

ASHLAND COUNTY PROBATE COURT  
ASHLAND, OHIO

# **LOCAL COURT RULES**

EFFECTIVE: FEBRUARY 1, 2013

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## **LOCAL FORMS**

Fiduciary Acceptance

Fee Computation Forms

## GENERAL RULES

### **I. AUTHORITY**

The following Rules have been adopted by the Ashland County Court of Common Pleas, Probate Division, pursuant to Article IV, Section 5(B) of the Ohio Constitution and Rule 5 of the Ohio Supreme Court Rules of Superintendence for the Courts of Common Pleas.

### **II. CITATION**

These Rules will be cited as Ashland County Probate Local Rule \_\_\_\_\_.

### **III. PROBATE LOCAL RULE NUMBERING**

The Ohio Superintendence Rule 75 on Local Rules of Probate Court states as follows:

"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. 61 shall be designated Ashland County Probate Rule 61.1."

Therefore, these Rules shall be read in conjunction with and as a supplement to the Ohio Rules of Superintendence of the Courts of Ohio.

### **IV. APPLICATION**

These Rules apply only to the Probate Division of the Ashland County Court of Common Pleas.

### **V. APPLICATION OF THE RULES OF CIVIL PROCEDURE TO THE PROBATE COURT**

The Ohio Rules of Civil Procedure shall apply to proceedings in the Ashland County Probate Court as applicable. The following Rules are incorporated by reference as if fully rewritten herein: Civil Rule 1, Scope of the Rules; Rule 73(A) Applicability; Rule 73(B) Venue; Rule 73(C) Service of Summons; Rule 73(D) Service and Filing of Pleadings Subsequent of Original Pleadings; Rule 73(E) through (G) Service of Notice; Rule 73(H) Forms Used in Probate Practice; Rule 73(I) Notice of Filing of Judgments.

### **VI. JURIES**

In cases where a right of trial by jury is specified, the Ashland County Court of Common Pleas, Probate Division, will participate in the jury system established, administered and operated by the Ashland County Court of Common Pleas, General Division.

## **SUP.R. 8 COURT APPOINTMENTS**

### **LOCAL RULE 8.1 - APPOINTMENTS**

Persons appointed by the Court to serve as appraisers, fiduciaries, attorneys, and guardians ad litem shall be selected by the Court.

Appointments shall be made taking into consideration the qualifications, skills, and expertise of the appointee in addition to the type, complexity, and requirements of the case.

Court appointees will be paid a reasonable fee with consideration given to the factors contained in Professional Conduct Rule 1.5, the Ohio Revised Code, and the Local Rules relating to fees.

If potential appointees are unknown to the Court, then the Court may request additional information, including credentials of the potential appointee, before making the appointment.

## **SUP.R. 9 SECURITY**

### **LOCAL RULE 9.1 - SECURITY**

Reserved

### **LOCAL RULE 9.2 - WEAPONS**

No weapons are permitted in the Court facility except those carried by sworn law enforcement officers and court security officers certified through the Ohio Peace Officers Training Council.

## **SUP.R. 11 RECORDING OF PROCEEDINGS**

### **LOCAL RULE 11.1 - RECORDING OF PROCEEDINGS**

The Court will make an audio recording of the proceedings as the record of the Court unless a stenographic record is requested. Parties who desire to have a stenographic record of the proceedings must make their own arrangements for a court reporter at least twenty-four hours prior to the scheduled hearing. The requesting party shall pay the cost of the stenographic record unless otherwise ordered by the Court.

Any interested person may request that an audio recording be transcribed by a stenographer approved by the Court. The person making the request shall pay the cost of the transcription.

The Court's original audio recording of the proceedings will not be made available to the parties. The Court will make a copy of the audio recording upon request by an interested person. Arrangements must be made with the Court to have recordings copied at a cost of Five Dollars (\$5.00) per application unless that fee is waived by the Court. Original audio recordings shall not be removed from the Court except upon special exception made by the Court.

As the Court now uses digital equipment for the audio recording of proceedings the audio shall be maintained by the Court.

### **SUP.R. 15 ARBITRATION**

#### **LOCAL RULE 15.1 - ARBITRATION/MEDIATION**

The Court may, at its discretion, refer a case or any issue to arbitration or to mediation.

### **SUP.R. 26 COURT RECORDS MANAGEMENT AND RETENTION**

#### **LOCAL RULE 26.1 - COURT RECORDS MANAGEMENT AND RETENTION**

Reserved

### **SUP.R. 45 COURT RECORDS-PUBLIC ACCESS**

#### **LOCAL RULE 45.1 - OMISSION OF PERSONAL IDENTIFIERS**

When submitting a case document to the Court or filing a case document with the Clerk of Court, a party to a judicial action or proceeding shall omit personal identifiers from the document pursuant to Sup.R. 45.

Personal identifiers mean Social Security Numbers, except the last four (4) digits; financial account numbers, including, but not limited to, debit card, charge card and credit card numbers; and employer and employee identification numbers.

When personal identifiers are omitted from a case document filed with this Court the party shall submit or file that information on a separate form.

The responsibility for omitting personal identifiers from a case document submitted to the Court or filed with the Clerk of Court shall rest solely with the party. The Court or the Clerk

shall not be required to review the documents to confirm that the party has omitted personal identifiers, and shall not refuse to accept or file a document on that basis.

### **SUP.R. 51 STANDARD PROBATE FORMS**

#### **LOCAL RULE 51.1 - STANDARD PROBATE FORMS**

Approved forms for use in the Ashland County Probate Court will be available at the Court Clerk's office in paper form.

### **SUP.R. 52 SPECIFICATIONS FOR PRINTING PROBATE FORMS**

#### **LOCAL RULE 52.1 - COMPUTERIZED FORMS**

Computer generated forms must comply with the specifications and form outlined by the Rules of Superintendence. The signature of the applicant or attorney constitutes a certification that the computer generated forms comply with these Rules.

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

### **SUP.R. 53 HOURS OF THE COURT**

#### **LOCAL RULE 53.1 - HOURS OF THE COURT**

The Probate Court shall be open for the transaction of business from 8:00 A.M. to 4:00 P.M., Monday through Friday, except holidays. All pleadings requiring a new case number or the payment of court costs shall be filed by 4:00 P.M.

### **SUP.R. 55 EXAMINATION OF PROBATE RECORDS**

#### **LOCAL RULE 55.1**

Court records shall not be removed from the Court.

Copies of any public records may be obtained from the Court at a per page cost established by the Court. Court personnel may assist the public in operating court copying equipment.

## **SUP.R. 57 FILINGS AND JUDGMENT ENTRIES**

### **LOCAL RULE 57.1**

The Court will not accept filings by facsimile transmission or electronic mail, except by permission of the Judge.

### **LOCAL RULE 57.2**

When required on a Court document, an attorney or fiduciary address must be a street address and, if applicable, any post office box numbers used as a mailing address. The address of the fiduciary who is not an attorney at law must be the fiduciary's legal residence. A fiduciary who is an attorney at law may use an office address.

### **LOCAL RULE 57.3 - CASE NUMBER**

All filings, including attachments, must have the case number on each sheet.

### **LOCAL RULE 57.4 - ORIGINAL SIGNATURES**

All filings must contain original signatures. In all matters with multiple fiduciaries, the signature of all fiduciaries is required. Persons who are not an attorney may not sign on behalf of an attorney.

### **LOCAL RULE 57.5 - FIDUCIARY SIGNATURE**

Any pleading, filing or other document, that by law or rule, requires the fiduciary's signature shall have the original signature of the fiduciary. The attorney for the fiduciary may not sign for the fiduciary. When co-fiduciaries have been appointed, each fiduciary must sign the filing or the filing must explain the reason for the absence of a co-fiduciary's signature and the efforts made to obtain it.

### **LOCAL RULE 57.6 - COURT FILINGS**

All filings must be legible, on 8-1/2" x 11" paper, and the type size for the body of the document shall be not less than ten (10) point or greater than twelve (12) point. The Court will accept for filing only those pleadings which are complete and without cross-outs. All pleadings, motions or other filings shall be typed or legibly printed in black or blue ink and correctly captioned.

### **LOCAL RULE 57.7 - FORWARDING COPIES**

The Court will return file-stamped copies by mail if they are submitted with a return, self-addressed, stamped envelope with sufficient postage to cover the postage cost.

**LOCAL RULE 57.8 - ISSUANCE OF SUMMONS**

In any proceeding requiring the issuance of Summons or Notice directed to be given by the Court, the attorney or party shall file written instructions for service with the Court, accompanied by sufficient copies of all filings to be served.

**LOCAL RULE 57.9 - EXHIBITS**

All Exhibits offered for admission during a hearing or trial shall be labeled by party name and item identification by the offering party, counsel or the Court. In a proceeding recorded by a court stenographer, custody of Exhibits admitted or proffered shall be given to the stenographer unless otherwise ordered by the Court. If the proceedings are electronically recorded, Exhibits shall be filed in the Court case file unless otherwise ordered by the Court.

Upon agreement of the parties or by Order of the Court, a copy may be submitted for an original Exhibit.

Disposal of Exhibits shall be pursuant to Sup.R. 26.

**LOCAL RULE 57.10 - ENTRY OF JUDGMENT**

Any proposed Judgment Entry submitted to the Court which is subject to Civil Rule 58(B), as modified by Civil Rule 73(I), shall contain a Certificate of Service, including the names and addresses of all parties and other interested persons required to be served.

**LOCAL RULE 57.11 - LENGTH OF BRIEFS**

Memoranda and Briefs shall not exceed twenty (20) pages, exclusive of any supporting documents. Briefs or Memoranda exceeding twenty (20) pages will not be accepted for filing without prior leave of Court.

**LOCAL RULE 57.12 - SUBMISSION OF PROPOSED JUDGMENT ENTRY**

A proposed Judgment Entry shall be submitted with each Motion filed with the Court.

**SUP.R. 58 DEPOSIT FOR COURT COSTS**

**LOCAL RULE 58.1**

The Court will accept cash, checks, money orders, cashier's checks, attorney checks, title company or fiduciary checks. The Court does not accept debit cards or credit cards. All deposits for Court proceedings shall be in accordance with the Court's deposit fee and/or cost schedule.

**LOCAL RULE 58.2 - RELEASE OF ADOPTION INFORMATION**

The fee for filing a Petition for release of adoption information pursuant to Section 2101.16(F), Ohio Revised Code, shall be \$50.00.

**ASHLAND PROBATE LOCAL RULE 58.3 - WITNESS FEES**

Witness fees may be requested at the conclusion of the hearing for which the subpoena was issued. If not requested at that time, the fees are presumed to have been waived. All unpaid witness fees will be refunded to the depositor.

**LOCAL RULE 58.4 - INSUFFICIENCY OF COST DEPOSIT**

If the cost deposit is inadequate to cover the cost or fee for any filing, the filing may not be accepted by the Court without payment of the appropriate filing cost or fee. The Court may, in its discretion, require an additional cost deposit in any matter at any time.

**SUP.R. 59 WILLS**

**LOCAL RULE 59.1**

Reserved

**SUP.R. 60 APPLICATION FOR LETTERS OF AUTHORITY**

**LOCAL RULE 60.1 - FIDUCIARY'S ACCEPTANCE**

All executors and administrators shall personally sign the Fiduciary's Acceptance (Local Form) prior to the issuance of the Letters of Authority. In the event there are multiple fiduciaries, each fiduciary shall sign the Acceptance.

**LOCAL RULE 60.2 - APPOINTMENT OF NON-RESIDENT FIDUCIARIES**

A non-resident of this State requesting appointment as a fiduciary of a decedent's estate must be in compliance with Section 2109.21, Ohio Revised Code, and use as the attorney of record an attorney licensed to practice law in the State of Ohio. To assure the assets remain in the State of Ohio during the administration of the estate or trust, the applicant must meet one or more of the following criteria as the Court may require:

- (A) Place assets of an amount determined by the Court in the custody of a depository account in Ohio pursuant to Section 2109.13, Ohio Revised Code;
- (B) Have a co-fiduciary who is a resident of Ohio; or
- (C) Post a bond in compliance with Section 2109.04, Ohio Revised Code.

### **LOCAL RULE 60.3 - CALCULATION OF EXECUTOR/ADMINISTRATOR COMPENSATION**

Unless otherwise approved by the Court, compensation shall not be paid to the Executor or Administrator of an estate until the Final Account is prepared for filing and the Court has been advised as to the basis upon which the compensation has been calculated.

### **SUP.R. 64 ACCOUNTS**

#### **LOCAL RULE 64.1 - FIDUCIARY'S SIGNATURE**

All Accounts must be personally signed by each fiduciary. If a fiduciary's signature cannot be obtained, the filing must explain the reason for the absence of the signature and the efforts made to obtain the signature. Accounts shall also contain the current residence address and telephone number of the fiduciary.

#### **LOCAL RULE 64.2 - EXTENSIONS FOR FILING AN ACCOUNT**

No expenditures, sale, distribution, compensation or fees will be approved while the fiduciary is delinquent in filing an Account.

The Court will generally grant one extension of time for the filing of an Account without a hearing unless good cause is otherwise shown.

The attorney and fiduciary shall sign any requests for an extension of time and recite any previous requests for an extension.

Requests for extension of time shall be filed within the time period for the filing of the Account.

### **LOCAL RULE 64.3 - VOUCHERS**

If required by statute or by Court Order, original vouchers or other proofs or receipts are to be displayed when filing Accounts.

### **LOCAL RULE 64.4 - BOND**

An Account will not be accepted for filing unless the bond, when required, is sufficient to cover twice the sum of the value of the personal property and one (1) year's projected income.

### **LOCAL RULE 64.5 - EVIDENCE OF ASSETS**

The Court requires that assets be exhibited at the time of filing a Partial Account. In lieu thereof, a bank certificate or other original writing from a depository or brokerage firm reflecting the amount on deposit may be exhibited to the Court.

### **LOCAL RULE 64.6 - TIME FOR FILING**

When determining the timing for the filing of Accounts for estates, guardianships or trusts, the following shall apply:

- (A) For decedent's estates, the filing of the Final and Distributive Account due within six (6) months after appointment of a fiduciary may be extended to thirteen (13) months by filing an Application and Entry to Extend Administration. All subsequent Accounts must be filed on an annual basis unless the Court orders otherwise. If Accounts are not filed in compliance with this Rule, the fiduciary and counsel shall be subject to citation.
- (B) For guardianships, the first Account shall be filed not later than one (1) year following the appointment of the fiduciary. All subsequent Accounts shall be filed on an annual basis unless otherwise ordered by the Court or filed sooner by the fiduciary.
- (C) For trusts, the first Account shall be filed not later than one (1) year following the date of the appointment of the fiduciary. All subsequent Accounts shall be filed on an annual basis unless otherwise ordered by the Court or filed sooner by the fiduciary.

### **LOCAL RULE 64.7 - HEARING, CERTIFICATE OF NOTICE AND SERVICE, AND METHOD OF SERVICE**

When determining the methods for the giving of a copy of an Account or the notice relating to the hearing thereon and the proof required by the Court, the following shall apply:

- (A) Every Account shall be set for hearing. A copy of every Account and Notice of Hearing shall be served by the fiduciary upon every heir, beneficiary, interested party and such other persons as the Court may designate.
- (B) The Court directs that service of Notice of Hearing on Account, in addition to any other methods provided in Civ.R. 72(E)(6), may be served by written notice mailed by ordinary U.S. Mail, postage prepaid, and evidenced by a U.S. Postal Service Certificate of Mailing bearing a postmark. If the mailing is returned undeliverable, then the service shall be deemed incomplete and the fiduciary shall complete service in another authorized manner.
- (C) The fiduciary must file a Certificate of Service of Account and must file either a signed Waiver of Notice of Hearing on Account or proof of service notice, for each heir, beneficiary, interested party and any other person designated by the Court unless otherwise provided in these Rules.

### **SUP.R. 65 LAND SALES**

#### **LOCAL RULE 65.1 - LAND SALES**

In every land sale proceeding the Plaintiff shall file at the time of the filing of the Complaint a Certificate of Title.

#### **LOCAL RULE 65.2 - GUARDIAN AD LITEM**

The Court shall appoint a Guardian Ad Litem in land sale proceedings where appropriate. A minimum fee of \$100.00 shall be assessed as costs for each Guardian Ad Litem appointed unless the circumstances warrant the payment of additional fees, subject to Court approval. In all other proceedings the amount of the Guardian Ad Litem fees will be determined upon motion supported by a statement of services. The Guardian Ad Litem fees may be assessed as costs.

### **SUP.R. 66 GUARDIANSHIPS**

#### **LOCAL RULE 66.1 - GUARDIANSHIP OF MINORS**

In cases of appointment of a Guardian of a minor the following apply:

- (A) A certified copy of the minor's birth certificate must be filed with the Guardian's Application.
- (B) The Court will not establish guardianship for school purposes only.

- (C) The Court will not establish any guardianship over the person of a minor where another Court has jurisdiction over custody of the minor.
- (D) Minors who are not U.S. citizens or resident aliens are not considered by this Court to be residents or have legal settlement as set forth in Section 2111.02(A), Ohio Revised Code.
- (E) A background check (BCI&I and FBI) shall be completed on the proposed Guardian as well as all adults living in the home in which the minor will reside. The results of the background checks shall be filed, in writing, with the Court at least ten (10) days prior to the hearing on the Application for Appointment of Guardian.

#### **LOCAL RULE 66.2 - RELEASE OF FUNDS**

Funds in the name of the ward shall not be released to the Guardian without a specific Court Order.

#### **LOCAL RULE 66.3 - DEPOSIT OF WILLS**

The Guardian may deposit with the Court or the Court may require any and all Wills of the ward to be deposited for safekeeping pursuant to Section 2107.07, Ohio Revised Code.

#### **LOCAL RULE 66.4 - CHANGE OF ADDRESS**

The Guardian appointed by this Court shall inform the Court as to any change of address of the Guardian or the ward. This notification must be made within thirty (30) days of the address change.

#### **LOCAL RULE 66.5 - GUARDIAN'S REPORT**

The Guardian of the person shall file the Guardian's Report. If there is only a Guardian of the estate, the Guardian's Report must be filed by this Guardian.

All Guardian's Reports for an incompetent must be accompanied by a Statement of Expert Evaluation.

#### **LOCAL RULE 66.6 - TERMINATION**

Applications to terminate a guardianship of a minor require notice to all persons designated in Section 2111.04, Ohio Revised Code, and any other individuals who received actual notice of the original appointment of the Guardian. It is the responsibility of the Applicant to perfect service and to file a Certificate of Service with evidence satisfactory to the Court.

**SUP.R. 67 ESTATES OF MINORS OF NOT MORE THAN \$10,000.00**

**LOCAL RULE 67.1**

Applications to dispense with the appointment of a Guardian under Section 2111.05 or 2111.131 of the Ohio Revised Code shall follow the notice provision of Section 2111.04(A) of the Ohio Revised Code.

**LOCAL RULE 67.2 - BIRTH CERTIFICATE**

A certified copy of the minor's birth certificate must be presented to the Court upon the filing of the Application to dispense with the guardianship.

**LOCAL RULE 67.3**

Pursuant to Sup.R. 67(C), in the absence of a Guardian for the estate of a minor, the attorney representing the Applicant or the payor in the matter shall acknowledge responsibility for depositing the funds and providing the financial institution with a copy of the Entry directing the deposit. The attorney shall obtain a Verification of Receipt and Deposit from the financial institution and file the form with the Court within thirty (30) days of the issuance of the Entry.

**SUP.R. 68 SETTLEMENT OF INJURY CLAIMS OF MINORS**

**LOCAL RULE 68.1 - BIRTH CERTIFICATE**

A certified copy of the minor's birth certificate must be presented to the Court upon the filing of the Application to settle a minor's claim.

**LOCAL RULE 68.2**

The attorney representing the minor prior to bringing the clients to Court to settle a minor's claim may request a settlement conference with the Court. The Court, under those circumstances, will conduct a settlement conference and the matter will be set for hearing at that time.

**LOCAL RULE 68.3 - SEPARATE CASE NUMBER**

Settlements of a minor's claim are separate proceedings in this Court and shall proceed under the supplemental case number assigned and shall not proceed under the case number assigned to the guardianship, if any.

**LOCAL RULE 68.4 - STRUCTURED SETTLEMENTS**

In the event that parties involved in claims for injuries to minors or incompetents desire to enter into a structured settlement, defined as a settlement wherein payments are made on a periodic basis, the following rules shall apply:

- (A) The Application shall include a signed statement from one of the following independent professionals specifying the present value of the settlement and the method of calculation of that value: an actuary, certified public accountant, certified financial planner, chartered life underwriter, chartered financial consultant, or an equivalent professional.
- (B) If the settlement is to be funded by an annuity, the Application shall include a signed statement by the annuity carrier or the broker procuring the policy stating:
  - (1) The annuity carrier is licensed to write annuities in Ohio.
  - (2) The annuity carrier's ratings from at least two of the following organizations, which meet the following criteria:
    - a. A.M. Best Company: A++, A+, or A
    - b. Duff & Phelps Credit Rating Company (Claims Paying Ability Rating): AAA, AA+, or AA
    - c. Moody's Investors Service (Financial Strength): Aaa, Aa1, or Aa2
    - d. Standard & Poor's Corporation (Financial Strength): AAA, AA+, or AA
    - e. Weiss Research Inc.: A+ or A
- (C) In addition to the requirements of Paragraph (B) above, an annuity carrier must meet any other requirements that the Court considers reasonably necessary to assure that the funding is sufficient to satisfy the periodic payment settlement.
- (D) If the structured settlement is not intended to be funded by an annuity, the settlement must be secured to the satisfaction of the Court.

**SUP.R. 70 SETTLEMENT OF WRONGFUL DEATH AND SURVIVAL CLAIMS**

**LOCAL RULE 70.1**

The Application to settle a claim for wrongful death and the apportionment of the proceeds are two distinct matters for which the Court may require separate hearings.

### **LOCAL RULE 70.2 - SETTLEMENT CONFERENCE**

An attorney involved in a wrongful death claim prior to bringing the clients to Court to settle the wrongful death and survival claims may request a settlement conference with the Court to discuss the settlement with the Court. If such a request is made, the Court will schedule a settlement conference and the matter will be set for hearing at that conference.

### **SUP.R. 71 COUNSEL FEES**

#### **LOCAL RULE 71.1 - ATTORNEY FEES**

- (A) Attorneys are expected to be familiar with Professional Conduct Rule 1.5 of the Code of Professional Responsibility that governs the reasonableness of fees. Upon review of the records the Court may set the fees for hearing, regardless of the submission of consents to fees.
- (B) When an attorney has been employed in the administration of a decedent's estate, reasonable attorney fees shall be paid from the estate by the fiduciary as part of the expenses of administration.
- (C) In determining whether the amount of attorney fees charged is reasonable, the Court will be guided by the Ohio Code of Professional Responsibility, Professional Conduct Rule 1.5 (fees for legal services), and the Local Rule.
- (D) The payment between that attorney and the fiduciary is a contractual relationship between them. The attorney and the fiduciary may determine the method by which the attorney will be paid. If the fiduciary agrees, the attorney may utilize a fee computation schedule approved by the Court. Provided, however, that the attorney shall also inform the fiduciary of the possibility that fees may be determined at an hourly rate.
- (E) Although the attorney and fiduciary may reach an agreement relevant to payment of attorney fees, the Court still holds the ultimate authority as to the granting of the payment of the fees. If an attorney requests payment of attorney fees prior to the preparation of the Final Account, an Application must be filed with the Court and may be granted only upon a showing of good cause. A hearing on that Application may be waived by the Court. In general, attorney fees for the administration of an estate shall not be paid until the Final Account is prepared for filing unless otherwise approved by the Court as noted.

- (F) The Court may set a hearing on any Applications for allowance of attorney fees regardless of the fact that the required consents of the beneficiaries have been given.
- (G) Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing an Account.
- (H) If a hearing is scheduled on an Application for allowance of attorney fees, notice shall be given to all parties affected by the payment of the fees.
- (I) The Court does not have nor does it recognize any minimum or maximum fees which will automatically be approved by the Court.

#### **LOCAL RULE 71.2 - ATTORNEYS SERVING AS FIDUCIARY**

In all matters where an attorney is the fiduciary of the estate, guardianship or trust, and that attorney or another attorney is the attorney of record, detailed records shall be maintained describing time and services, as fiduciary and attorney, which records shall, upon request, be submitted to the Court for review. Professional Conduct Rule 1.5 of the Code of Professional Responsibility shall govern the reasonableness of all fees, notwithstanding statutory commissions and allowances. The Court assumes an attorney appointed as fiduciary has been selected due to the attorney's special knowledge and abilities, which it is expected will result in savings and fees to the estate, guardianship or trust.

#### **LOCAL RULE 71.3 - EARLY PAYMENT OF ATTORNEY FEES**

Attorney fees for the administration of decedent's estate shall not be paid or advanced from any source until the Final Account or final closing documents are prepared for filing unless otherwise approved by the Court upon application. An Application for early payment shall contain a statement that the fee is being requested in advance of the time permitted by Sup.R. 71(B) and shall set forth the reason for the request. The Application shall be accompanied by a consent as to the amount and the timing of the fees by all beneficiaries who have yet to receive their complete distribution or shall be set for hearing, with notice to the non-consenting beneficiaries.

#### **LOCAL RULE 71.4 - ATTORNEY FEES IN ESTATES**

Application for attorney fees in estates made at the time of the filing of the Final Account shall include a statement of the amount of the fees.

Fees not in excess of those computed in accordance with the attached schedule are presumed reasonable. However, they are still subject to review by the Court and subject to

hearing if the Court determines a hearing to be necessary. Fees in excess of those computed in accordance with this Rule shall be set for hearing.

If fees have been calculated on an hourly basis, then the attorney shall submit a statement of the amount of fees, which includes a statement of legal services rendered, the time expended, and the hourly rate charged.

#### **LOCAL RULE 71.5 - ATTORNEY FEES IN SUMMARY RELEASES**

A Summary Release from Administration shall not be considered a full administration of an estate and, therefore, the Local Rules regarding attorney fees in administration of estates do not apply in their entirety. Rather, in Summary Release proceedings attorneys shall be paid fees based upon the legal services rendered and the time expended to complete those legal services. The attorney shall submit to the Court a written itemization of legal services rendered and the time expended to complete those services along with a request for approval of attorney fees. In most cases the Court will enter an Order approving attorney fees requested. However, the Court may set the matter for hearing at its discretion.

#### **LOCAL RULE 71.6 - ATTORNEY FEES IN RELIEF OF ESTATE FROM ADMINISTRATION**

Relief from Administration proceedings shall not be considered as full administration of an estate and, therefore, the Local Rules regarding attorney fees for the administration of estates do not apply in their entirety. Rather, in Relief of Estate from Administration proceedings attorneys shall be paid fees based upon the legal services rendered and the time expended to complete those legal services. The attorney shall submit to the Court a written itemization of legal services rendered and the time expended to complete those services along with a request for approval of attorney fees. In most cases the Court will enter an Order approving attorney fees requested. However, the Court may set the matter for hearing at its discretion.

#### **LOCAL RULE 71.7 - ATTORNEY FEES IN GUARDIANSHIPS**

In guardianships, the Court shall consider Applications for attorney fees relating to the establishment of the guardianship upon the filing of the inventory. Thereafter, the Court shall consider additional fees on an annual basis or upon the filing of each Account. Notice of the Application shall be given to the Guardian of the estate, if any has been appointed. The Guardian of the estate may waive notice of the hearing on the Application and consent to the payment of fees.

After the death of the ward, the Court will consider attorney fees and guardian fees as liens on the ward's assets. If the fees are approved by the Court, the fees may be paid out of the guardianship assets and included in the final guardianship Account.

The Court may require notice of the hearing on the fees to be given to the estate fiduciary of the deceased ward or other interested persons.

### **LOCAL RULE 71.8**

In the administration of trusts, the Court shall consider Applications for attorney fees for the establishment of the trust upon the filing of the inventory and shall consider additional fees annually upon the filing of each Account.

Notice of the Application shall be given to the trustee. The trustee may waive notice of hearing on the Application and consent to the payment of fees. The Court may require notice of hearing on the payment of fees to be given to the trust beneficiaries who are affected by the payment of fees.

### **LOCAL RULE 71.9 - CONTESTED FEES**

If attorney fees are contested, the burden is upon the attorney to prove the reasonableness of the fee as governed by Professional Conduct Rule 1.5. A detailed fee statement may be required, which includes the itemization and date of services performed, time expended, identification of the individuals performing the services, the hourly rate charged, and such other information as the attorney deems relevant to the establishment of the fee.

### **LOCAL RULE 71.10 - CONTINGENT FEES**

All fiduciaries shall make application to the Court for authority to enter into a Contingent Fee Contract. Preliminary approval shall be subject to final review at the conclusion of the matter that is the subject of the Contingent Fee Agreement.

In minor settlement cases where the amount of the settlement does not require the appointment of a guardian, the attorney shall make the application to approve the Contingent Fee Agreement. Before a settlement may be approved, a guardianship must be established or dispensed with under its own case number.

If there are ancillary attorney fees and court costs associated with administering an estate, establishing a guardianship or dispensing with the appointment of a guardian for the primary purpose of settling or resolving a claim, then those ancillary fees and costs shall be paid out of the contingent fee unless otherwise allocated by the Court. The Court may allocate the payment of the fees between the contingent fee and the beneficiaries of the settlement.

**SUP.R. 73 GUARDIAN'S COMPENSATION**

**LOCAL RULE 73.1 - GUARDIAN'S COMPENSATION**

- (A) Guardian's compensation for services as guardian of the estate in non-indigent guardianships may be computed annually upon application and entry and shall be supported by calculations and documentation, or shall be computed at the time each Account is due. Extraordinary fee applications shall be set for hearing unless the Court waives the hearing.

The following shall apply for ordinary Guardian's compensation:

- (1) An amount equal to three per cent (3%) on all amounts of income, plus an amount equal to three per cent (3%) on all amounts expended during the accounting period. Investments and re-investments of funds shall not be considered as income or expenses in applying this formula nor shall a final distribution of unexpended balances to the ward or the ward's personal representative at the expiration of the guardianship be considered as expenses in applying this formula, nor shall balances carried forward from one accounting period to another be considered as income or expenses in applying this formula.
  - (2) An amount equal to one per cent (1%) of the fair market value of the final distribution of unexpended balances to the ward or the ward's personal representative at the expiration of the guardianship.
  - (3) Allowance for fees in excess of the above schedule shall be granted only upon written application of the Guardian and for good cause shown. The Court may schedule a hearing on any such application.
- (B) Compensation for services as Guardian of the person only shall be set for hearing unless the hearing is waived by the Court. Notice of the hearing shall be given to the Guardian of the estate if any has been appointed.
- (C) Except for good cause shown, neither compensation for a Guardian nor fees to counsel representing the Guardian will be allowed while the Guardian is delinquent in the filing of an account.
- (D) After death of the ward, the Court will consider the Guardian's compensation as a lien on the ward's assets. If the Court approves the compensation, the compensation may be paid out of the guardianship assets and included in the final guardianship Account.

**LOCAL RULE 73.2 - GUARDIAN'S COMPENSATION IN INDIGENT GUARDIANSHIPS**

In guardianship cases where the ward has been declared indigent by the Court, compensation for attorneys appointed as Guardians shall be computed as follows: One Hundred Dollars (\$100.00) per hour compensation for both in-court services rendered by the attorney/guardian and the same for out-of-court services rendered by the attorney/guardian. In appropriate cases, an attorney/guardian may request extraordinary fees by application setting forth the amount and the reason for the request. The Court shall set a hearing on such a request.

**SUP.R. 74 TRUSTEE'S COMPENSATION**

**LOCAL RULE 74.1 - TRUSTEE'S COMPENSATION**

Except where the instrument creating the trust makes provisions for compensation, trustees subject to this Court's jurisdiction may be allowed compensation annually for ordinary services rendered in connection with the administration of each separate trust. The computation shall be submitted to the Court and shall be supported by calculations and documentation. Extraordinary fee applications shall be set for hearing unless the Court waives hearing. The trustee's ordinary computation shall be calculated using the following schedule:

1. Income Fee

- A. Six per cent (6%) of the first \$10,000 of gross income earned during the accounting period.
- B. Five per cent (5%) of the gross income earned during the accounting period in excess of \$10,000.
- C. Investments and reinvestment of funds shall not be considered as income in applying this formula nor shall balances carried forward from one year to another shall be considered as income in applying this formula.

2. Principal Fee

- A. \$4.00 per thousand per year on the first \$100,000 of principal; \$3.00 per thousand per year on the balance of the principal, which shall be chargeable to the principal. Principal compensation may be taken every three months for said three months only based on fair market value at the end of the three months, or may be taken each year at the end of the year based upon fair market value at the end of the year.

**SUPPLEMENTAL RULE - LAND SALES**

## **LOCAL RULE - LAND SALE PROCEEDINGS**

Attorney fees for services in land sale proceedings in a decedent's estate, guardianship or trusts shall be computed separately from other fees for services rendered in the administration of those proceedings. Said fees may be computed upon the gross proceeds of sale at five per cent (5%) and shall be paid, after allowance by the Court, in the land sale proceedings as an expense thereof.

The provisions of this Rule notwithstanding all attorney fees in land sale proceedings must be approved by the Court and may be set for hearing upon Order of the Court.

Fees for the fiduciary in land sale proceedings shall be governed by the applicable statute and/or these Local Rules in regards to fees to executors, administrators, guardians and/or trustees.

## **SUP.R. 75 LOCAL RULES**

### **LOCAL RULE 75.1 - GUARDIAN AD LITEM**

The Court shall select and appoint each Guardian Ad Litem. Guardian Ad Litem fees may be assessed as costs or in the discretion of the Court may be allocated to any party.

### **LOCAL RULE 75.2 - ADOPTIONS**

When proceedings for adoptions are filed with the Court, the following shall apply:

- (A) All Petitioners for adoption are required to be represented by an attorney except for refinalization of foreign adoptions and adult adoptions.
- (B) An original and a copy of all Petitions and filings shall be filed with every adoption case. Additional copies shall be submitted as required for purposes of service.
- (C) In private placement adoptions, a preplacement application shall be filed by the proposed adopting parents not less than fifteen (15) days prior to the placement.
- (D) Once the preplacement application has been approved by the Court and the child is born, a hearing shall be held not less than seventy-two (72) hours after the birth or after the birth parents have met with the adoption assessor, whichever occurs later, for the placement and consent by the birth parents. Prior to the placement hearing the Court shall be supplied with a statement from the child's physician as to the medical condition of the child to be placed. If the placement is approved,

the adoption Petition must be filed before the Court will issue a hospital release for the release of the child to the Petitioner or the attorney for the Petitioners.

- (E) When the Petitioner is the Guardian of the minor to be adopted the Court shall require a placement hearing. The adoption Petition shall not be set for hearing until after the placement is complete.
- (F) In all adoption cases, court costs shall be paid at the time of the filing. The Court may be consulted in advance for current deposit information.
- (G) The criminal background checks required pursuant to Section 2151.86, Ohio Revised Code, and Petitioner's accounts shall be filed in all cases.
- (H) In all adoptions, married Petitioners must be married for not less than one (1) year prior to the final approval of the adoption.
- (I) In all placement hearings where a birth parent of a child to be adopted is a minor, the birth parent shall be represented by an attorney. The fees for the attorney for the birth parent may be assessed as costs to the Petitioner.
- (J) The adoption assessor's report shall be filed with the Court not later than ten (10) days prior to the adoption hearing. The report shall be made available to counsel for the Petitioner upon request.

### **LOCAL RULE 75.3 - SURETY BONDS**

- (A) Attorneys shall not act as sureties in any case nor shall they be permitted to become sureties on the bond of any fiduciary.
- (B) The Court will not accept any personal sureties except upon specific Order of the Court.
- (C) Bond required by law or Court Order shall be in an amount not less than double the probable value of the personal estate and all sources of income during the accounting period.
- (D) All bond premiums shall be paid by the fiduciary upon receipt of the bill for the bond premium. Proceedings shall remain open until the fiduciary has accounted for the payment of the bond premium. Should payment not be made pursuant to this Rule, the fiduciary may be held personally liable for its payment.

#### **LOCAL RULE 75.4 - RELEASES OF ESTATE FROM ADMINISTRATION**

- (A) The Court will approve and appoint Commissioners when required in estates released from administration.
- (B) The Court may waive a noticed hearing in those instances where it appears no beneficiaries or creditors will be prejudiced.
- (C) Any Applicant who is not represented by counsel, at the request of the clerk, shall exhibit photo identification and proof of a current address in a manner satisfactory to the Court.

#### **LOCAL RULE 75.5 - WILLS DEPOSITED FOR SAFEKEEPING**

Any person placing a Will on deposit in the Court shall sign a written statement acknowledging the Will is being placed on deposit at the request of the testator or Guardian of the testator and identify the testator's current address and telephone number.

After the testator's death, Wills deposited for safekeeping pursuant to Section 2107.07, Ohio Revised Code, shall only be released to a Court of probate jurisdiction.

#### **LOCAL RULE 75.6 - WILLS IN A SAFE DEPOSIT BOX**

When a decedent has a safe deposit box for which there is no authorized living signatory, and if there has not been a personal representative appointed for the decedent, then the Court, upon application, may appoint a suitable person as a Commissioner for the sole purpose of entering the safe deposit box, to remove and deliver the decedent's Wills and Codicils to the Court.

#### **LOCAL RULE 75.7 - MARRIAGE LICENSE APPLICANTS**

Any applicant for a marriage license who is a minor must provide proof of having received a minimum of three (3) hours of marriage counseling prior to the issuance of the license. Counseling may be provided by either clergy or a person licensed to provide counseling. Proof of counseling may be in the form of a letter from the provider.

#### **LOCAL RULE 75.8 - DUTIES OF DEPUTY CLERKS AND LEGAL ADVICE**

Deputy Clerks shall endeavor to assist counsel and individuals as permitted by law and the Rules of the Court. However, Deputy Clerks shall not provide legal advice as such is prohibited by law.

#### **SUP.R. 78 CASE MANAGEMENT IN DECEDENTS ESTATES,**

## GUARDIANSHIPS AND TRUSTS

### LOCAL RULE 78.1 - WITHDRAWAL OF COUNSEL

- (A) An attorney desiring to withdraw shall file an Application to withdraw, stating the reasons for the withdrawal. The Application shall contain the last known address and telephone number of the client. The Application shall be accompanied by either a written acknowledgement and consent to the withdrawal signed by the client, or reasons stating why that is not possible. The Court shall not issue an Entry approving the withdrawal until the attorney has filed a Certification that all of the following conditions have been met:
  - (1) Notice has been given to the client advising the client of all filing deadlines affecting the client;
  - (2) Notice has been given to all involved attorneys, unrepresented parties, and interested persons; and
  - (3) Notice has been given to any bonding agency involved.
- (B) Substitution of counsel does not require approval of the Court, however, written notice shall be filed with the Court. The substituting counsel shall give notice to all involved attorneys, unrepresented parties, and interested persons.

### LOCAL RULE 78.2 - INVENTORY

- (A) In lieu of the appraiser signing the estate inventory the fiduciary may attach the original appraisals containing the signature of the appraiser to the inventory.
- (B) The inventory shall contain the address, legal description, and parcel number of any real estate of the decedent or ward.
- (C) The inventory will not be approved unless the bond, when required, is such an amount as required by law or by Order of the Court. A Guardian's inventory shall include the projected annual income of the ward.
- (D) Upon Application, and for good cause shown, the Court may approve the transfer of motor vehicles prior to the filing of the inventory.
- (E) The Court may, upon Application and for good cause shown, dispense with the appraisal of any estate asset comprising a part of the estate inventory. Each Application shall specifically state the reason for the request, state the proposed

valuation of the asset, indicate whether a Federal or Ohio Estate Tax Return will be filed, and contain an acknowledgement that the valuation may not be determinative for Federal or Ohio Estate and Income Tax purposes. In every case in which such an Application is made, each fiduciary, counsel of record and affected beneficiary shall sign the Application. If the Application is granted, the value stated in the Court's Order shall be the values for purposes of the estate proceedings.

- (F) When multiple fiduciaries have been appointed, all fiduciaries must sign the inventory.

### **LOCAL RULE 78.3 - REQUEST FOR JURY TRIAL**

The Local Rules of the Ashland County Common Pleas Court, General Division, as they relate to juries, shall apply to proceedings in the Probate Division, except to the extent that by their nature they would be clearly inapplicable.