no request is made, then it shall determine the matter as soon as possible after the response is filed, or if no response is filed, then as soon as possible after the fourteenth (14th) day.