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COURT OF COMMON PLEAS OF VAN WERT COUNTY

PROBATE DIVISION

LOCAL RULES

[Revised Effective January 11, 2016]

Rule numbers shall correspond to Rules Governing the Courts of Ohio identified as Court of Common Pleas—Probate Division.

RULE 52.1 COMPUTER GENERATED FORMS

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

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

RULE 53 HOURS OF THE COURT

Establish hours for the transaction of business.

RULE 53.1 LOCAL HOURS OF THE COURT

The probate court and its offices shall be open for the transaction of business from 8:30 a.m. to 5:00 p.m. Monday and 8:30 a.m. to 4:00 p.m. on Tuesday through Friday. The probate court shall be closed Saturday, Sunday, and legal holidays, and at such times as the judge deems necessary and proper. If the court is closed due to an emergency, all filings due on that date shall be considered timely if filed the next open business day.

RULE 54 CONDUCT IN THE COURT

(A) Proper decorum in the court is necessary to the administration of the court's function. Any conduct that interferes or tends to interfere with the proper administration of the court's business is prohibited.

(B) No radio or television transmission, voice recording device, other than a device used by a court reporter making a record in a proceeding, or the making or taking of pictures shall be permitted without the express consent of the court in advance and pursuant to Sup. R. 12.

RULE 55 EXAMINATION OF PROBATE RECORDS

(A) 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.

(B) Copies of records may be obtained at a cost per page as authorized by the judge.

(C) Adoption, mental illness, and developmentally delayed proceedings are confidential. Records of those proceedings, and other records that are confidential by statute, may be accessed as authorized by the judge.

(D) A citation for contempt of court may be issued against anyone who divulges or received information from confidential records without authorization of the judge.

RULE 55.1 LOCAL EXAMINATION OF PROBATE RECORDS

The file may also be removed with the consent of a deputy clerk. The file must be signed for by the receiving party and returned within two business days. Only attorneys or their representatives may remove files.

RULE 56 CONTINUANCES

(A) Motions for continuance shall be submitted in writing with the proper caption and case number.

(B) Except on motion of the court, no continuance shall be granted in the absence of proof of reasonable notice to, or consent by, the adverse party or the party's counsel. Failure to object to the continuance within a reasonable time after receiving notice shall be considered consent to the continuance.

(C) A proposed entry shall be filed with a motion for continuance, leaving the time and date blank for the court to set a new date.

RULE 57 FILINGS AND JUDGMENT ENTRIES

(A) All filings, except wills, shall be on eight and one-half by eleven inch paper, without backings, of stock that can be microfilmed.

(B) All 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 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 method of service as the court may direct.

(D) Filings containing partially or wholly illegible signatures of counsel, parties or offices administering oaths may be refused, or, if filed, may be stricken, unless the typewritten or printed name of the person whose signature is purported to appear is clearly indicated on the filing.

(E) All pleadings, motions, or other filings are to be typed or printed in ink and correctly captions.

(F) Unless the court otherwise directs, counsel for the party in whose favor a judgment is rendered, shall prepare the proposed judgment entry and submit the original to the court with a copy to counsel for the opposing party. The proposed judgment entry shall be submitted within seven days after the judgment is rendered. Counsel for the opposing party shall have seven days to object to the court. If the party in whose favor a judgment is rendered fails to comply with this division, the matter may be dismissed or the court may prepare and file the appropriate entry.

(G) When a pleading, motion, judgment entry or other filing consists of more than one page, each page shall contain the case number in the upper portion of the page.

RULE 57.1 FACSIMILE

(A.) Pursuant to civil rule 73(j) the court in its discretion may allow facsimile filings during regular business hours of the court. The facsimile number is 419-238-7315.

(B.) Any documents received after regular business hours shall be deemed filed the following business day.

(C.) Only documents subsequent to the initial document may be filed by facsimile.

(D.) A document filed by facsimile shall be accepted as the original and shall be filed by the attorney of record. All risks of transmission shall be borne by the sender.

(E.) Any signature on documents transmitted by facsimile shall be considered that of the attorney or party that it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court may order the filings stricken and costs assessed to the sender.

(F.) The filing date of any document transmitted during business hours shall be the date the document was received by the court's facsimile machine.

(G.) Any document filed by facsimile that requires a filing fee shall not be accepted by the clerk for filing until court costs and fees have been paid or deposits previously made were sufficient to pay the costs involved.

(H.) If the facsimile copy is not capable of photocopying, microfilming, or scanning, the deputy clerk may request the original to be filed and the original shall be substituted for the facsimile as if received on the date of the facsimile. Attorneys or parties may also present the original for substitution of the facsimile.

RULE 57.2 COMPLETE ADDRESS

When required in a court document, address must be a street address and, if applicable, any post office box number used as a mailing address. The address of the fiduciary who is not an attorney must be the fiduciary’s legal address. A fiduciary who is an attorney may use an office address.

RULE 58 DEPOSIT FOR COURT COSTS

(A) Deposits in the amount set forth in a local rule shall be required upon the filing of any action or proceeding and additional deposits may be required.

(B) The deposit may be applied as filings occur.

RULE 58.1 LOCAL DEPOSIT FOR COURT COSTS

Deposits in the amount set forth below shall be required upon the filing of the following actions and proceedings:

ESTATES:

- 1. Full Administration (due with Inventory) \$150
- 2. Release from Administration (with Probate of Will) \$133
- 3. Release from Administration (Will for record only) \$123
- 4. Release from Administration (without Will) \$113
- 5. Summary Release (with Probate of Will) \$113
- 6. Summary Release (Will for record only) \$103
- 7. Summary Release (without Will) \$93

GUARDIANSHIPS:

- 1. Adult \$300
- 2. Minor \$100
- 3. Conservator \$100

OTHER:

- 1. Admit Authenticated Copies \$94
- 2. Adoptions \$325 First Child;
 - a. Each additional child \$150
- 3. Appeals \$125
- 4. Authenticated Copies \$14 in State;\$16 out of State
- 5. Certified Copies \$3
- 6. Change of Name \$150
- 7. Civil Complaints \$125
- 8. Correction of Birth \$5
- 9. Delayed Birth Certificates \$7
- 10. Marriage Ceremonies \$25
- 11. Marriage Licenses \$45
- 12. Minor Settlements \$100

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|---------------------------|--|
| 13. Photocopies | \$.25 |
| 14. Structured Settlement | \$100 |
| 15. Tax Return Filed Only | \$28 |
| 16. Trusts | \$150 |
| 17. Will Filed Only | \$58 |
| 18. Recording Fees | \$1 per page after the 1 st 3 pages, up to \$35.00 per case |

RULE 59 WILLS

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

(B) 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 months of their appointment or be subject to removal proceedings. If required by the court, proof of service shall consist of either waivers of notice of the probate of the will or original certified mail return receipt cards as provided under Civil Rule 73(E)(3), or if necessary, under Civil Rule 73(E)(4) or (5). A waiver of notice may not be signed by any minor, or on behalf of a minor sixteen or seventeen years of age. See Civil Rule 4.2.

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

(A) Notice of an application for appointment of administrator shall be served at least seven days prior to the date set for hearing. If there is no known surviving spouse or next of kin resident of the state, the notice shall be served upon persons designated by the court.

(B) The administrator shall give notice of the appointment within seven days after the appointment to all persons entitled to inherit, including persons entitled to an allowance for support, unless those persons have been provided notice of the hearing on the appointment or have waived notice.

(C) The probate court shall serve by certified mail the spousal citation and summary of rights required by R.C. 2106.02 to the surviving spouse within 7 days of the initial appointment of the administrator or executor, unless a different time is established by local court rule.

RULE 61 APPRAISERS

(A) Without special application to the court, a fiduciary may allow to the appraiser as compensation for services a reasonable amount agreed upon between the fiduciary and the appraiser, provided the compensation does not exceed the amount allowed by local court rule. If no local court rule exists, the compensation shall be subject to court approval.

(B) If, by reason of the special and unusual character of the property to be appraised, the fiduciary is of the opinion that the appraisal requires the services of persons qualified in the evaluation of that property, a qualified appraiser may be appointed and allowed compensation as provided in division (A) of this rule.

RULE 61.1 LOCAL RULE FOR APPRAISAL OF PERSONAL PROPERTY

Household goods of a value of \$3,000.00 or less, and motor vehicles whose value is listed in motor vehicle publications generally recognized as being reliable, will be considered assets the value of which is readily ascertainable and which need not be appraised.

RULE 62 CLAIMS AGAINST ESTATE

(A) When a claim has been filed with the court pursuant to section 2117.06 of the Revised Code, the fiduciary shall file a copy of any rejection of the claim with the court.

(B) If the court requires a hearing on claims or the fiduciary requests a hearing on claims or insolvency, the fiduciary shall file a schedule of all claims against the estate with the court. The schedule of claims shall be filed with the fiduciary's application for hearing or within ten days after the court notifies the fiduciary of a court-initiated hearing.

RULE 62.1 LOCAL RULE FOR CLAIMS AGAINST THE ESTATE

No estate shall be closed until all claims filed with the court have been resolved. It shall be the responsibility of fiduciary or attorney for the estate to notify the court of the status of any claims filed with the court. This rule does not apply if the estate is insolvent and the claim is listed as a debt in the insolvency.

RULE 63 APPLICATION TO SELL PERSONALTY

An application to sell personal property shall include an adequate description of the property. Except for good cause shown, an order of sale shall not be granted prior to the filing of the inventory.

RULE 63.1 LOCAL RULE FOR SALE OF PERSONAL PROPERTY

The requirements of rule 63 shall not apply where sale has been authorized by will or consent given by all heirs, provided that except for good cause shown, personal property shall not be sold until the inventory has been approved.

RULE 64 ACCOUNTS

(A) The vouchers or other proofs required by section 2109.302 and 2109.303 of the Revised Code and receipts filed or exhibited pursuant to section 2109.32(B) (1)(b) of the Revised Code, shall be referenced to the account by number, letter, or date.

(B) If land has been sold during the accounting period, the account shall show the gross amount of the proceeds and include a copy of the closing statement itemizing all of the disbursements.

(C) Receipts for distributive shares signed by persons holding power of attorney may be accepted, provided the power of attorney is recorded in the county in which the estate is being administered and a copy of the recorded power is attached to the account.

(D) Exhibiting assets.

(1) The court may require that all assets be exhibited at the time of filing a partial account.

(2) Cash balances may be verified by exhibiting a financial institution statement, passbook, or a current letter from the financial institution in which the funds are deposited certifying the amount of funds on deposit to the credit of the fiduciary. Assets held in a safe deposit box of a fiduciary or by a surety company on a fiduciary's bond may be exhibited by filing a current inventory of the assets. The inventory shall be certified by the manager of the safe deposit box department of the financial institution leasing the safe deposit box or by a qualified officer of the surety company if the assets are held by a surety. If the assets are held by a bank, trust company, brokerage firm, or other financial institution, exhibition may be made by proper certification as to the assets so held. For good cause shown, the court may designate a deputy clerk of the court to make an examination of the assets located in the county, not physically exhibited to the court or may appoint a commissioner for that purpose if the assets are located outside the county. The commissioner appointed shall make a written report of findings to the court.

(E) A final or distributive account shall not be approved until all court costs have been paid.

RULE 64.1 PAYMENT OF COURT COSTS

All court costs are to be paid when a final or distributive account is filed with the court. The amount of the court costs will be provided to the representative of the estate prior to the filing of this final distributive account.

RULE 64.2 EXTENSION FOR FILING AN ACCOUNT

Extensions of time for the filing of an account shall not be granted if the account is more than eighteen months past due.

RULE 64.3 ANNUAL FIDUCIARY ACCOUNT

Fiduciary's accounts shall be filed annually.

RULE 64.4 NOTICE OF HEARING ON AN ACCOUNT

Unless a waiver of notice of the filing of the account is filed with the account with waivers from all residuary beneficiaries under the will or all heirs at law if an intestate estate, the attorney from the estate, or the executor/administrator of the estate shall give notice of the hearing on the account, by regular mail to the last known address to all residuary beneficiaries under the will or to all heirs at law if an intestate estate. The probate court shall docket a certificate of mailing with the name of all beneficiaries or heirs to whom the notice was sent and date of the mailing of the notice.

RULE 65 LAND SALES - R.C. CHAPTER 2127

(A) In all land sale proceedings, the plaintiff, prior to the issuance of an order finding the sale necessary, shall file with the court evidence of title showing the record condition of the title to the premises described in the complaint and prepared by a title company licensed by the state of Ohio, an attorney's certificate, or other evidence of title satisfactory to the court. Evidence of title shall be to a date subsequent to the date on which the complaint was filed.

(B) The plaintiff shall give notice of the time and place of sale by regular mail at least three weeks prior to the date of a public sale to all defendants at their last known addresses. Prior to the public sale, the plaintiff shall file a certificate stating that the required notice was given to the defendants and the sale was advertised pursuant to section 2127.32 of the Revised Code.

(C) In all private land sale proceedings by civil action, the judgment entry confirming sale, ordering issuance of deed, and ordering distribution shall show the gross amount of the proceeds and include a copy of the proposed closing statement itemizing all of the proposed disbursements.

(D) The court may appoint a disinterested person, answerable to the court, who shall investigate the circumstances surrounding the proposed transaction, view the property, ascertain whether the proposed sale is justified and report findings in writing. The report shall be a part of the record. The compensation for the person performing these services shall be fixed by the court, according to the circumstances of each case, and shall be taxed as costs.

RULE 66 GUARDIANSHIP

(A) All applications for the appointment of a guardian on the grounds of mental incompetency shall be accompanied by either a statement of a physician or clinical psychologist or a statement that the prospective ward has refused to submit to an examination.

(B) An Application for Authority to Expend Funds (Standard Probate Form 15.7) shall not be approved until an Inventory (Standard Probate Form 15.5) has been filed.

(C) An application for allowance of care and support of a minor shall allege, if such is the fact, that the father and mother are financially unable to provide the items for which the amount is sought.

RULE 66.1 EMERGENCY GUARDIANSHIP

Consistent with Rule 66.03(A) of the Rules of Superintendence for the Courts of Ohio, the following process is established for emergency guardianships in Van Wert County.

In general, the following forms shall be completed and filed with the Court.

1. Required pleadings:

Motion for Appointment of Emergency Guardian
Judgment Entry Appointing Emergency Guardian

- | | |
|-------|---|
| 17.0 | Application for Appointment of Guardian |
| 17.1 | Statement of Expert Evaluation |
| 17.1A | Supplement for Emergency Guardian of Person |
| 15.0 | Next of Kin of Proposed Ward |
| 15.1 | Waiver of Notice and Consent |
| 15.01 | Judgment Entry Setting Hearing on Application for Appointment of Guardian |
| 17.3 | Notice to Prospective Ward of Application and Hearing |

- 17.4 Notice of Hearing for Appointment of Guardian of Alleged Incompetent Person
- 17.5 Judgment Entry Appointment of Guardian for Incompetent Person
- 15.2 Fiduciary's Acceptance – Guardian
- 15.9 Oath of Guardian
- 15.4 Letters of Guardianship

At the time of filing, a filing fee of \$300.00 is required. This filing fee may be waived if an Affidavit of Indigency is filed with the Court and the Court declares the guardianship indigent.

As provided by statute, the initial emergency guardianship shall extend for seventy-two hours. A motion to extend an emergency guardianship for an additional thirty days may be filed. A Motion for 30-Day Extension may be completed and filed within the seventy-two hour emergency guardianship period.

RULE 66.2 RESPONSIBILITIES OF COURT ESTABLISHING GUARDIANSHIPS

(A) Criminal background check shall be conducted on a proposed guardian and the results of said background check shall be filed with the Court prior to the hearing on the Application for Appointment of Guardian of Alleged Incompetent.

(B) If the applicant to be appointed guardian has resided in the State of Ohio for five (5) years immediately preceding the filing of said application, said background check shall be conducted by the Ohio Bureau of Criminal Identification and Investigation and the results of said background check shall be filed with the Court prior to the hearing on the Application for Appointment of Guardian of Alleged Incompetent. Said results shall be dated within one year preceding the filing of the Application for Appointment of Guardian of Alleged Incompetent.

(C) If the applicant to be appointed guardian has not resided in the State of Ohio for five (5) years immediately preceding the filing of said application, said background check shall be conducted by the Ohio Bureau of Criminal Identification and Investigation and the Federal Bureau of Investigation and the results of said background check shall be filed with the Court prior to the hearing on the Application for Appointment of Guardian of Alleged Incompetent.

(D) The fees or costs of any criminal background check required by this rule shall be the responsibility of the applicant, and may be reimbursed to the applicant with guardianship funds once the guardianship is established and the inventory filed (provided that the guardianship is for the ward's estate). If the proposed ward is indigent, as evidenced by the filing of an Entry approving a Financial Disclosure/Affidavit of Indigency of Proposed Ward, said applicant may move the Court for reimbursement of said fees or costs by providing the

appropriate motion and original receipt confirming applicant's payment of said fees or costs for a criminal background check.

(E) If the applicant to serve as a guardian is an attorney, a certificate of good standing with disciplinary information issued by the Supreme Court shall be accepted by the Court in place of a criminal background check.

RULE 66.3 GUARDIAN PERFORMANCE

(A) Consistent with Rule 66.03(B) of the Rules of Superintendence for the Courts of Ohio, the Van Wert County Probate Court establishes the following process for submitting comments or complaints regarding the performance of guardians appointed by the Court and for considering such comments and complaints.

(B) Comments or complaints regarding the performance of guardians appointed by this Court shall be submitted in writing to this Court c/o the Deputy Clerk by any of the following means:

- Electronic mail to: probate@vwprobjuvcourt.com
- Regular U.S. mail to Van Wert County Probate Court, 108 E. Main St. Van Wert, Ohio 45891
- Hand delivery to the Van Wert Probate Court Clerk's Office at 108 E. Main St. Van Wert, Ohio.

The person making the comments or complaints shall provide the Court with their name and address so that the Court may notify said person of any hearing dates and/or the disposition of said comments or complaints.

(C) Upon receipt of a comment or complaint, the Court will provide a copy to the guardian who is the subject of the comment or complaint. Time permitting, the guardian may be given the opportunity to respond to the comment or complaint.

(D) The comment or complaint will then be forwarded to the Probate Court Judge for prompt consideration and appropriate action, if any is necessary.

(E) Any comments or complaints submitted to this Court regarding the performance of guardians appointed by this Court shall be filed and made part of the record, including the disposition of said comments or complaints.

(F) The Court shall notify the person making the comments or complaints and the guardian of the disposition of the comments or complaints.

RULE 66.4 GUARDIANS

The court will not accept for filing any guardianship for a minor where the only purpose of the guardianship is to establish a residency for school purposes. Custody for school purposes is a matter to be heard and determined in the juvenile division of the court.

RULE 66.5 GUARDIAN'S REPORTS

Guardian's reports as required by R.C. 2111.49(a) shall be filed at least every two years as required by law and shall be filed with the account during the year in which the report is due.

RULE 66.6 DEPOSIT OF WILLS

The guardian must deposit with the attorney for guardianship any and all wills of the ward for safekeeping pursuant to R. C. section 2107.07. The attorney shall place the will in either the attorney's fire proof will safe or a safety deposit box and shall file a notice with the court of receipt of any wills. Neither guardian or attorney shall open any sealed envelopes purporting to contain a will.

RULE 67 ESTATE OF MINORS OF NOT MORE THAN TEN THOUSAND DOLLARS

(A) Each application relating to a minor shall be submitted by the parent or parents or by the person having custody of the minor and shall be captioned in the name of the minor.

(B) Each application shall indicate the amount of money or property to which the minor is entitled and to whom such money or property shall be paid or delivered. Unless the court otherwise orders, if no guardian has been appointed for either the receipt of an estate of a minor or the receipt of a settlement for injury to a minor, the attorney representing the interests of the minor shall prepare an entry that orders all of the following:

- (1) The deposit of the funds in a financial institution in the name of the minor;
- (2) Impounding the principal and interest;
- (3) Releasing the funds only upon an order of the court or to the minor at the age of majority.

(C) The entry shall be presented at the time the entry dispensing with appointment of a guardian or approving settlement is approved. The attorney shall be responsible for depositing the funds and for providing the financial institution with a copy of the entry. The attorney shall obtain a Verification of Receipt and Deposit (Standard Probate Form 22.3) from the financial institution and file the form with the court within seven days from the issuance of the entry.

RULE 67.1 BIRTH CERTIFICATE OF A MINOR

A certified copy of the birth certificate of the minor child shall be filed with the application. If requested the court will allow a subsequent substitution of the certified copy by a photocopy and the clerk will note on the photocopy that the certified copy was returned to the applicant.

RULE 68 SETTLEMENT OF INJURY CLAIMS OF MINORS

(A) An application for settlement of a minor's claim shall be brought by the guardian of the estate. If there is no guardian appointed and the court dispenses with the need for a guardian, the application shall be brought by the parents of the child or the parent or other individual having custody of the child. The noncustodial parent or parents shall be entitled to seven days notice of the application to settle the minor's claim which notice may be waived. The application shall be captioned in the name of the minor.

(B) The application shall be accompanied by a current statement of an examining physician in respect to the injuries sustained, the extent of recovery, and the permanency of any injuries. The application shall state what additional consideration, if any, is being paid to persons other than the minor as a result of the incident causing the injury to the minor. The application shall state what arrangement, if any, has been made with respect to counsel fees. Counsel fees shall be subject to approval by the court.

(C) The injured minor and the applicant shall be present at the hearing.

RULE 68.1 BIRTH CERTIFICATE OF A MINOR

A certified copy of the birth certificate of the minor child shall be filed with the application. If requested the court will allow a subsequent substitution of the certified copy by a photocopy and the clerk will note on the photocopy that the certified copy was returned to the applicant.

RULE 68.2 SETTLEMENTS UNDER \$10,000

Rule 67 of the Rules of Superintendence for the courts of Ohio shall apply to all settlements under \$10,000.00. when the minor and parents are unrepresented by counsel, the attorney drafting the pleadings shall be responsible for depositing the funds and providing the financial institution with a copy of the entry dispensing with the appointment of guardian and ordering deposit (SPF 22.2) and shall obtain a receipt from the financial institution and deposit it with the court within seven days of the approval of the entry (SPF 22.3).

RULE 68.3 STRUCTURED SETTLEMENTS

In the event the parties involved in claims for injuries to minors or incompetents desire to enter into a structured settlement, the application shall include a signed statement specifying the present value of the settlement and the method of the calculation of the value.

RULE 69 SETTLEMENT OF CLAIMS OF OR AGAINST ADULT WARDS

(A) An application for settlement of a claim in favor of or against an adult ward shall be brought by the guardian of the estate. Notice of the hearing on the application shall be given to all persons who are interested parties to the proposed settlement, as determined by the court. The court may authorize or direct the guardian of the ward's estate to compromise and settle claims as the court considers to be in the best interest of the ward. The court may dispense with notice of hearing.

(B) The application for settlement of an injury claim shall be accompanied by a current statement of the examining physician describing the injuries sustained, the extent of recovery from those injuries, and permanency of any injuries. The application shall state what additional consideration, if any, is being paid to persons other than the ward as a result of the incident causing the injury to the ward. The application shall state what arrangement, if any, has been made with respect to counsel fees. Counsel fees shall be subject to approval by the court.

RULE 70 SETTLEMENT OF WRONGFUL DEATH AND SURVIVAL CLAIMS

(A) An application to approve settlement and Distribution of Wrongful Death and Survival Claims (Standard Probate Form 14.0) shall contain a statement of facts, including the amount to be allocated to the settlement of the claim and the amount, if any, to be allocated to the settlement of the survival claim. The application shall include the proposed distribution of the net proceeds allocated to the wrongful death claims.

(B) The fiduciary shall give written notice of the hearing and a copy of the application to all interested persons who have not waived notice of the hearing. Notwithstanding the waivers and consents of the interested persons, the court shall retain jurisdiction over the settlement, allocation and distribution of the claims.

(C) The application shall state what arrangements, if any, have been made with respect to counsel fees. Counsel fees shall be subject to approval by the court.

RULE 71 COUNSEL FEES

(A) Attorney fees in all matters shall be governed by Rule 1.5 of the Ohio Rules of Professional Conduct.

(B) Attorney fees for the administration of estates shall not be paid until the final account is prepared for filing unless otherwise approved by the court upon application and for good cause shown.

(C) Attorney fees may be allowed if there is a written application that sets forth the amount requested and will be awarded only after proper hearing, unless otherwise modified by local rule.

(D) The court may set a hearing on any application for allowance of attorney fees regardless of the fact that the required consents of the beneficiaries have been given.

(E) Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing the accounts required by section 2109.30 of the Revised Code.

(F) If a hearing is scheduled on an application for the allowance of attorney fees, notice shall be given to all parties affected by the payment of fees, unless otherwise ordered by the court.

(G) An application shall be filed for the allowance of counsel fees for services rendered to a guardian, trustee, or other fiduciary. The application may be filed by the fiduciary or attorney. The application shall set forth a statement of the services rendered and the amount claimed in conformity with division (A) of this rule.

(H) There shall be no minimum or maximum fees that automatically will be approved by the court.

(I) Prior to a fiduciary entering into a contingent fee contract with an attorney for services, an application for authority to enter into the fee contract shall be filed with the court, unless otherwise ordered by local court rule. The contingent fee on the amount obtained shall be subject to approval by the court.

RULE 71.1 LOCAL RULE FOR COUNSEL FEES

(A) Counsel fees shall be agreed upon between the executor or administrator and the attorney of his/her choosing. Counsel fees may be set forth in a written agreement between the executor or administrator and filed with court. In the event that no agreement is filed with the court, then the schedule in appendix A shall be considered. As reasonable and the court will approve the same provided the counsel fees do not exceed the fees as calculated by appendix A and if the calculation of the fees is signed by all executors or administrators. If the fees exceed exhibit A, then a separate attorney fee agreement must be filed and signed by all fiduciaries. If the executor and administrator is also the attorney for the estate or within the same law firm the court will not accept an agreement for counsel fees exceeding appendix A without a hearing.

(B) Counsel fees for the administration of a decedent's estate as set forth in appendix A and form A1 attached hereto, may serve as a guide in determining fees to be charged to the estate for legal services of an ordinary nature rendered as attorney for the executor or administrator in the complete administration of a decedent's estate. Such schedules, however, are not to be considered as schedules of minimum or maximum fees to be charged.

RULE 71.2 EXTRAORDINARY FEES

Examples of extraordinary services which may be compensated in addition to the foregoing suggested guidelines on ordinary fees includes, but is not limited to the following:

1. Litigation or matters in a court other than Probate Court.
2. In a contested matter in the Probate Court, including but not limited to will contests, applications to determine heirships, declaratory judgments for interpretations of wills.
3. In connection with the preparation or filing, audit, protest of any state, federal, or local income tax issue or any applicable business tax.
4. In connection with the settlement of Estate or inheritance taxes in respect to insurance not payable to the estate, gifts in contemplation of death, or general testamentary powers of appointment not exercised by the decedent and other negotiation not represented by assets included in the 'gross value' of the estate.
5. With respect to problems of valuation or taxability of property for estate and inheritance taxes or to the protest of such taxes.
6. Preparation and filings of federal estate tax returns or audit of state or federal estate tax returns.
7. In connection with matters which are unusual or expensive for the size of the estate involved.
8. In connection with the performance of duties normally performable by the personal representative but which fall to the lawyer because of personal representative's inexperience, lack of ability, or absence from the place from which assets of the estate must be managed.
9. Sale of business or business assets.
10. Proceedings involving partnership.

RULE 71.3 OHIO ESTATE TAX RETURN

The Ohio Estate Tax Return shall not be considered as an extraordinary fee.

RULE 71.4 COMBINED FIDUCIARY AND ATTORNEY FEES

When an attorney is appointed as executor, administrator, or guardian, AND that attorney or other attorney with the same law firm is acting as attorney for the fiduciary, the combined total fees allowed may not exceed the statutory fiduciary commission plus one-half of the guideline counsel fee absent good cause shown.

RULE 71.5 NON-PROBATE ASSET

The attorney or the executor/administrator shall file a confidential inventory with the Probate Court of all NON-PROBATE assets to be used in the calculation of attorney and fiduciary fees.

RULE 72 EXECUTOR'S AND ADMINISTRATOR'S COMMISSIONS

(A) 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 persons in accordance with Civil Rule 73(E).

(B) 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.

(C) The commissions of the 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.

(D) 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

(A) Guardian's compensation shall be set by local rule.

(B) Additional compensation for extraordinary services, reimbursement for expenses incurred and compensation of a guardian of a person only may be allowed upon an application setting forth an itemized statement of the services rendered and expenses incurred and the amount for which compensation is applied. The court may require the application to be set for hearing with notice given to interested persons in accordance with Civil Rule 73(E).

(C) The compensation of co-guardians in the aggregate shall not exceed the compensation that would have been allowed to one guardian acting alone.

(D) 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 guardian has not faithfully discharged the duties of the office.

RULE 73.1 LOCAL RULE GUARDIAN COMPENSATION

(A) Unless otherwise provided by law or ordered by the court, a guardian may charge for his ordinary services on an annual basis an amount computed in accordance with the attached schedule marked appendix B.

(A)(1) Compensation computed on income will not be allowed on balances carried forward from one accounting period to another, nor will an investment of funds or the final distribution of unexpected balances to a ward at the close of a guardianship be considered as expenditure.

(A)(2) For the purpose of computing a guardian's compensation as herein approved, the fair market value of the principal shall be determined by the guardian as of the date of his appointment and as of each anniversary thereafter. The compensation so determined may be charged during the ensuing year. The annual principal valuation shall be adjusted from time to time to reflect additions to and withdrawals from the principal of the estate, and the compensation for the remaining portion of the annual periods shall be similarly adjusted to reflect such revised valuation.

RULE 74 TRUSTEE'S COMPENSATION

(A) Trustee's compensation shall be set by local rule.

(B) Additional compensation for extraordinary services may be allowed upon application setting forth an itemized statement of the services rendered and the amount of compensation requested. The court may require that the application be set for hearing with notice given to interested parties in accordance with Civil Rule 73(E).

(C) The compensation of co-trustees in the aggregate shall not exceed the compensation that would have been allowed to one trustee acting alone, except where the instrument under which the co-trustees are acting provides otherwise.

(D) 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.

(E) 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.

RULE 74.1 LOCAL RULE TRUSTEE'S COMPENSATION

(A) Except where the instrument creating a trust makes provisions for compensation, a testamentary trustee may charge annually for the ordinary services performed by the trustee in connection with the administration of each schedule trustee estate a fee established by Appendix C. Provided, however, if the trustee is a corporate trustee licensed to do business as a trustee, then the trustee may charge its normal fee charged in similar trusts.

(A)(1) For the purpose of computing a trustee's compensation as herein approved, the fair market value of the principal shall be determined by the trustees as of the date of his appointment and as of each anniversary thereafter. The compensation so determined may be charged during the ensuing year. The annual principal valuation shall be adjusted from time to time to reflect additions to and

withdrawals from the principal of the estate, and the compensation for the remaining portion of the annual periods shall be similarly adjusted to reflect such revised valuation.

(A)(2) Additional compensation for extraordinary service may be allowed upon application. The court may require that such application be set for hearing and notice, thereof, be given to interested parties in accordance with Civil Rule 4.1. Such notice shall contain a statement of the amount of such compensation applied for.

RULE 75 LOCAL RULES

The local rules of the court shall be numbered to correspond with the numbering of these rules and shall incorporate the number of the rule it is intended to supplement. For example, a local rule that supplements Sup. R. 71 shall be designated County Local Rule 71.1.

RULE 75.1 RELEASES FROM ADMINISTRATION

(A) If a decedent has a de minimus estate (less than \$1000) the personal representative may request a letter noting the court has no objection to a release of the property to the next of kin. The filing fee for such a letter shall be \$5.00.

(B) In cases of estates entitled to be released from administration, where there is a will, such will shall be presented for probate. If the entire estate will be consumed in the payment of debts, costs, and applicable statutory allowances, or if the will distributes the net proceeds of the estate in the same manner as the Statute of Descent and Distribution, and there is no real estate involved, then the will may be filed only and need not be admitted to probate. If the will is admitted to probate, an application for an order releasing the estate from administration may be filed in lieu of the appointment of the executor named in the will. If probate of the will is denied, an application for an order releasing the estate from administration may be granted and distribution made under the laws of intestate succession.

Where a full administration of an estate had been commenced but it is later determined that the estate qualifies for release of administration, the applicant may file a motion and judgment entry ordering the transfer to a release of administration.

RULE 76 EXCEPTION TO THE RULES

Upon application, and for good cause shown, the probate division of the court of common pleas, may grant exception of Sup. R. 53 to 79.

RULE 77 COMPLIANCE

Failure to comply with these rules may result in sanctions as the court may direct.

RULE 78 PROBATE DIVISION OF THE COURT OF COMMON PLEAS - CASE MANAGEMENT IN DECEDENT'S ESTATE, GUARDIANSHIP, AND TRUSTS

(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 section 2109.31 of the 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)(1) If a decedent's estate must remain open more than six months pursuant to R.C. 2109.301(B) (1) [R.C. 2109.30.1(B) (1)], the fiduciary shall file an application to extend administration (Standard Probate Form 13.8).

(2) An application to extend 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 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 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.

APPENDIX A

COUNSEL FEES

I. TOTAL PROBATE ASSETS (PER INVENTORY)

| | |
|--------------------|---------------------------------|
| 0-\$5,000 | \$300.00 |
| \$5,001-\$20,000 | \$300.00 + 6% over \$5,000 |
| \$20,000-\$50,000 | \$1,000.00 + 4% over \$20,000 |
| \$50,000-\$400,000 | \$2,700.00 + 3% over \$50,000 |
| \$400,000-up | \$13,200.00 + 2% over \$400,000 |

II. TOTAL NON-PROBATE ASSETS

| | |
|--------------------|----|
| 0-\$25,000 | 3% |
| \$25,000-\$100,000 | 2% |
| \$100,000 – up | 1% |

III. EXTRAORDINARY FEES MAY BE AWARDED ON APPLICATION BASED UPON THE TIME SPENT AND SERVICES RENDERED

This schedule is merely a guide for determining fees of counsel in an ordinary estate and should be considered as neither a minimum or maximum fee schedule.

FORM A1

COMPUTATION OF ATTORNEY FEES

TOTAL PROBATE ASSETS (PER INVENTORY SALE PRICE) \$ _____

0 - \$5,000 \$300.00
\$5,000 - \$20,000 6% over \$5,000 _____
\$20,000 - \$50,000 4% over \$20,000 _____
\$50,000 - \$400,000 3% over \$50,000 _____
over \$400,000 2% _____

1. TOTAL PROBATE FEE \$ _____

TOTAL NON-PROBATE ASSETS (PER RULE 71.5)

0 - \$25,000 3% _____
\$25,000 - \$100,000 2% _____
Over \$100,000 1% _____

2. TOTAL NON-PROBATE FEE \$ _____

EXTRAORDINARY FEES (MUST BE ITEMIZED)

- 1. _____ ----- \$ _____
- 2. _____ ----- \$ _____
- 3. _____ ----- \$ _____
- 4. _____ ----- \$ _____

3. EXTRAORDINARY FEE TOTAL \$ _____

TOTAL ATTORNEY FEES (SUM OF 1, 2, 3) \$ _____

ATTORNEY FEE TAKEN ON PRIOR ACCOUNT \$ - _____

BALANCE OF ATTORNEY FEES \$ _____

Attorney's signature

Fiduciary's signature

APPENDIX B

GUARDIAN FEES

A. COMPUTATION OF GUARDIAN FEES—ANNUALLY

1. 0-\$1,000 income 4% of income (excludes income from real estate rental managed by guardian)
\$1,000 – up income 3% of income
2. 0 - \$1,000 expenses 4% of expenses
(Excludes real estate rental)
\$1,000 – up expenses 3% of expenses
3. \$3 per thousand principal
4. 8% of Gross rental property income if managed by guardian
5. Minimum fee of \$50.00 per year

ATTORNEY'S FEES

1. Attorney fees up to \$200.00 for representing a guardian subsequently appointed including the filing of an inventory and entry approving the inventory normally approved without hearing.
2. Reasonable attorney fees shall be up to \$75.00 for filing of the guardianship plus 2% of the inventory. Reasonable attorney fees for account shall be up to 2% of the income and expenses plus \$60.00 per page of accounts with a minimum of \$100.00.

APPENDIX C

TRUSTEE FEES

A. COMPUTATION OF TRUSTEE FEES—ANNUALLY

1. 0-\$1,000 income 4% of income (excludes income from real estate rental managed by trustee)
\$1,000 – up income 3% of income
2. 0 - \$1,000 expenses 4% of expenses
(excludes real estate rental)
\$1,000 – up expenses 3% of expenses
3. \$3 per thousand principal
4. 8% of Gross rental property income if managed by trustee
5. Minimum fee of \$50.00 per year

ATTORNEY'S FEES

1. Attorney fees up to \$200.00 for representing a trustee subsequently appointed including the filing of an inventory and entry approving the inventory normally approved without hearing.
2. Reasonable attorney fees shall be up to \$75.00 for filing of the guardianship plus 2% of the inventory. Reasonable attorney fees for account shall be up to 2% of the income and expenses plus \$60.00 per page of accounts with a minimum of \$100.00.