

# ASHTABULA COUNTY COURT OF COMMON PLEAS PROBATE DIVISION

ALBERT S. CAMPLESE, JUDGE

LOCAL RULES OF PRACTICE AND PROCEDURE

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25 West Jefferson Street  
Jefferson, Ohio 44047  
T: 440-576-3451  
F: 440-576-3633  
[probate@ashtabulacounty.us](mailto:probate@ashtabulacounty.us)

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## **INTRODUCTION**

Pursuant to Rule 5 of the Rules of Superintendence for the Courts of Ohio, the Ashtabula County Court of Common Pleas, Probate Division (hereinafter “Ashtabula County Probate Court” or “Probate Court” or “Court”) adopts the following local rules of practice to facilitate the expeditious disposition of cases. These rules shall be read in conjunction with rules promulgated by the Supreme Court of Ohio.

As required by Rule 75 of the Rules of Superintendence for the Courts of Ohio, these local rules are numbered to correspond with the numbering of the Rules of Superintendence they are intended to supplement. The Court has determined that certain Rules of Superintendence do not require any supplementation and their omission herein is by design. The Court reserves the right to revise and amend these local rules as permitted by Sup. R. 5.

The abbreviation “SPF” used throughout these Local Rules shall mean the Ohio Supreme Court Probate Form.

## SUP. R. 5.01: LOCAL CHILD RESTRAINT RULE

### Local Rule 5.01.1 Child Restraint

(A) The Court presumes physical restraints on children shall not be utilized unless the judge or magistrate before whom the child is appearing makes an individualized determination on the record that there is no less restrictive alternative to the use of physical restraint of the child and such physical restraint is necessary because either

1. The child represents a current and significant threat to the safety of the child's self or other persons in the courtroom; or
2. There is a significant risk the child will flee the courtroom.

(B) Any party, as defined by Juv. R. 2(Y), who desires to be heard on the issue of whether the physical restraint is necessary for that particular child at that particular proceeding shall be afforded the opportunity to be heard.

(C) If physical restraint is found to be necessary, then the restraint shall be the least restrictive necessary to meet the risk requiring the restraint and shall be done in a manner that does not unnecessarily restrict the movement of the child's hands.

## SUP. R. 8: COURT APPOINTMENTS

### Local Rule 8.1 Court Appointments

Persons appointed by the Court to serve as fiduciaries, appraisers, counsel, masters, investigators, guardians *ad litem*, trustees for suit or in any other capacities, shall be selected from lists maintained by the Court. Appointments shall be made taking into consideration the qualifications, skills, and expertise of the appointee and the type and complexity of the case. Any individual interested in serving in any of the aforementioned capacities shall file their resume and any other necessary certifications with the Court for its consideration.

### Local Rule 8.2 Compensation

Persons appointed herein shall receive reasonable compensation pursuant to the Revised Code, the local rules of the Court pertaining to fees, including any fee schedule established by the Court, and Rule 1.5 of the Ohio Rules of Professional Conduct.

### Local Rule 8.3 Periodic Review

The Court shall review all appointments and the abovementioned appointment procedure periodically to ensure the equitable distribution of appointments among persons on each list maintained by the Court.

## SUP. R. 9: SECURITY PLAN

### Local Rule 9.1 Security Plan

The Court has adopted a Court security policy and procedures plan addressing the provisions of the Ohio Court Security Standards adopted by the Supreme Court of Ohio, and shall review the same from time to time.

### Local Rule 9.2 Confidentiality

Any information contained in the plan adopted under Sup. R. 9 and any information resulting from a Court security review conducted by a local court or the Supreme Court shall not be a public record.

## SUP. R. 11: RECORDING OF PROCEEDINGS

### **Local Rule 11.1 Recording of Proceedings**

(A) The Court shall make an audio recording of proceedings before the Court that shall serve as the record of the Court, unless the Court authorizes the stenographic transcription of the proceedings or unless said recording or stenographic transcription is waived by all interested parties present at the proceeding. Parties or other interested persons who desire to have the recording of the proceeding transcribed shall make written request to the Court.

(B) The Court shall maintain all electronically or digitally recorded proceedings for three years from the date of hearing. All currently existing audiotapes or digital recordings will be maintained for twelve years from the adoption of these rules. Any interested person desiring to preserve the record beyond the three-year period must make arrangements to have the record transcribed.

### **Local Rule 11.2 Stenographic Transcription**

(A) The party requesting the transcript shall be solely responsible to arrange for the preparation and payment of the full cost of the transcript charged by an Official Court Reporter upon completion. A transcript that was transcribed by a stenographer other than an Official Court Reporter and offered to the record shall be subject to Court approval.

(B) A request for transcription shall be made in writing. The Official Court Reporter shall charge the usual customary fee charged by a private reporter for services in this county for such transcription. The Court Reporter shall attach a certificate of accuracy of such transcription, and certify the required fees have been paid.

(C) A transcript filed with the Court shall supersede the digital or audio recording as the official record of the Court.

### **Local Rule 11.3 Use of Contents of Recordings**

An interested party shall not be allowed to use the contents of a recording in subsequent pleadings or in argument before the Court unless a transcript of the entire hearing is filed with the Court.

### **Local Rule 11.4 Hearing by Audio/Telephone/Video Conferencing**

(A) Upon Motion of a party, and at the Judge's discretion, any hearing may be conducted using audio, telephone, or video conferencing.

(B) Attendance by audio/telephone/video conference, if authorized by the Judge, shall comply with these Local Rules.

(C) In addition to other procedures that may be available, the testimony of a witness that is located outside of Ashtabula County may be offered by deposition or other means allowable in the Court. The Court on its own motion may order that the testimony of a witness be taken in another county, and may prescribe the manner and terms upon which it is to be taken. The Court may permit a witness located in another county to be deposed or to testify by telephone, audio conference, video conference, or other electronic means.



- (D) Provision shall be made to preserve the confidentiality of attorney-client communications and privilege in accordance with Ohio law.
- (E) A record of any proceeding conducted by video conference shall be made in the same manner as customarily recorded by the Court.
- (F) Documentary evidence transmitted from another county to the Court by technological means that does not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.
- (G) All exhibits shall be electronically transmitted to the Court and all other parties twenty-four hours prior to the hearing. Any party may ask the Court to have a document marked as an exhibit during the hearing for good cause shown within the Court's discretion. If the party offering the exhibit is in a remote location, he or she may request a recess to allow counsel to scan and email the exhibit to the Court. A clerk of the Court will print and mark the proposed exhibit. All exhibits will be retained in accordance with Loc. R. 26.2.

## **SUP. R. 16.21: LOCAL MEDIATION RULE**

### **Local Rule 16.21.1 Mediation**

- (A) The Court hereby adopts and incorporates by reference R.C. Chapter 2710 "Uniform Mediation Act" (UMA), including all definitions founds in R.C. 2710.01, by this Local Rule.
- (B) Any case before the Court may be submitted to mediation as provided by this Local Rule upon order of the Court on its own motion, upon the motion of counsel, upon the request of a party, or upon referral by a mediator. The Court may, in its sole discretion, deny any motion or request for mediation.
- (C) Mediation is prohibited in domestic violence cases pursuant to R.C. 2919.25, 2919.26, and 3113.31. If parties have either resided in a common residence or are related by blood, adoption, or marriage, and have known or alleged domestic abuse at any time prior to or during the mediation, the parties or their counsel shall disclose such information to the Ashtabula County Mediation and Conflict Management Services staff and participate in any screening required by Sup. R. 16 et seq. prior to and during the mediation sessions.
- (D) A one-time court fee of \$100.00 shall be assessed as court costs upon the case being ordered into mediation, with an additional \$50.00 assessed as court costs for any mediated case with more than three parties.
- (E) Any case ordered into mediation under this Local Rule shall be handled by Ashtabula County Mediation and Conflict Management Services, unless otherwise ordered for good cause shown. Upon order of the Court into mediation, the parties are responsible for contacting Ashtabula County Mediation and Conflict Management Services to schedule the necessary appointments.
- (F) Parties ordered into mediation shall cooperate in all matters pertaining to the mediation. The mediation process shall provide an opportunity to parties and their counsel to engage in those steps that are appropriate and helpful in settling the matters in dispute. Unless otherwise ordered, all parties, their

counsel, and, if applicable, all principal insurance adjuster(s) shall personally attend all mediation sessions, have complete authority to settle the case, and be prepared to discuss all relevant issues, including terms of settlement. A party other than a natural person must be represented by an office or authorized employee, and may also be represented by counsel.

(G) Upon ordering a case into mediation, all hearings and filing deadlines shall be held in abeyance until mediation is complete, unless otherwise ordered by the Court. Upon conclusion of a session of mediation, and in compliance with R.C. 2710.06, the Court shall be informed of the status of mediation, including whether the mediation occurred or was terminated, whether settlement was reached on none, some, or all of the issues, whether future mediation session(s) are scheduled, including the date and time, and whether further Court action is required.

(H) Mediation communications are confidential and shall not be disclosed unless all parties and the mediator consent to disclosure, except as provided in R.C. 121.22, R.C. 149.43, and in the following cases:

1. Parties may share all mediation communication with their counsel;
2. Threats of abuse or neglect of a child or adult;
3. Statements made during the mediation process to plan or hide an ongoing crime;
4. Statements made during the mediation process that reveal a felony has been committed.

Disputes regarding confidentiality shall first be addressed by the Ashtabula County Mediation and Conflict Management Services to the extent necessary for enforcement of this Local Rule.

(I) Parties, their counsel, and any other individual(s) designated by the party may accompany them to and participate in mediation. By participating in mediation, a nonparty participant (as defined by R.C. 2710.01(D)) submits to the Court's jurisdiction to the extent necessary for enforcement of this Local Rule. Any nonparty participant shall have the same rights and duties under this Local Rule as are attributed to the parties, except that no evidence privilege shall be expanded.

(J) It shall be the responsibility of any mediator participating in this Court's mediation program to meet and maintain the requisite qualifications established by the Ohio Supreme Court, including Sup. R. 16.22 and Sup. R. 16.23. It shall be the obligation of the mediator to inform the Court if the mediator no longer meets such qualifications or is otherwise disqualified from serving.

(K) The Court may impose penalties for violations of this Local Rule, including for improper disclosures, which may include sanctions, an award of counsel fees and costs, contempt, or other appropriate sanctions.

(L) The Court Administrator shall maintain resources for mediation parties, including victims and suspected victims of crime, and encourage appropriate referrals to legal counsel and other support services, such as children services, domestic violence prevention, counseling, substance abuse, and mental health services.

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

### **Local Rule 26.1 Court Records Management and Retention**

The Court maintains a Schedule of Records Retention and Disposition pursuant to Sup. R. 26.04.

### **Local Rule 26.2 Exhibits**

All exhibits offered for admission during a proceeding shall be properly labeled by party name and item identification. The custody of the exhibits offered for admission shall be given to the custody of the Court Administrative Assistant to be logged and filed unless otherwise ordered by the Court. Upon agreement of the parties and approval of the Court, copies of the exhibits may be substituted for the originals.

## **SUP. R. 45: COURT RECORDS – PUBLIC ACCESS**

### **Local Rule 45.1 Personal Identifiers**

(A) When submitting a case document to the Court or filing a case document with the Clerk of Court, a party to a Probate action or proceeding shall omit personal identifiers from the document. “Personal identifiers” means social security numbers, except for the last four digits; financial account numbers, including but not limited to debit card, charge card, and credit card numbers; and employer and employee identification numbers (Sup. R. 44(H)). When personal identifiers are omitted from a case document, the party shall submit or file the omitted information on SPF 45(D) – Confidential Disclosure of Personal Identifiers.

(B) 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 Clerk is not required to review the case document to confirm that the party has omitted personal identifiers and shall not refuse to accept or file the document on that basis. The personal identifiers shall not be disclosed as public records as provided by law.

### **Local Rule 45.2 Restricting Public Access**

(A) The Revised Code deems adoption, civil commitment, and tax documents as confidential, and the Court will not release them from Court files.

(B) Guardianship investigator reports and statements of expert evaluation filed in guardianship cases shall only be released as a public record by order of the Court for good cause shown after application or motion has been made by the requesting party.

(C) The Court shall be permitted to restrict public access to information in any case document or, if necessary, an entire case document in the manner set forth in Sup. R. 45.

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

### **Local Rule 51.1 Ohio Supreme Court Forms**

In all instances in which the Ohio Supreme Court has prescribed forms for use in probate proceedings, the applicable Supreme Court forms must be used. Supreme Court prescribed forms are available on the Ohio Supreme Court’s website.

### **Local Rule 51.2 Local Forms**

In all instances in which the Court has prescribed forms for use in probate proceedings, the applicable Ashtabula County Probate Court forms must be used. Ashtabula County Probate Court’s prescribed forms are available on the Court’s website.

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

### **Local Rule 52.1 Computer Generated Forms**

Computer generated forms must comply with the specifications and format outlined by the Rules of Superintendence of the Courts of Ohio.

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

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

The Ashtabula County Probate Court shall be open for the transaction of business from 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays. All pleadings requiring a new case number or payment of court costs shall not be accepted after 4:00 p.m. absent a demonstrated exigency.

## **SUP. R. 54: CONDUCT IN THE COURT**

### **Local Rule 54.1 Conduct in the Court**

Proper attire is required for admittance to the Court. Shorts, tank tops, halter tops, hats, bare feet, etc., are not acceptable forms of attire at any Court hearing, including hearings conducted via electronic means as indicated in Loc. R. 11.4. A violation of this rule may result in exclusion of access to the Court by the Court Administrator, Chief Deputy Clerk, Magistrate, or Judge, and/or contempt charges.

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

### **Local Rule 55.1 Removal of Records**

Records shall not be removed from the Court except when approved by order of the Court. Individual pleadings shall not be removed from any file.

### **Local Rule 55.2 Photocopies**

Copies of records may be obtained at the cost of twenty five cents (\$.25) per page. Copying of records that are confidential by law is strictly prohibited. Inspection of confidential files or files restricted from public access must be authorized by prior Court order. Payment for copies and associated search fees must be received before copies are furnished. Parties who routinely request copies through the Court may document their copies with the Clerk, and elect to pay for such copies via periodic billings.

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

### **Local Rule 57.1 Facsimile Filings**

Pursuant to Civ. R. 73(J), the Court, in its discretion, may allow facsimile filing, subject to the following provisions:

(A) All initial pleadings must be filed with the Clerk of the Court in person or by U.S. mail. Only documents subsequent to the initial filing, including pleadings, motions, exhibit and other documents may be filed with the Clerk of the Court by facsimile. The area code and number of the receiving machine is 440-576-3633. All risk associated with transmission shall be borne by the sender.

(B) All filings by facsimile shall be accompanied by a cover page that includes the following information:

1. The date of transmission;
2. The name telephone number, and facsimile number of the person transmitting the document;
3. The Case Number and caption of the case in which the document is to be filed;
4. The title of the document to be filed; and
5. The number of pages being transmitted.

(C) Any signature on documents transmitted by facsimile shall be considered that of the counsel or party that it purports to be for all purposes. If it is established the documents were transmitted without authority, the Court may order the filing stricken.

(D) The filing date of any document transmitted by facsimile shall be the time and date the document was received by the Court's facsimile machine.

(E) Any document filed by facsimile that requires a filing fee shall not be accepted for filing by the Clerk of the Court until the filing fee is paid. Such a document shall be held for a 7 day period, at which time, if no filing fee has been received, the filing will be destroyed.

(F) Papers, pleadings, and other documents that are incomplete may be refused for filing or, if filed, may be stricken.

#### **Local Rule 57.2 Electronic Transmission Filings**

(A) As used in Loc. R. 57.2:

1. "Source document" shall mean the document to be filed. The source document shall be transmitted to the Court by e-mail in PDF format ONLY. Other electronic formats will not be accepted and shall be deleted upon receipt.
2. "Original document" shall mean the e-mail copy of the source document received by the Court, and maintained as the "original" document in the Court's file. A document filed by e-mail shall be accepted as the original filing if the sender complies with all of the requirements set forth in this Local Rule. The sender need not file any source document with the Court.

(B) The following documents may NOT be filed by e-mail transmission:

1. Any pleading or document necessary to commence a proceeding for which the Court must collect an initial case deposit and/or for which the Court is required to effectuate service of summons; or
2. Any document filed by e-mail that requires a filing fee at the time of filing unless the filer has on deposit sufficient funds for the payment of costs; or
3. Any proceedings deemed confidential pursuant to Ohio law.

(C) All filings by e-mail shall include the following information:

1. Date of transmission;
2. Name, address, e-mail address, telephone number, and fax number of the sender;
3. Case number and caption of the case in which the document is to be filed;
4. Title of the document(s) to be filed; and
5. Number of pages being transmitted.

(D) The email address available for receiving filings for the Court is [probate@ashtabulacounty.us](mailto:probate@ashtabulacounty.us). This e-mail address is available twenty-four hours per day seven days per week for e-mail filings ONLY. Filings sent to any other e-mail address are not permitted under this Local Rule and will not be considered filed.

(E) An e-mail transmission may contain more than one document but may not apply to more than one case number per transmission. Motions and other filings making reference to or incorporating other documents attached to the motion or other filing as an exhibit thereof shall be considered as part of a single filing for purposes of this rule.

(F) There are no specific costs related to Electronic Filings except to the extent that the filings are taxed as costs to any case. Each page of the filing in excess of ten pages per document shall be assessed a copying charge at the rate of twenty-five cents a page.

(G) The Clerk's office is authorized to reject any electronic filing if it fails to comply with the requirements of this rule. In such an event, the Clerk's office shall notify sender of said rejection.

(H) For purposes of this rule and for entering such filings into the electronic Case Docket system, electronically transmitted documents may be received twenty-four hours per day, seven days per week. Documents will be stamped and docketed with the date received by the Probate e-mail inbox.

(I) Any signature on documents transmitted by e-mail shall be considered as that of the counsel or other person that it purports to be for all purposes. If it is established the documents were transmitted without authority, the Court may order the filing stricken.

(J) The Court shall send a delivery receipt. Once the document has been filed the Court shall confirm said filing via email by the close of business.

COMMENT: Under Civ. R. 5(E), pleadings, motions, applications and other filings may be filed with the Court by e-mail transmission subject to conditions in the rule. This Local Rule is adopted for the convenience of those filing documents with the Court but the Court does not assume any new or additional responsibilities, obligations, or liabilities by virtue of this Rule. The filer remains responsible for any requirements pertaining to time, costs, or otherwise when using this method of filing. In making copies, the Court will attempt to keep necessary copying of attachments to a minimum to reduce expenses for parties. This Local Rule pertains only to the method of filing and does not change any other requirements in the Local Rules, Civil Rules, or Ohio Revised Code including obtaining the consent of parties or counsel, or obtaining signatures or the authorization to sign for opposing counsel.

#### **Local Rule 57.3 Required Information Sheets**

The appropriate "Required Information Sheet" shall be filed with each new case with all information required by the form completely and accurately provided. All information provided shall be updated as necessary at the time of subsequent filings.

#### **Local Rule 57.4 Street Address**

When required on a Court document, an address must be a street address. Upon satisfactory proof that a street address is unknown or cannot be ascertained, the Court may permit the use of the post office box upon request.

**Local Rule 57.5 Case Number**

All filings, including exhibits and attachments, must have the case number on each page, including the reverse side of two-sided filings.

**Local Rule 57.6 Signatures**

All filings must contain original signatures except when the Court permits otherwise. A fiduciary and counsel, if any, shall sign all documents filed with the Court, including but not limited to, applications for counsel fees. In the event there are multiple fiduciaries, the signature of each fiduciary is required on all documents. Counsel may not sign on behalf of a fiduciary. Notwithstanding the foregoing, Counsel may execute and file on behalf of a fiduciary a report of Distribution of Wrongful Death Proceeds with copies of the checks evidencing distribution attached thereto.

**Local Rule 57.7 Return Copies**

The Court will not return file stamped copies by mail unless a self-addressed envelope stamped with sufficient postage has been supplied to the Court by filing party.

**Local Rule 57.8 Certificate of Notice of Judgment Entry**

Any proposed judgment entry submitted to the Court for approval shall comply with the requirements of Civ. R. 58(B) and Civ. R. 73(I), and shall contain a certificate of service including the names and addresses of all parties and other interests persons required to be served.

**Local Rule 57.9 Social Security Numbers**

Social security numbers shall not be filed in any filing that is available for public inspection. An applicant for guardianship shall provide his/her social security number, and the social security number for the proposed ward on a form that will not be disclosed to the public. Social security numbers disclosed on marriage license applications and estate tax returns are sequestered as confidential, non-public records.

**Local Rule 57.10 Notice of Litigation**

Upon the filing of any legal action that affects an estate, trust, or guardianship, the fiduciary shall file a status report, with the Court identifying the court or tribunal in which the litigation was filed, the names and addresses of the parties and their counsel, the case number, and a brief description of the nature of the litigation and status of the same. Subsequent status reports shall be filed every six months.

**Local Rule 57.11 Real Estate Transfer Only**

An Application for Certificate of Transfer may be approved pursuant to Rev. Code Sec. 2113.61(D) without a full estate or release from administration no earlier than six months after the date of death if: 1) the sole probate asset of the decedent is real estate and 2) the decedent was not subject to Medicaid Estate Recovery. Applicants must file Local Form Release from Administration: Real Property Only and accompanying necessary documents to utilize the process provided by this rule.

**SUP. R. 58: DEPOSIT FOR COURT COSTS****Local Rule 58.1 Deposits for Court Costs**

(A) Deposits for Court costs for all proceedings shall be determined by the Court, and the Court's costs schedule shall be made available to the public.

(B) Any balance that remains outstanding in a matter shall be paid at the time an accounting, waiver of accounting, certificate of termination, or a final judgment entry is filed. The Court reserves the right to

require additional deposits during the course of a proceeding as the Court deems necessary. Costs shall be paid by cash, money order, cashier's check, personal check, official bank check, or credit card.

(C) Papers, pleadings, and other documents may be stricken, following notice to the filing party, for failure to make deposits, or to pay court costs, absent good cause to the contrary being shown.

(D) In all cases of decedent's estates, civil actions, complaints to sell real estate and any other matters requiring a deposit, the fiduciary or plaintiff shall be required to maintain a positive balance in the deposit account. Filings presented to the Court with insufficient funds may be refused or returned by the Clerk's office.

**Local Rule 58.2 Deposit for Jury Trial**

Upon the filing of a demand for a jury trial, the party making the demand shall remit an advance deposit of \$500 or such other amount as the Court may require.

**SUP. R. 59: WILLS**

**Local Rule 59.1 Certificate of Notice of Probate of Will**

(A) The notice required by R.C. 2107.19 and Sup. R. 59 shall be served as set forth in Civ. R. 73(E)(3) or, if necessary, by Civ. R. 73(E)(4) or (5). The serving party or counsel shall file with the Court copies of the certified mail return receipt cards and/or an appropriate affidavit at the same time as the SPF 2.4 – Certificate of Service of Notice of Probate of Will.

(B) Persons entitled to notice of the probate of a will shall be permitted to waive notice of the will's admission to probate using SPF 2.1 – Waiver of Notice of Probate of Will, except that that a waiver of notice may not be signed by any minor, or on behalf of any minor who is sixteen or seventeen years of age, pursuant to Civ. R. 4.2.

**Local Rule 59.2 Will for Deposit**

Any will that is deposited with the Court for safekeeping pursuant to R.C. 2107.07 shall be accompanied by the appropriate local form. The Court will provide the depositor with a Certificate of Deposit of Will as a receipt for the deposit of the will.

**SUP. R. 60: APPLICATION FOR LETTERS OF AUTHORITY TO ADMINISTER ESTATE AND NOTICE OF APPOINTMENT**

**Local Rule 60.1 Contact Information**

Any change of address, telephone number, or email address for the fiduciary, heir, or beneficiary must be updated with the Court within fourteen days of such change. The failure to promptly notify the Court of the fiduciary's change of address may subject the fiduciary to removal pursuant to R.C. 2109.21(F).

**Local Rule 60.2 Spousal Citation and Summary of Rights**

Where appropriate, SPF 8.6 – Waiver of Service to Surviving Spouse of the Citation to Elect should be filed at the same time as the Application for Authority to Administer Estate. Absent the filing of a waiver, the Court shall serve the spousal citation and summary of rights required by R.C. 2106.01 upon the surviving spouse by certified mail, return receipt requested within thirty days of the initial appointment of the estate fiduciary.



### **Local Rule 60.3 Fiduciary's Bond**

An applicant for Letters of Authority shall include a proposed fiduciary's bond in the amount set forth in R.C. 2109.04 with the Application for Authority to Administer Estate. An applicant may move the Court to waive or reduce bond in accordance with R.C. 2109.04.

### **Local Rule 60.4 Letters of Authority in the Estate of a Deceased Incompetent Ward**

Absent exigent circumstances, Letters of Authority shall not be granted to an applicant who was also the guardian of estate of an incompetent ward until the final Guardian's Account is filed and approved in the decedent's guardianship case.

### **Local Rule 60.5 Application to Reopen Estate**

Applicants seeking to reopen an estate previously filed in the Court and receive new Letters of Authority must utilize Local Form Application to Reopen Estate and Appoint Fiduciary.

### **Local Rule 60.6 Motion to Release Information**

(A) A person who is eligible to be appointed as executor or administrator of a decedent's estate who desires to obtain a decedent's financial information for the sole purpose of a decedent's estate administration, including a summary release from administration or relief from administration, may be appointed by the Court as a special commissioner by filing with the Court the following forms:

1. Local Form Motion to Release Information;
2. SPF 1.0 – Surviving Spouse, Children, Next of Kin, Legatees and Devisees;
3. A copy of the decedent's death certificate or other proof of death; and
4. Any signed waivers using the appropriate local form.

(B) The Court may hold a hearing on the Motion to Release Information. If a hearing is set, then the Clerk shall send a hearing notice by regular mail pursuant to Civ. R. 73(E)(7) to all persons listed on the SPF 1.0 – Surviving Spouse, Children, Next of Kin, Legatees and Devisees who are vested in the Decedent's estate and have not waived and consented to the release of information.

## **SUP. R. 61: APPRAISERS**

### **Local Rule 61.1 Appraiser's Appointment and Fees**

(A) A fiduciary or applicant must use SPF 3.0 – Appointment of Appraiser to appoint an appraiser. The credentials of the proposed appraiser must be filed with the Court prior to the appraiser's appointment. The appraiser sought to be appointed must be experienced in appraising similar property and shall not be a member of the family, business associate, or client of the fiduciary, the fiduciary's counsel or other person interested in the estate. A real estate appraiser not having an office in Ashtabula County must affirmatively demonstrate their familiarity with the local market.

(B) No person who is appointed appraiser shall, during the administration of the estate or within one year of their appointment, directly or indirectly purchase or negotiate the purchase or sale of property inventoried or appraised by them.

(C) Any asset, the value of which is readily ascertainable, is not required to be appraised.

(D) A fiduciary or appraiser shall request the Court's approval to pay an appraiser a reasonable fee after taking into account the appraiser's training, qualifications, experience, the time reasonably

required, and the value of the property appraised. Appraiser fees shall be paid as part of the expenses of administering the estate.

**Local Rule 61.2 Real Estate Appraisers**

(A) A real estate appraisal can only be made by a licensed Real Estate Agent, Broker, Auctioneer, credentialed real estate appraiser, or such other persons who, by experience and training, are qualified to make real estate appraisals.

(B) Upon application using SPF 3.0 – Appointment of Appraiser, the Court may authorize the fiduciary to use the County Auditor’s tax value for real property in an estate in lieu of a formal appraisal.

**Local Rule 61.3 Personal Property Appraisers**

Appraisals of personal property with no reasonably ascertainable value shall be made by licensed auctioneers, credentialed personal property appraisers, or such person who, by experience and training, is qualified to make such appraisals.

**Local Rule 61.4 Readily Ascertainable Value of Motor Vehicle**

(A) The market value of any motor vehicle as found in a publication such as the current NADA Official Used Car Guide or Kelley Blue Book under the category “Average Retail” or “Private Party Sale”, may be accepted as the readily ascertainable value. A copy of the appropriate page shall be filed with the Court prior to the Court issuing any entry or order approving an Inventory, Application to Relieve Estate from Administration, Application for Summary Release, or Application to Transfer Motor Vehicle.

(B) Heirs or beneficiaries may file their written consent to vehicle valuations without corroboration from NADA or Kelley Blue Book with the Court and, upon receipt of all required consents, the Court can approve the value without corroboration. If the sole heir or beneficiary is also the fiduciary, then the signing of the Inventory and Appraisal and Schedule of Assets shall be construed as consent to the valuation.

**SUP. R. 62: FILING CLAIMS AGAINST ESTATE**

**Local Rule 62.1 Filing of Claims against Estate**

Any claim against an estate filed with the Court pursuant to RC 2117.06 (A)(1)(b) shall be accompanied by the appropriate filing fee. Claims shall be accepted or rejected by the fiduciary with Court approval before final accountings can be approved.

**Local Rule 62.2 Notice of Insolvency**

Insolvency hearings may be held only in full administration and guardianship cases. Insolvency proceedings shall be commenced by the fiduciary filing a representation of insolvency accompanied by a prioritized schedule of claims. The counsel or fiduciary shall indicate the amount of the proposed payment to each creditor. The counsel or fiduciary shall obtain a hearing date on the insolvency and notify all creditors of the hearing by certified mail and file the receipts with the Court.

**SUP. R. 63: APPLICATION TO SELL PERSONAL PROPERTY**

**Local Rule 63.1 Affidavit and Report**

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. An affidavit

and report pursuant to R.C. 2109.45 and R.C. 2113.42 shall include a statement that personal property was not purchased by the fiduciary, a family member, business associate, client, or agent of the fiduciary.

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

### **Local Rule 64.1 Delinquency of Filing**

If a fiduciary is delinquent in filing an account required under R.C. 2109.301, R.C. 2109.302, R.C. 2109.303, or these Local Rules, and no extension of time for filing has been granted, the Court may refuse to appoint the fiduciary to another office of trust and/or issue a citation. Except for good cause shown, the costs of citations shall be deducted from the fiduciary's compensation.

### **Local Rule 64.2 Vouchers and Receipts**

(A) For estates wherein the date of death occurs after April 8, 2004, vouchers evidencing disbursements and receipts for assets received during the administration of a decedent's estate must be maintained by the fiduciary, but shall not be filed with the Court unless ordered by the Court in its discretion. At any hearing on objections to the account, counsel for the fiduciary shall be prepared to introduce into evidence such vouchers, receipts, cancelled checks, or other proof of transactions to support the filed account. Fiduciaries or their counsel shall retain vouchers, receipts, cancelled checks or other proof of transactions until six months after the final account is approved by the Court.

(B) Accounts requiring vouchers will not be approved without vouchers or other proof which verifies each disbursement. Copies of bank drafts receipt and un-deposited checks will not satisfy this requirement.

(C) The Court will accept a bank statement from a financial institution that includes photocopies of cancelled checks that specifies the payee, check amount, and date of payment as a voucher.

### **Local Rule 64.3 Time for Filing in Decedent's Estates**

For decedent's estates, the final and distributive account is due within six months of the appointment of the fiduciary unless the time is extended to thirteen months upon timely application for the reasons enumerated in R.C. 2109.301(B)(1) using SPF 13.8 – Application to Extend Administration. All subsequent accounts must be filed on an annual basis unless otherwise ordered by the Court.

### **Local Rule 64.4 Notice of Filing**

(A) A fiduciary filing an account required by R.C. 2109.301 shall provide a copy of the account to all those heirs or beneficiaries who are required to receive a copy under R.C. 2109.32(B)(1) by one of the methods provided for in Civ. R. 73(E).

(B) Prior or simultaneous to the filing of an account, the fiduciary shall file a SPF 13.9 – Certificate of Service of Account to Heirs or Beneficiaries with the Court, as required by R.C. 2109.32(B)(2), indicating all parties entitled to a copy of the account under R.C. 2109.32(B)(1) were provided a copy.

### **Local Rule 64.5 Hearings on Account**

(A) The Court will set every fiduciary's account for hearing pursuant to R.C. 2109.32(A) and send a hearing notice by regular mail to interested persons. The Court's hearing notice does not constitute service as contemplated in R.C. 2109.33.

(B) The Court shall take up timely-filed exceptions to an account at the hearing on the account unless a continuance is granted. Exceptions must be filed at least five days prior to the hearing on the account and a copy must be furnished to the fiduciary by the exceptor pursuant to R.C. 2109.33.

**Local Rule 64.6 Notice of Hearing on Account**

(A) The fiduciary may, but is not required to, serve notice of the hearing to persons interested in an estate by following the provisions of R.C. 2109.33. A fiduciary who elects to serve notice of the hearing shall serve notice of the hearing on account using SPF 13.5 – Notice of Hearing on Account. Notice shall be sent by ordinary U.S. mail with certificate of mailing, postage prepaid pursuant to Civ. R. 73(E)(7) and by publication pursuant to Civ. R. 73(E)(6) upon interested persons, including creditors as the Court may direct. The fiduciary shall provide the Court with copies of the certificates of mailing. Notice of the hearing must be served at least 15 days prior to the hearing.

(B) A fiduciary who is required to serve notice of the hearing by the Court pursuant to R.C. 2109.33 shall serve notice of the hearing on account using SPF 13.5 – Notice of Hearing on Account. Notice shall be sent by ordinary U.S. mail with certificate of mailing, postage prepaid pursuant to Civ. R. 73(E)(7) and by publication pursuant to Civ. R. 73(E)(6) to those persons the Court designates. The fiduciary shall provide the Court with copies of the certificates of mailing. Notice of the hearing must be served at least 15 days prior to the hearing.

(C) Any person entitled to notice of the hearing on the fiduciary’s account may waive notice of the hearing by executing and filing SPF 13.7 – Waiver of Notice of Hearing on Account with the Court.

**Local Rule 64.7 Guardian, Trustee, and Other Fiduciary Accountings**

(A) All guardian, trustee, and other fiduciary accountings required by R.C. 2109.302 and R.C. 2109.303 shall be filed on the first anniversary date of the appointment of the fiduciary, and annually thereafter on the anniversary date.

(B) A trustee shall file a current list of the names and addresses of all persons interested in the trust and the interest of each party in the trust with the account and shall provide a copy of the account to all interested parties.

(C) A guardian shall provide a copy of the account to the ward, if living, or to the ward’s heirs or will beneficiaries if the ward is deceased, and to the Veteran’s Administration in the cases of a veteran’s guardianship.

**Local Rule 64.8 Newly Discovered Assets**

Pursuant to R.C. 2113.69, if the assets obtained by the Executor or Administrator following the filing of the original inventory consist of currency, interest, refunds, or other proceeds with a total of less than \$500.00, an itemized report of such assets does not have to be filed in the Court. All other assets obtained after the filing of inventory shall be itemized for the Court in a report of Newly Discovered Assets and/or Amended Inventory. Newly discovered assets shall be administered, accounted for, and distributed in like manner as if received prior to the filing of the original inventory.

## SUP. R. 65: LAND SALES

### Local Rule 65.1 Land Sales

A Preliminary Judicial Report or Title Search must be filed with every Complaint to Sell Real Estate at the time the Complaint is filed with the Court. No land sale proceeding shall be approved by the Court without the filing of a Preliminary Judicial Report pursuant to R.C. Chapter 2329 and/or R.C. Chapter 2127.

### Local Rule 65.2 Guardian *ad Litem*

Unless appointment of a guardian *ad litem* is required by the Court because of a conflict between the interests of the guardian and the ward, or for good cause shown, the guardian may proceed to sell a ward's property without the appointment of a guardian *ad litem*.

### Local Rule 65.3 Appraisals in all Land Sales

For purposes of a Complaint to Sell Real Estate, the fiduciary shall utilize the services of a licensed real estate appraiser. The Court will not accept an appraisal performed by a licensed real estate agent unless first approved by the Court.

## SUP. R. 66.01: DEFINITIONS

### Local Rule 66.01.1 Definitions

The terms defined in Sup. R. 66.01 have the same meaning when used in Local Rule 66.01.1 through Local Rule 66.09.1.

## SUP. R. 66.02: APPLICATION OF RULES

### Local Rule 66.02.1 Application of Rules

These Local Rules apply to all guardianship administered through this Court, unless otherwise indicated in the particular Local Rule, or unless expressly waived by Court Order.

## SUP. R. 66.03: LOCAL GUARDIANSHIP RULE

### Local Rule 66.03.1 Emergency Guardianships

(A) The Court has adopted the following process for emergency guardianships: Every application for the appointment of an *ex parte* emergency guardianship shall be filed in person and shall be accompanied by:

1. Completed Local Form Application for Emergency Guardianship;
2. Completed SPF 17.1 - Statement of Expert Evaluation and SPF 17.1A – Supplement for Emergency Guardianship of Person or actual testimony of a physician consistent with Loc. R. 11;
3. Completed SPF 15.0 – Next of Kin of Proposed Ward;
4. Narrative statement or affidavit signed by the applicant setting forth information describing the imminent risk of significant injury to the person or property of the minor or incompetent that justifies an *ex parte* emergency appointment and the action required to prevent such injury; and
5. Photo identification of the applicant.

(B) The applicant shall attend the hearing set as a result of the emergency filing at which the Court will take up any motion to extend the emergency guardianship filed by the applicant.

(C) If the applicant anticipates a need for continued guardianship beyond the emergency period, the applicant shall file a SPF 16.0 - Application for Appointment of Guardian or SPF 17.0 – Application for Appointment of Guardian of Alleged Incompetent, as is applicable, within seven days of the hearing.

**Local Rule 66.03.2 Guardian Comments and Complaints**

(A) Comments and complaints (hereinafter collectively referred to as “complaints”) received regarding the performance of any guardian and the resulting documents and correspondence are considered to be case documents and accessible to the public, unless otherwise excluded pursuant to Sup. R. 44(C)(2). The Court will docket actions with respect to the complaint accordingly.

(B) The Court will not accept or act upon an oral or telephonic complaints against a guardian, other than to provide the address to which the complaint shall be hand delivered, mailed, e-mailed, or faxed. The Court will not accept an anonymous complaint. The Court will date-stamp the complaint on the day it is received.

(C) When a complaint is entered on the docket by the Court, the Court shall perform an initial review of the complaint and guardianship file, provide a copy to the guardian, and do one of the following within ten Court days:

1. Dismiss the complaint as unsubstantiated, unspecific, and/or insufficient; or
2. Request a response to the complaint from the guardian within fifteen Court days from the date of filing.

(D) Upon the expiration of the period provided in Local Rule 66.03.2(C)(2), the Court shall do one of the following within five Court days:

1. Determine the complaint to have been resolved or unsubstantiated and advise the complainant, guardian, and guardian’s counsel accordingly by letter;
2. Refer the matter to mediation with a copy of the referral order being served to the complainant, the guardian, guardian’s counsel;
3. Set a review conference or a show cause hearing with notice to the complainant, the ward, the guardian, any counsel who have entered an appearance, and other interested parties; or
4. Appoint a guardian *ad litem* to investigate the issues and to report with findings and recommendations with notice to all interested parties. Upon filing of the guardian *ad litem*’s report, the Court will set the matter for hearing, with notice to the ward, the guardian *ad litem*, guardian, guardian’s counsel, and the complainant.

(E) In the event of exigent circumstances, the Court may take any action it finds proper or appropriate, including removing a guardian. Except when administratively dismissing a complaint or acting in an emergency, the Court shall not act without a hearing. The Court’s entry relating to the Court’s decision will close the complaint. The Court’s actions may include dismissal, directives for remedial action, establishing periodic review dates, allocating costs and fees, referral to law enforcement for investigation, sanctions, removal of the guardian, and any other action permitted by law.

(F) When the ward is a veteran and the Court appointed the guardian under R.C. Chapter 5905, notice of the complaint, reports, hearings and actions shall be given to the Administrator of Veterans Affairs of the United States pursuant to R.C. 5909.03.

## **SUP. R. 66.04: ESTABLISHMENT OF GUARDIANSHIP**

### **Local Rule 66.04.1 Guardianship of Minors**

When proceedings for the appointment of a guardian of a minor are presented to this Court, the following shall apply:

(A) A certified copy of the minor's birth certificate must be filed along with the SPF 16.0 – Application for Appointment of Guardian of Minor and SPF 16.1 – Affidavit.

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

(C) The Court will not establish a guardianship over the person of a minor where a court outside of Ashtabula County has jurisdiction over custody of the minor.

(D) When the minor has not been in Ohio for six months, the Court will not accept for filing an Application for Guardianship unless it is alleged that the minor has been (1) abandoned (no contact) by the parents for more than ninety days; (2) has a medical emergency; or (3) the minor's "home state" has declined jurisdiction. (See R.C. 3127.01 *et seq.*).

### **Local Rule 66.04.2 Indigent Wards**

(A) An applicant or guardian must file with the Court an affidavit of indigency if the waiver of court costs or payment of compensation from the indigent guardianship fund is being requested.

(B) For purposes of the indigent guardianship fund, an adult ward or alleged incompetent will be rebuttably presumed to be indigent if his or her personal property is less than One Thousand Five Hundred and No/100 Dollars (\$1,500.00) and his or her annual income is less than the U.S. Department of Health and Human Services poverty guidelines.

### **Local Rule 66.04.3 Statement of Expert Evaluation**

Upon written request by the guardian, and for good cause shown, the Court may dispense with the filing of the annual SPF 17.1 – Statement of Expert Evaluation after the Court holds a Status Conference on the matter. The Court will consider all relevant evidence, including the statement of a physician or clinical psychologist on SPF 17.1 – Statement of Expert Evaluation that, to a reasonable degree of medical certainty, the ward's mental incompetence will not improve in determining whether to dispense with the requirement. The Court may reinstate the requirement of annual filings of SPF 17.1 – Statement of Expert Evaluation at any time upon written notice to the guardian.

### **Local Rule 66.04.4 Veterans' Guardianships**

Veterans' guardianships are governed by R.C. Chapter 5905 and, to the extent there are special rules established therein, those rules shall apply. In every other respect, the general guardianship laws and rules shall apply.

## **SUP. R. 66.05: RESPONSIBILITIES OF COURT ESTABLISHING GUARDIANSHIPS**

### **Local Rule 66.05.1 Guardian Background Checks**

(A) All applicants who are applying to be appointed guardian of the person and/or estate of a prospective ward are required to submit to a criminal background check unless waived by the Court. Each applicant who has been a resident of Ohio for at least 5 years prior to filing an application shall submit to a criminal background check using the WEBCHECK system and shall have the results sent directly to the Court to become a permanent part of the Court's file and public record. All other applicants shall submit to a FBI background check.

(B) The costs for the background check shall be paid by the applicant directly, and shall be considered expenses of administration that are reimbursable. Pursuant to Sup. R. 66.05, the WEBCHECK or FBI background check submitted to the Court must be dated within one year of the filing of an Application for Appointment of Guardian.

(C) An Ohio attorney applying to be appointed guardian may file a Certificate in Good Standing issued by the Supreme Court of Ohio in lieu of the criminal background check.

(D) Every applicant shall file a Local Form Affidavit of Guardian Applicant before appointment.

### **Local Rule 66.05.2 Guardian with Ten or More Adult Wards**

(A) By January 31 of each year, a guardian with ten or more wards appointed through the Court shall register with the Court using SPF 27.5 - Annual Registration Guardian with Ten or More Wards. The registration shall include a list of the wards for whom the guardian is responsible, the case number for each guardianship, addresses of wards, name of facility where each ward resides, the guardian's address, work phone number, cell phone number, home phone number, email address, and, if applicable, the name of the guardian's supervisor with their contact information.

(B) The guardian in all cases shall advise the Court of any change in the guardian's name, address, telephone number, or email address within ten days of the change.

(C) A guardian with ten or more wards shall include with the annual SPF 17.7 - Guardians Report, a statement indicating whether the guardian is aware of any circumstances that may disqualify the guardian from continuing to serve as a guardian.

## **SUP. R. 66.06: GUARDIAN PRE-APPOINTMENT EDUCATION**

### **Local Rule 66.06.1 Guardian Fundamentals Training Requirement**

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



## **SUP. R. 66.07: GUARDIAN CONTINUING EDUCATION**

### **Local Rule 66.07.1 Guardian Continuing Education**

(A) After completing the Guardian Fundamentals Course, every guardian of an adult shall annually complete a three hour guardian continuing education course provided by the Supreme Court of Ohio, or another entity with approval of this Court.

(B) If the guardian fails to comply with the guardian continuing education requirement, the guardian shall not be eligible for further appointment until the requirement is met. The guardian also may be subject to sanctions including, but not limited to, imposition of a citation fee, denial of compensation, and removal.

(C) The Court shall consider an exemption from the educational requirements imposed by Sup. R. 66.01 et seq. on a case-by-case basis based on the performance of the guardian. Guardians with less than ten wards, who have been guardian for at least three years, have made timely reports in the last three years, and who have had no citations or substantiated complaints in the last three years may apply for exemption. The Court may, at its option, hold a hearing on the application.

## **SUP. R. 66.08: GENERAL RESPONSIBILITIES OF GUARDIAN**

### **Local Rule 66.08.1 General Responsibilities of the Guardian to the Court**

(A) Unless waived by the Court for good cause, the person seeking to be appointed as a guardian is expected to have met with the proposed ward at least once prior to appearing before the Court for the hearing on the Application.

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

(C) A guardian shall not move a ward's residence to a location outside of Ashtabula County, Ohio without prior Court approval unless a delay in obtaining authorization for the change of residence would affect the health and safety of the ward.

(D) A guardian shall inform the Court when a ward is hospitalized within 10 days of the hospitalization and include the reason, date, place, and expected length of the hospitalization using Local Form Notice of Hospitalization. A guardian shall update the Court on a ward's discharge from hospitalization within 10 days of discharge using Local Form Notice of Discharge.

(E) While a guardian is generally required to seek Court approval prior to the filing a suit on behalf of the ward, prior approval shall not be required when the suit is being filed in this Court.

(F) The guardian shall avoid conflicts of interest with the ward and endeavor to avoid the appearance of impropriety (perceived self-serving, self-dealing, or actions adverse to best interests decisions) when dealing with the ward's assets and needs. A potential conflict for the guardian may arise if the guardian's immediate family (parent, spouse, or child) is being employed or contracted by the guardian. The guardian shall disclose all conflicts to the Court in a clear and unequivocal manner. Proper disclosure of

conflicts facilitates a determination whether the conflict can be mitigated or eliminated through the use of a guardian *ad litem*, a limitation of the powers of the guardian, or other actions.

(G) The guardian shall obey all orders of this Court and shall perform all guardianship duties in accordance with relevant state and federal laws and rules and this Court's Local Rules, as each may be effective during the guardianship.

**Local Rule 66.08.2 Fund Release, Expenditures, and Guardian's Account**

(A) Funds in the name of the ward shall not be released to the guardian without the approval of an SPF 15.6 - Application to Release Funds or other specific Court Order. The expenditure of funds by a guardian shall not be approved until an SPF 15.5 - Guardian's Inventory has been filed.

(B) Every guardian shall file an SPF 15.8 - Guardian's Account on the first anniversary of the date of the issuance of the Letters of Guardianship and annually thereafter.

(C) Guardians of Estate shall file an annual proposed budget with anticipated monthly expenditures for wards on SPF 15.7 - Application for Authority to Expend Funds, or other Court-approved form, at the time of filing the Guardian's Account.

**Local Rule 66.08.3 Guardian's Report**

A guardian of the person of an adult incompetent shall annually file SPF 17.7 – Guardian's Report on or before the anniversary date of the guardian's appointment. Unless otherwise ordered by the Court, each Guardian's Report for an incompetent must be accompanied by SPF 17.1 - Statement of Expert Evaluation and the appropriate Annual Guardianship Plan required by Sup. R. 66.08(G).

**Local Rule 66.08.4 Deposit of Will by Guardian**

The guardian must deposit with the Court for safekeeping an instrument known to the guardian and executed by the ward that would constitute a will under R.C. 2107.01. The Clerk shall issue to the guardian a Certificate of Deposit of Will as a receipt for the deposited Will.

**Local Rule 66.08.5 Powers of Attorney by Guardian Prohibited**

Per the discretion granted to the Court by R.C. 2111.50(A)(2)(c), the Court adopts this Local Rule to expressly prohibit a guardian appointed by the Court from executing a Power of Attorney or any other document which purports to appoint an agent to execute any of the duties or responsibilities imposed upon the guardian by law, rule, or order of the Court, unless otherwise approved by a specific order of the Court.

**Local Rule 66.08.6 Termination**

Termination of a guardianship shall require notice to all persons designated in R.C. 2111.04 and to any other individuals who received actual notice of the original appointment of the guardian. It is the responsibility of the applicant for termination to perfect service pursuant to Civ. R. 73 when a termination is requested. A Certificate of Service with supporting documentation satisfactory to the Court must be filed prior to the consideration of the Application. This Local Rule shall not apply to terminations of a guardianship of a minor by reason of attaining the age of majority or of any guardianship by reason of the death of the ward.

## **SUP. R. 66.09: RESPONSIBILITIES OF GUARDIAN TO WARD**

### **Local Rule 66.09.1 General Responsibilities of the Guardian to the Ward**

(A) The guardian shall treat the ward with respect and dignity. The guardian shall meet with the ward at least monthly throughout the year, and preferably more, to promote the best interests of the ward.

(B) Unless a guardian is the natural parent of the ward, the guardian shall not deliver the ward direct services, as defined in Sup. R. 66.01(B), without approval of this Court.

(C) The guardian shall deposit ward's Last Will and Testament, along with other important legal documents such as Advance Health Care Directives, Pre-Planned Funeral Arrangements, and like papers with the Court for safekeeping if said papers are in the possession of the guardian. If the ward's Will or other important papers are not in the possession of the guardian, upon being advised of the location, the Court shall order the holder of the Will or other important papers to deposit the Will with the Court for safekeeping.

## **SUP. R. 67: ESTATES OF MINORS OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS**

### **Local Rule 67.1 Release of Funds at Age of Majority**

Upon the minor attaining the age of 18 years, funds shall be released to the former minor by the institution holding the funds unless exigent circumstances brought to the Court's attention require otherwise. The former minor shall submit an SPF 15.7 - Application for Authority to Expend Funds to the Court, along with satisfactory proof of identity and date of birth. The Court shall authorize the financial institution to release said funds to the former minor.

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

### **Local Rule 68.1 Settlement of Minor's Claim without Counsel**

When an applicant is not represented by counsel, the Court may appoint a guardian *ad litem* for the minor and the costs for the services shall be assessed as costs of the proceedings and allocated to the applicant, the minor, or the insurer advancing settlement, as may be determined by the Court in its sole discretion.

### **Local Rule 68.2 Structured Settlements**

In the event parties involved in claims for injuries to minors 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 the 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; and
  2. The annuity carrier's rating is "A" or better from at least two ratings organizations.

(C) In addition to the requirements of Paragraph 2 above, an annuity carrier must meet any other requirement the Court considers necessary to ensure trust funding sufficient to satisfy periodic payment settlements will be provided.

## **SUP. R. 69: SETTLEMENT OF CLAIMS OF OR AGAINST ADULT WARDS**

### **Local Rule 69.1 Structured Settlements**

When a structured settlement is proposed for the net settlement proceeds from a claim of an adult ward, the provisions of Local Rule 68.2 shall apply unless otherwise clearly inapplicable.

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

### **Local Rule 70.1 Reopen/Convert Estate for Wrongful Death Action Only**

Upon the distribution and accounting of the known probate assets in a full estate administration, a fiduciary may file Local Form Motion to Reopen/Convert Estate for Wrongful Death Only to reopen or convert an estate for the sole purpose of completing wrongful death proceedings.

### **Local Rule 70.2 Waivers and Consents**

The Court may, in its sole discretion, waive a hearing on an Application for Settlement of Wrongful Death and Survival Claims if waivers and consents to the proposed distribution from all interested parties, as same are defined under R.C. 2125.02, are filed with the Court.

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

### **Local Rule 71.1 Counsel Fee Applications**

(A) Counsel fees shall not be paid except upon application. All applications for fees shall be accompanied by itemized time records that clearly show the date of time entries, the person or position that performed the service, the nature of the service performed, and the hourly rate or specific basis for the fee requested. Counsel shall also be permitted to file a signed and dated copy of a written fee agreement in support of the application. Counsel in matters before this Court are expected to be familiar with Prof. Cond. R. 1.5, Sup. R. 71, Sup. R. 73, and Sup. R. 66.08 and how they relate to counsel fee applications.

(B) Early or partial payment of counsel fees shall only be permitted upon good cause shown, which shall be clearly demonstrated in the application.

(C) All applications shall be accompanied by written consent of the estate fiduciary, guardian, or trustee, whichever is applicable. Failure to file such consent may cause the Court to hold a hearing on the application.

(D) An application for counsel fees in a land sale proceeding shall be filed within 30 days of the Court's issuance of a judgment entry confirming the sale, ordering the deed, and ordering distribution.

(E) Counsel shall not be compensated for either preparing the fee statement or application for counsel fees, or for any of the hearings or proceedings thereon.

(F) Paralegal services may be used so long as the paralegal's work is supervised by a licensed attorney and does not constitute the unauthorized practice of law. All paralegal fees for which payment is sought shall be itemized and included in counsel fee applications and shall be at a reasonable rate for paralegal work.

#### **Local Rule 71.2 Hearing on Counsel Fee Applications**

(A) The Court may set a hearing on any application for counsel fees, regardless of the submission of consent(s) to such fees, in its sole discretion, except that the Court shall hold a hearing on an application for fees where the Court receives an objection to the requested fees or an exception to the Accounting.

(B) If the Court sets a counsel fee application for hearing, then the attorney-applicant shall be responsible for giving notice of the hearing on the application along with a copy of the fee application by regular mail to all those persons whose interests are affected by payment of such fees no less than ten days prior to the hearing date. The applicant shall file a Certificate of Service indicating to whom, where, and when notice was sent.

(C) Interested parties may waive notice of the hearing and sign written consents to applications for counsel fees.

#### **Local Rule 71.3 Counsel Serving as Fiduciary**

(A) The Court assumes counsel appointed as a fiduciary has been selected due to the counsel's special knowledge and abilities that are expected to result in savings of fees to the estate, guardianship, or trust. Matters not requiring professional skills shall not be billed at the counsel's standard legal billing rate without Court approval.

(B) When counsel is serving as both the fiduciary and counsel for a matter, counsel shall only be permitted to take either a fiduciary fee or counsel fee in the case.

#### **Local Rule 71.4 Timing of Applications**

(A) In estate administration, counsel fees shall not be paid until the Final Fiduciary's Account or Certificate of Termination is prepared and ready to be filed, unless otherwise permitted by the Court.

(B) An application for allowance of counsel fees in guardianship cases shall not be considered until the filing of a Guardian's Account, except for good cause shown.

(C) Except for good cause shown, no counsel fees shall be allowed to counsel representing fiduciaries who are delinquent in filing the accounts required by R.C. 2109.30, *et seq.*

#### **Local Rule 71.5 Contingency Fees**

Prior to a fiduciary entering into a contingent fee agreement with counsel for services, an application for authority to enter into a written fee agreement shall be filed with the Court. The contingency fee in the agreement shall be subject to approval by the Court and may be set for hearing by the Court.

## **SUP. R. 72: EXECUTOR'S AND ADMINISTRATOR'S COMMISSIONS**

### **Local Rule 72.1 Estate Fiduciary Commission**

(A) Fiduciaries of estates shall be entitled to commission as outlined in R.C. 2113.35 and R.C. 2113.36. In cases where an estate fiduciary does not desire to accept the full calculated commission under R.C. 2113.35, the fiduciary must file a written consent to the reduced or waived commission with the Final Fiduciary's Account. All fiduciaries seeking to be paid the ordinary commission provided in R.C. 2113.35 shall file Local Form Computation of Executor or Administrator Fee with the Fiduciary's Account at the time they seek payment.

(B) The Court may, in its sole discretion, hold a hearing on any application for extraordinary fiduciary commission filed pursuant to R.C. 2113.36.

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

### **Local Rule 73.1 Guardian Compensation**

(A) Unless otherwise provided by law or ordered by the Court, a Guardian of Estate may charge an annual fee for ordinary services at the rate of 3% of the ward's income and those expenditures approved by the Court. An application for allowance of guardian's compensation for ordinary services rendered in the administration of the estate shall be filed at the time of the Guardian's Account.

(B) Compensation shall not be allowed on the principal balance carried forward from one accounting period to another.

(C) Investment of funds, reinvestment of assets, and transfers between accounts of a ward shall not be considered money or property originally received or as income or expenditures. The final distribution of unexpended balances to a ward at the closing of a guardianship or to a successor guardian shall also not be counted as income or expenditures for the purposes of calculating compensation under this Rule.

(D) A Guardian of Estate or Guardian of Person may apply for extraordinary compensation and personal services by filing a written application accompanied by an itemized statement of the services performed, the date services were performed, the time spent in rendering the services, and the hourly rate. The Court may, in its sole discretion, decide to hold a hearing on the application.

(E) Guardian compensation payable under this rule shall be shared equally between co-guardians unless otherwise ordered by the Court.

(F) Guardian compensation shall not be allowed when there is a delinquency in the filing of an account.

(G) Guardian compensation shall not be paid until allowed by order of the Court.

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

### **Local Rule 74.1 Application for Trustee Compensation**

(A) An application for allowance of trustee's compensation shall be submitted to the Court for approval with the annual trustee's account.

(B) An application for allowance of trustee's compensation for ordinary services rendered in the administration of each separate trust estate shall conform to the schedule in Local Form Computation of Trustee Fees unless otherwise provided by the instrument creating the trust, by law, or by order of the Court.

(C) The Court may set a hearing on an application for allowance of trustee's compensation, and if a hearing is scheduled, the trustee shall give notice of the hearing along with a copy of the application by regular mail to all those persons whose interests are affected by payment of such fees no less than ten days prior to the hearing date. The applicant shall file a Certificate of Service indicating to whom, where, and when notice was sent

(D) Interested parties may waive notice of hearing and sign written consents to applications for approval of trustee's compensation.

(E) The application required by Sup. R. 74 (B) shall set forth an itemized statement of the services performed, the date services were performed, the time spent in rendering the services, and the rate charged per hour.

(F) Trustee's compensation of an ordinary or extraordinary nature shall not be paid from the trust estate until the application has been approved by judgment entry.

#### **Local Rule 74.2 Initiation of Trust**

All cases filed with the Court under R.C. Title 58 shall be initiated by a Complaint and service of process shall be served as provided by law.

### **SUP. R. 78: CASE MANAGEMENT**

#### **Local Rule 78.1 Case Management**

(A) The Court may schedule a case management conference in any matter to ensure the readiness of cases for pretrial and trial and to maintain and improve the timely disposition of cases. The counsel and parties who have entered an appearance in the matter shall attend any case management conference set by the Court to discuss referral to an appropriate alternative dispute resolution program and to set a schedule for discovery, pretrial motions, hearings, trial, and other appropriate matters. Once issued, a scheduling order may be modified only for good cause shown and with the Court's consent.

(B) The Jury Commissioner(s) appointed by the Judges of the Court of Common Pleas shall be responsible for the administration of the jury system, acting under the supervision of the Administrative Judge of the Court of Common Pleas.

#### **Local Rule 78.2 Notice of Litigation**

Upon the filing of any legal action that affects an estate, a trust, or guardianship, the fiduciary or counsel shall file a notice of litigation with the Court. The fiduciary or counsel shall also notify the Court of significant events as to the litigation and advise the Court within 30 days of the conclusion of litigation.

#### **Local Rule 78.3 Reminders of Delinquent Filings**

If accounts, inventories, or other required reports of fiduciaries are not filed within the time prescribed by statute or rule, then the Court, on its own motion, may cite the delinquent fiduciary to appear and show

cause why the fiduciary has not filed the required report. Upon issuance of a citation, no continuance shall be granted until the fiduciary has personally appeared at the citation hearing.

#### **Local Rule 78.4 Changes in Value of Inventoried Assets**

In the event the fiduciary determines that an asset was incorrectly included in the original inventory or the original inventory included a valuation that was incorrect, the fiduciary shall amend the inventory and pay the appropriate filing fee. Notice of the filing of the amended inventory shall be sent in accordance with law.

#### **Local Rule 78.5 Guardians ad Litem**

The Court, in its discretion and pursuant to Civ. R. 17(B), R.C. 2111.23, and other relevant provisions of the Revised Code, may appoint a guardian *ad litem* to protect the interests any minor or person under disability in a court proceeding. The appointed guardian *ad litem* shall have all the powers enumerated in Sup. R. 48 *et seq.* in cases before the Court unless otherwise limited when appointed. The Court may require an additional deposit to cover anticipated fees of the guardian *ad litem*. Fees for guardians *ad litem* appointed to indigent persons shall be paid using OPD-1026R. The fee allowed to the guardian *ad litem* for non-indigent persons shall be determined upon motion supported by a statement of services.

#### **Local Rule 78.6 Publication**

(A) Where publication is required for service of summons or service of notice in a matter before this Court, it shall be the duty of the party requesting publication, or their counsel, to effectuate the publication.

(B) Before service by publication can be made, a motion, with a proposed order, and with an affidavit by a party requesting notice or their counsel shall be filed with the Court, together with a copy of the proposed notice. The affidavit shall aver that service of summons or notice cannot be made because the residence of the party is unknown to the affiant, list all of the efforts made on behalf of the affiant to ascertain the residence of the party, and that the residence of the party cannot be ascertained with reasonable diligence.

(C) Within ten days of the first publication, the party requesting publication shall file a notice with the Court of the dates of publication. Within ten days after the final publication, the party requesting publication shall cause an affidavit from the publisher that includes the notice published and the dates of publication to be filed with the Court.

#### **Local Rule 78.7 Applicability of Rules**

All persons, including *pro se* persons, must follow these Local Rules.

#### **Local Rule 78.8 Community Assisted Commitment Program**

[RESERVED FOR FUTURE USE]

*Name Changes, Conformities, and Corrections of Records*

#### **Local Rule 78.9 Change of Name of Adult**

Each applicant shall either publish notice of the application and hearing or submit to a criminal background checking using the WEBCHECK system and shall have the results sent directly to the Court to become a permanent part of the Court's file and public record. The costs for the background check or publication shall be paid directly by the applicant. Whenever an application to change the name of an adult is filed, no hearing shall be held unless ordered by the Court.



**Local Rule 78.10 Change of Name of Minor**

Whenever an application to change the name of a minor is filed, a hearing shall be held unless ordered by the Court. In the event either parent does not file a consent to the name change, the applicant must serve the non-consenting parent in accordance with Civ. R. 73. In the event the identity and/or address of the non-consenting parent is unknown, the applicant may file an affidavit detailing the efforts to identify the name and/or address of the non-consenting parent and request authorization to conduct service by publication.

**Local Rule 78.11 Name Conformity**

Whenever a conformity action is filed with the Court, no hearing shall be held unless ordered by the Court. The applicant must give sufficient identity documentation for the conformity, which could include driver's license, state identification card, social security card, passport, and other similar documents.

**Local Rule 78.12 Correction of Records**

The Court may set a hearing on any application to correct any record of this Court, including a birth record or marriage record. Where the applicant is not a party on the record sought to be corrected, the Court shall hold a hearing.

*Adoptions***Local Rule 78.13 Minor Adoption Proceedings**

(A) All adoption proceedings in the Court are confidential and are not available to the public. Access or information contained in the adoption case file will only be provided pursuant to statute.

(B) All hearings in adoption cases will be electronically recorded by the Court. If a party wishes for a court reporter to be present, they must arrange for a court reporter pursuant to Loc. R. 11.2.

(C) Except in step-parent adoption proceedings, applicant must have lawful placement of the minor before the filing of the Petition for Adoption. In all private placement adoptions, where this Court is approving and ordering the placement, a Pre-Placement Application shall be filed at the time of the opening of the case.

(D) If there is an existing child support order for the minor being adopted, it is the responsibility of the Petitioner(s) to notify the appropriate child support enforcement agency upon the filing of the Final Decree of Adoption.

(E) Except as otherwise provided by this rule, Local Form Addendum to Consent to Adoption must be filed in addition to SPF 18.3 - Consent to Adoption. The Addendum to Consent to Adoption is not required from the custodial Agency, a minor over 12 years of age, the custodial parent in a stepparent adoption, or in an adult adoption. Except for good cause shown, a consent shall not be signed more than 30 days before filing the petition for adoption.

(F) If married, the prospective adoptive parents shall be married to each other for at least one year prior to the filing of the petition for adoption. In the case of stepparent adoptions, the Petitioner and custodial parent shall be married to each other for at least one year prior to the filing of the petition for adoption.

(G) Counsel for the petitioner shall be responsible to provide the names and addresses for all parties entitled to notice, including putative fathers, in adoption proceedings. The Court shall issue notice and assess costs for service.

(H) Putative fathers shall be named in all adoption proceedings. Due diligence shall be made to provide notice to putative fathers.

(I) A completed Social and Medical History form shall be required in all cases except stepparent and grandparent adoptions.

(J) In all adoption matters, a criminal background check of the prospective adoptive parent(s) and all other family members over the age of 18 residing in the home of the prospective adoptive parent(s) shall be completed and submitted to the Court using the WEBCHECK system. If the prospective adoptive parent(s) has been a resident of Ohio for less than five years, a federal FBI check shall be completed.

(K) The petitioner(s) shall file all pleadings required by the Court at the time of initial filing. A list of required pleadings shall be published on the Court website and made available at the Court, and shall be reviewed annually by the Court Administrator. When a form is required, only the Ohio Supreme Court Probate Forms or the current local forms will be accepted.

(L) In all adoption proceedings, the Court shall conduct a hearing on the matters of both consent and best interest, unless bifurcated by the order of the Court.

(M) If there is an existing child support order for the minor being adopted, it is the responsibility of the Petitioner(s) to notify the appropriate child support enforcement agency upon the filing of the Final Decree of Adoption.

(N) If there is a pending proceeding in a juvenile or domestic relations court, the Probate Court will not proceed on a petition for adoption until the matter is concluded in that juvenile or domestic relations court.

**Local Rule 78.14 Appointed Counsel in Adoption Proceeding**

(A) Counsel appointed to represent indigent legal parents in adoption proceedings shall not be paid an hourly rate in excess of that approved in the Ashtabula County fee schedule for appointed counsel and, absent extraordinary circumstances, shall not be paid a total fee in excess of the maximum total fee in the Ashtabula County fee schedule for appointed counsel.

(B) Fees requested by counsel appointed to represent indigent legal parents in adoption proceedings must be filed on form OPD-1026R or such other form utilized by the Office of the Ohio Public Defender. A more detailed itemization may also be required to be filed at the Court's discretion. In the event that counsel is requesting a total fee in excess of the maximum total fee according to the Ashtabula County fee schedule, counsel shall file a motion for extraordinary fees, accompanied by a detailed itemization, in addition to form OPD-1026R.

(C) All requests for fees shall be filed no later than thirty days after the final disposition of the adoption proceeding.

**Local Rule 78.15 Private Placement Adoptions**

(A) In private placement adoptions, the proposed adopting parents shall file a preplacement application not less than thirty days prior to placement. This preplacement application shall be in a form prescribed or approved by the Court.

(B) Once the pre-placement application has been approved by the Court, and the child is born, a hearing shall be held not less than seventy-two hours after the birth or after the birth parent(s) have met with the adoption assessor, whichever occurs later, for the placement and consent by the birth parent(s). Prior to the placement hearing, the child's physician shall provide the Court with a statement as to the medical condition of the child being 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 petitioners or the counsel for the petitioners

(C) In all placement hearings, the birth mother must be represented at the hearing by counsel. Counsel fees for the birth mother will be assessed as costs to the petitioner(s).

**Local Rule 78.16 Adult Adoptions**

All petitioners for the adoption of an adult must complete Local Form Adult Adoption Fact Sheet and comply with the list of required pleadings published by the Court.