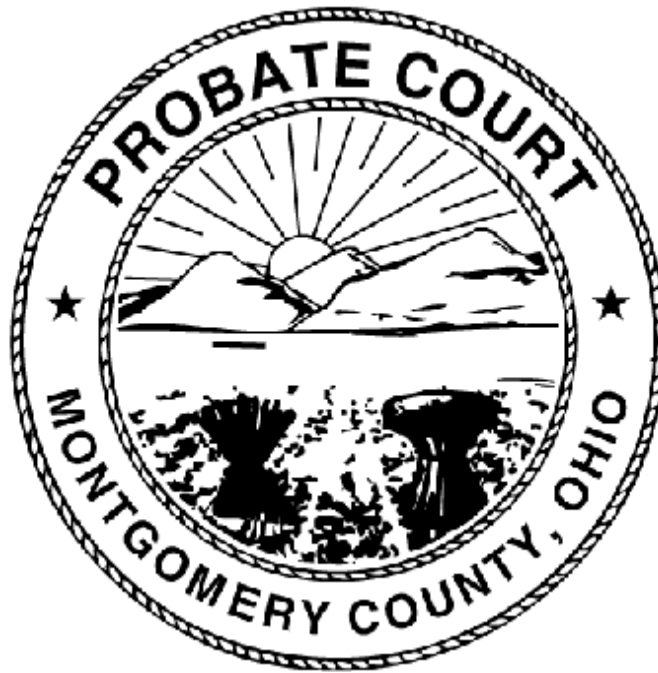


LOCAL RULES



Alice O. McCollum
Judge

Montgomery County Courts Building
41 N. Perry St.
Dayton, Ohio 45402

INDEX

	Rule
5.1	<u>Adoption, Scope and Construction of Rules</u>
6.1	<u>Attorney Registration Number</u>
8.1	<u>Court Appointments</u>
9.1	<u>Court Security Policy and Procedures Plan</u>
11.1	<u>Recording of Proceedings</u>
12.1	<u>Conditions for Broadcasting and Photographing Court Proceedings</u>
16.1	<u>Mediation</u>
26.1	<u>Court Records Management and Retention</u>
45.1	<u>Public Records</u>
51.1	<u>Standard Probate Forms</u>
52.1	<u>Computerized Forms</u>
53.1	<u>Hours of the Court</u>
55.1	<u>Examination of Probate Records</u>
57.1	<u>Filings and Judgment Entries</u>
58.1	<u>Deposits for Court Costs</u>
60.1	<u>Application for Letters of Authority to Administer Estate Notice of Appointment</u>
61.1	<u>Appraisers</u>
62.1	<u>Claims Against the Estate</u>
64.1	<u>Accounts</u>
65.1	<u>Land Sales</u>
66.1	<u>Guardianships</u>
67.1	<u>Estate of Minors</u>
68.1	<u>Settlement of Minor's Claims</u>
70.1	<u>Settlement of Wrongful Death Claims</u>
71.1	<u>Counsel Fees</u>
72.1	<u>Executor's and Administrator's Compensation</u>
73.1	<u>Guardian's Compensation</u>
74.1	<u>Trustee's Compensation</u>
75.1	<u>Local Rules</u>
76.1	<u>Exceptions to the Rules</u>
78.1	<u>Case Management</u>
Appendix A - <u>Attorney Fees</u>	
Appendix B - <u>Computation of Attorney Fees</u>	
Appendix C - <u>Consent to Payment Fees</u>	
Appendix D - <u>Computation of Fiduciary Fees in Estate Cases</u>	
Appendix E - <u>Computation of Guardian's Fees</u>	
Appendix F - <u>Computation of Trustee's Fees</u>	
Appendix G— <u>Notice of Scheduled Mediation</u>	
	<u>Agreement to Mediate</u>
	<u>Mediation Intake Form</u>
	<u>Order to Pay Mediation Fees</u>

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 5

LOCAL RULES

LOCAL RULE 5.1

ADOPTION, SCOPE AND CONSTRUCTION OF RULES

The Probate Division of the Montgomery County Common Pleas Court adopts the following rules for the management of proceedings and other functions of the court pursuant to Rule 5 of the Rules of Superintendence for the Courts of Ohio. The court may amend these rules as needed or as required by law.

These rules are intended to supplement and complement the Ohio Rules of Civil Procedure, other applicable controlling statutes, and the Rules of Superintendence for the Courts of Ohio. (See www.sconet.state.oh.us/Rules/Superintendence/)

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 6

ATTORNEY REGISTRATION NUMBER

LOCAL RULE 6.1

All attorneys who appear before this court or prepare documents for filing with this court shall include their attorney registration number issued by The Supreme Court of Ohio on all documents filed with the court.

Adopted: 2/1/05

Revised: 4/6/10

SUPERINTENDENCE RULE 8

COURT APPOINTMENTS

LOCAL RULE 8.1

- (A) The court will maintain separate master lists of persons who may be appointed as attorneys, guardian ad litem, appraisers, commissioners, fiduciaries, investigators, mediators and trustees for suit. Appointees will be added to each list upon their request and a demonstration to the court that they possess the requisite skill, expertise and any required licensure pursuant to these rules and the laws of the State of Ohio.
- (B) Appointments will be made from such lists taking into consideration the qualifications, skills, expertise, and caseload of the appointee, in addition to the type, complexity, and requirements of the case. The Court will periodically review the appointment lists to ensure the equitable distribution of appointments and that all potential appointees continue to meet the established qualifications.
- (C) Court appointees will be paid a reasonable fee with consideration given to the factors contained in Rule 1.5 of the Ohio Rules of Professional Conduct, the Ohio Revised Code, and the Local Rules of Court relating to fees except where otherwise noted.

Adopted: 2/1/05

Revised:

**SUPERINTENDENCE RULE 9
SECURITY PLANS; CONFIDENTIALITY**

LOCAL RULE 9.1

COURT SECURITY POLICY AND PROCEDURES PLAN

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

Adopted: 2/1/05

Revised: 5/28/10

SUPERINTENDENCE RULE 11

RECORDING OF PROCEEDINGS

LOCAL RULE 11.1

- (A) The Court records hearings electronically and stenographically. If a hearing is recorded electronically, the electronic recording shall be the official record.
- (B) A Read-Only Memory copy of a Compact Disk (CD-ROM) recording of an electronic hearing shall be requested by submission of **FORM MC 6** and the payment of costs.
- (C) A transcript of an electronic record shall be a CD-ROM recording of the hearing or testimony. An electronic transcript shall be requested on **FORM MC 6.1** with the payment of costs. Two CD-ROM copies will be prepared. A copy will be filed by the Court as the record. The applicant will be provided with a second copy of the CD-ROM transcript. Upon filing the transcript, the Court will serve a Certificate of preparation and filing upon the requesting party. A written transcript of the CD-ROM, or any portion of the CD-ROM, may be prepared by the requesting party at the requesting party's expense.
- (D) A transcript of a stenographic record shall be requested on **FORM MC 6.2**. A copy of the request should be served upon the Court Reporter. The party requesting the transcript shall contact the court reporter to obtain the cost for preparation of the transcript. The Court Reporter may require a deposit. All costs are the responsibility of the requesting party. Transcripts will be released upon payment of all costs.
- (E) The Court maintains electronically recorded proceedings for three (3) years from the date of the hearing. Any interested party desiring to preserve the record beyond this period must file a CD-ROM copy of the hearing as part of the record of the case prior to the expiration of the three year period.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 12

**CONDITIONS FOR BROADCASTING AND PHOTOGRAPHING
COURT PROCEEDINGS**

LOCAL RULE 12.1

In compliance with Rule 12 of the Rules of Superintendence, the court may permit the broadcasting, televising, recording or photographing of court proceedings. The term “proceedings” shall mean public hearings held by the court.

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

SUPERINTENDENCE RULE 16

MEDIATION

Local Rule 16.1

(A) Introduction

The Montgomery County Court of Common Pleas, Probate Division, adopts Local Rule 16.1 effective February 1, 2007. Through 16.1, the Court incorporates by reference the Uniform Mediation Act (UMA) R.C. 2710 and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

By participating in mediation, a non-party participant, as defined by R.C. §2710.01(D), submits to the Court's jurisdiction to the extent necessary for enforcement of this rule. Any non-party shall have the rights and duties under this rule as parties, except that no evidence privilege applies.

Mediator means any individual who mediates cases pursuant to an order of this Court, regardless of whether that individual is a court employee, an independent contractor or a volunteer.

(B) Case Selection

Disputed issues in any civil case, estate, guardianship application, trust, or any other action, may be referred to mediation pursuant to a party's motion, by agreement of the parties, or on the Court's own motion. The Court must approve all referrals to mediation. Referral to mediation by the Court shall be by a "Notice of Scheduled Mediation" which shall indicate the time and place of the mediation as well as the name and telephone number of the mediator.

Mediation is prohibited as an alternative to the prosecution or adjudication of domestic violence; in determining whether to grant, modify or terminate a protection order; in determining the terms and conditions of a protection order; and in determining the penalty for violation of a protection order.

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

(C) Selection of Mediator

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

- (a) The Court shall appoint a mediator from a list of qualified mediators maintained by the court. The list will contain the names of attorneys who meet certain qualifications set by the court. The Court will annually prepare and review this list.
- (b) The Court may make specific appointments taking into consideration the qualifications, skills, expertise of the mediator in addition to the type complexity and requirements of the case.

In accordance with R.C. §2710.08 (A) and (B), the mediator shall disclose to the mediation participants any known possible conflicts that may affect the mediator's impartiality as soon as such conflict becomes known to the mediator. If a party or counsel requests that the assigned mediator withdraw because of the conflict, the parties should notify the Judge who will appoint another mediator. The parties shall be free to retain the mediator by an informed, written waiver of the conflict of interest.

(D) Procedures

If a case is appropriate for mediation, the Court will set a time and date. A mediator may meet with the parties individually prior to bringing the parties together for any reason including, but not limited to further screening. A mediator may schedule multiple mediation sessions, if necessary and mutually acceptable for the resolution of the issues.

In accordance with R.C. §2710.09, an attorney or other individual designated by a party may accompany the party to and participate in a mediation.

The Court will generate a "Notice of Scheduled Mediation" that will be sent to all parties. This notice shall ensure that parties are aware of their right to participate in mediation and provide an initial screening for domestic violence.

The Court will send the parties an "Agreement to Mediate" form to complete. This form shall explain mediation and underscore the confidentiality of mediation.

The Court will require all parties to complete a "Mediation Intake Form" to screen for domestic violence and to ascertain the issues in the case.

(E) Mediation Privilege/Confidentiality

All mediation communications related to or made during the mediation process are subject to and governed by the UMA, R.C. §§2710.03-2710.05, the Rules of Evidence, and any other judicial rules that pertain to privilege and confidentiality.

(F) Continuances

Continuances shall only be granted for good cause shown and after a mutually acceptable date has been determined.

If a case is continued, settled, or dismissed more than seven days prior to the scheduled mediation conference date, the qualified mediator shall not be entitled to compensation except in cases where the Court is not notified of the continuance, settlement, or dismissal by that date.

(G) Stay of Proceedings

All orders remain in effect during the mediation process unless the Court grants a stay or suspension by written court order.

(H) Termination

If the mediator determines that further mediation efforts would not be beneficial to the parties, the mediator shall terminate the mediation and inform all interested parties and the Court.

(I) Mediator's Duty

Upon reaching a settlement in mediation:

(a) The mediator may immediately prepare a written memorandum memorializing the agreement reached by the parties. The parties and counsel shall sign the memorandum.

(b) Counsel shall present a termination entry for approval within fourteen (14) days.

(J) Duties of Attorneys/Parties

Trial counsel and all parties, all with authority to settle, shall personally attend all mediation sessions prepared to discuss all relevant issues, including settlement terms. A party other than a natural person must be represented by a person in addition to counsel.

If counsel or any mediation party becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but who has not been joined as a party in the pleadings, they shall promptly inform the mediator and the Judge of such fact.

If the opposing parties to any case 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 information to the mediator or the Judge. Such party shall have a duty to participate in to the mediation then the parties or their counsel have a duty to disclose such any screening required by The Supreme Court of Ohio Superintendence Rule 16 both prior to, and in the mediator's discretion, during the mediation sessions.

(K) Compensation

A mediation session is a four-hour period. The parties are equally responsible for paying 1/2 of the mediator's fee for the first mediation session. The Court will pay the remaining 1/2 of the fee for the first mediation session unless otherwise ordered. If continued mediation sessions are necessary, the mediator's fee shall be borne equally by the parties, unless otherwise ordered by the court. The court will determine the mediator's fee rate based on the complexity of the issues and other requirements of the case.

(L) Legal Advice

The efforts of the mediator shall not be construed as giving legal advice. The Court provides and prominently displays brochures to distribute to parties as appropriate. The Court authorizes the mediator to provide such resource information; however, such distribution shall not be construed as a recommendation of or referral to such resource. These materials will include (1) attorney referral information and (2) local domestic violence prevention, counseling, substance abuse and mental health services.

(M) Sanctions

If any individual ordered by the court to attend mediation fails to attend without good cause, the Court may impose sanctions, including contempt, the award of attorney's fees and other costs, or other appropriate sanctions.

See APPENDIX G

[Notice of Scheduled Mediation](#)

[Agreement to Mediate](#)

[Mediation Intake Form](#)

[Order to Pay Mediation Fees](#)

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 26

COURT RECORDS MANAGEMENT AND RETENTION

LOCAL RULE 26.1

The court has a Schedule of Records Retention and Disposition filed under case number 2004MSC00404, which will be followed in conjunction with the Rules of Superintendence for the Courts of Ohio.

Adopted: 6/23/09

Revised:

SUPERINTENDENCE RULE 45.1

PUBLIC RECORDS

LOCAL RULE 45.1

- (A) Any party submitting a document to this court for filing shall omit personal identifiers from the document.
- (B) The term “personal identifiers” means social security numbers, 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.
- (C) When personal identifiers are omitted from a document filed with this court the party shall submit the omitted information to the court on a separate form. The party shall use Local Probate Court Form M 2, Personal Identifiers Omission Form, to submit this information to this court.

Adopted: 2/01/05

Revised:

SUPERINTENDENCE RULE 51

STANDARD PROBATE FORMS

LOCAL RULE 51.1

Forms approved for use in the Montgomery County Probate Court are available at the Court and on the Court's website: www.mcoho.org/probate

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 52
SPECIFICATIONS FOR PRINTING PROBATE FORMS

LOCAL RULE 52.1

COMPUTERIZED FORMS

- (A) Computer generated forms must comply with the specifications and format outlined by the Rules of Superintendence. The signature of the applicant or attorney constitutes a certificate that the computer generated forms comply with the rules.
- (B) All computer forms presented for filing must be generated with the exact wording as well as blank lines as they appear in the uniform forms.
- (C) The type size for the body of all forms filed in this Court cannot be less than ten (10) point or greater than twelve (12) point.
- (D) The Court may reject any forms that fail to comply with this rule.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 53

HOURS OF THE COURT

LOCAL RULE 53.1

The Probate Court shall be open for the transaction of business from 8:30 a.m. to 4:30 p.m., Monday through Friday except holidays. All pleadings requiring a new case number or the payment of Court costs shall be filed by 4:15 p.m.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 55

EXAMINATION OF PROBATE RECORDS

LOCAL RULE 55.1

- (A) Probate Court public records may be viewed at the Court's website: www.mcoho.org/probate. No records shall be removed from the court.
- (B) Public records may be examined at the court and copies may be obtained at a reasonable cost.
- (C) Adoption, mental illness, certain estate tax filings, and mental retardation proceedings are confidential. Records of these proceedings may be accessed only as allowed by law.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 57

FILINGS AND JUDGMENT ENTRIES

LOCAL RULE 57.1

- (A) All filings, except wills, shall be on eight and one-half (8 1/2) by eleven (11) inch paper, without backings. All pleading, motions or other filings shall be typed or printed in ink and be sufficiently legible to meet the Court's criteria for imaging. The Court may refuse or strike any filings in which the text or the signatures are illegible. The court will accept for filing only those pleadings that are complete. Filings that are not complete may be returned to counsel and/or the applicant.
- (B) When a filing consists of more than one page, the case number must appear in the upper portion of each page, including attachments.
- (C) All filings shall contain the name, address, telephone number, and attorney registration number of the individual counsel representing the fiduciary or in the absence of counsel, the name address and telephone number of the fiduciary. The address of the fiduciary who is not an attorney must be the fiduciary's legal residence. A fiduciary who is an attorney may use an office address. Attorneys, fiduciaries, and pro se litigants shall notify the Court of any address changes.

Failure of the fiduciary to notify the court of the fiduciary's current address shall be grounds for removal. The fiduciary shall be given not less than ten days written notice of the hearing to remove. The notice shall be sent by regular mail to the last known address contained in the Court's case file.

- (D) Unless otherwise ordered by the Court, the prevailing party shall prepare a proposed judgment entry and submit the original to the Court with a copy to Counsel for the opposing party or to the opposing party if there is no counsel. The proposed entry shall be submitted within seven (7) days after judgment. If the prevailing party fails to submit this entry, the matter may be dismissed or the Court may prepare and file the appropriate entry.

Any proposed entry submitted to the Court shall contain a certificate of service including the names and addresses of all parties and other interested persons required to be served.

- (E) Social Security numbers are confidential and will not be required on any filing in this Court that is available for inspection by the public. Applicants for guardianships will provide their social security number and the social security number for the proposed ward on a form that will not be disclosed to the public.
- (F) The Court will not accept filings by facsimile transmission or electronic mail.
- (G) The court does not accept Power of Attorney signatures on pleadings or on any other documents except: (1) if there is specific language contained in the Power of Attorney authorizing the signature or (2) as authorized in Local Rule 64.1 (A)(2).

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 58

DEPOSIT FOR COURT COSTS

LOCAL RULE 58.1

The business of this Court shall be conducted on a cash basis. The Court will only accept cash, money orders, cashier's checks, attorney, title company, or trust company checks.

- (A) Deposits shall be required upon the initial filing of any action or proceeding. The deposit shall be applied as filings occur and additional deposits may be required. The Court shall maintain and make available a current list of costs.
- (B) A minimum deposit of \$25.00 shall be maintained in all pending estates, guardianships of estates, trusts and civil matters pending before this court. The Court may order additional deposits.
- (C) Jury deposits shall be paid contemporaneously with the filing of a jury demand.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 60

**APPLICATION FOR LETTERS OF AUTHORITY TO ADMINISTER
ESTATE AND NOTICE OF APPOINTMENT**

RULE 60.1

- (A) Prior to the granting of an Application for Letters of Administration by a person who is not the nominated Executor, surviving spouse, next of kin, or legatee or devisee of the decedent, the Court shall give notice to the surviving spouse, next of kin or legatees and devisees of the decedent, including persons entitled to an allowance for support. Said notice shall be given regardless of the party's residence unless written waivers are submitted with the application. A written notice shall include the time, date and place of hearing and shall be served at least seven (7) days prior to the date set for hearing. Notice shall be given in the manner provided by Rule 73 of the Ohio Rules of Civil Procedure.
- (B) Before filing an Application for Letters of Administration, the attorney or proposed fiduciary shall determine if there is a will of the decedent on deposit with this Court pursuant to Ohio R. C. 2107.07, if there is a will of the decedent on file with this Court pursuant to Ohio R.C. 2107.084 or if there is a will of the decedent that has otherwise been filed with this Court.
- (C) All executors or administrators shall sign and file the Fiduciary Acceptance Form that has been adopted for use by order of this Court. This form shall be signed and filed prior to the issuance of Letters of Authority.
- (D) Non-resident executors shall keep all assets located in Montgomery County at the time of decedent's death in the County until final distribution or until further order of the Court.

Adopted: 2/1/05

Revised: 4/6/10

SUPERINTENDENCE RULE 61

APPRAISERS

LOCAL RULE 61.1

- (A) When required by law, one suitable, disinterested appraiser may be appointed by the Court upon application of the fiduciary. This Court maintains a list of approved appraisers that shall be used by the fiduciary.
- (B) The Fiduciary must list all probate assets in the Inventory. Assets whose values are not readily ascertainable must be appraised by a court approved appraiser.
 - a. The fiduciary may use the fair market value of real property, as determined by the County Auditor for real estate taxes, in lieu of a formal appraisal. A copy of the County Auditor's valuation shall be submitted as proof of value.
 - b. The fiduciary may use the average trade-in value, from any recognized valuation guide for motor vehicles, in lieu of appraisal. A copy of the valuation shall be submitted as proof of value.
 - c. The probate court may order a formal appraisal of any asset upon the court's own motion or upon the motion of any interested party.
- (C) Without application to the Court, fiduciaries may compensate the appraiser a reasonable agreed amount for the appraiser's services, or an amount computed on the gross value of the assets appraised in the estate (as set forth in the inventory) at a rate of \$1.00 per thousand dollars of value with a minimum fee of \$100.00. Fees for appraisals shall be computed on the full value of the property appraised even though the decedent's interest may be fractional.
- (D) If the fiduciary and the appraiser cannot agree upon the amount of the appraiser's compensation, and the schedule set forth in paragraph C above is not used, the fiduciary shall file an application for allowance of compensation for each appraiser. Otherwise, no court order is necessary before payment of the appraisal fees, and credit may be taken for payment in the next accounting subject to exceptions allowed by law.

- (E) During the administration of the estate, no appraiser or broker shall directly or indirectly purchase or negotiate the purchase or sale of property that the appraiser has appraised.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 62

CLAIMS AGAINST ESTATE

RULE 62.1

- (A) When a claim has been filed with this Court pursuant to R.C. 2117.06, the fiduciary shall file a copy of any rejection of the claim with this Court.
- (B) If the fiduciary requests a hearing on claims in an insolvency action, the fiduciary shall submit a schedule of claims or other similar form prioritizing the claims pursuant to R.C. 2117.25. The fiduciary shall serve notice of the hearing on all creditors, next of kin and/or legatees and devisees, who have not waived notice, pursuant to Civil Rule 73 and file proof of service with this Court within five (5) days of any hearing.
- (C) No estate shall be closed until all claims filed with the Court have been rejected or accepted and resolved. Bond premiums shall be regarded as administration expenses and shall be paid when due.

Adopted: 2/1/05

SUPERINTENDENCE RULE 64

ACCOUNTS

LOCAL RULE 64.1

All accounts must be signed by the fiduciary and contain the full name, current resident address, and telephone number of the fiduciary and counsel of record. If there are multiple fiduciaries, all fiduciaries must sign the account.

Delinquent Accounts

No expenditure, sale, distribution or fee will be approved while the fiduciary is delinquent in filing an account. No land sale actions will be confirmed in guardianship cases when accounts are delinquent.

(A) DECEDENT'S ESTATES:

(1) Time for Filing

For decedent's estates where the death occurred on or after January 1, 2002, the fiduciary's final distributive account is due within six (6) months after the appointment of the fiduciary as required by R.C. 2109.301. The time period may be extended by filing Form 13.10, Notice to Extend Administration or by filing Form 13.8, Application to Extend Administration and obtaining approval of the Court. Extensions beyond thirteen (13) months may only be obtained by filing Local Form 13.81 and obtaining the permission of the Court. If partial accounts are allowed, all subsequent accounts must be filed on an annual basis until the estate administration is completed, unless otherwise ordered by the Court.

For decedent's estates where the death occurred on or before December 31, 2001 the fiduciary shall file the first account with this Court within one (1) year from the appointment of the fiduciary. All subsequent accounts shall be filed on an annual basis, unless otherwise ordered by the Court.

(2) Assets

At the time of filing a partial account, all intangible personal assets remaining in the fiduciary's hands must be exhibited according to Rule 64 (D)(2) of the Rules of Superintendence.

If real property has been sold during an accounting period, under a power in a will or by consent, the gross proceeds from the sale and all costs of sale shall be accounted for on the fiduciary account and a copy of the closing statement shall be attached to and made a part of the fiduciary account.

If a distributive share is being received by a person holding a power of attorney, the attorney in fact must sign a receipt that is filed with the account and a copy of the recorded power of attorney for the attorney in fact must be submitted with the account.

(3) Vouchers

The fiduciary is required to present vouchers or receipts for all disbursements made on behalf of a minor and/or an incompetent. If the distribution has been made to a fiduciary appointed by another court, a certified copy of the fiduciary's letter of authority shall be submitted with the voucher or receipt.

Except as provided herein, the fiduciary of a decedent's estate is not required to submit to the Court vouchers to verify disbursements made from the estate. The fiduciary shall collect and retain vouchers for his or her records. If an interested party requests to view a voucher, the fiduciary shall provide a copy of the requested voucher to the interested party. If an interested party files exceptions to an account the fiduciary shall file any vouchers that relate to any exceptions with the Court at least five (5) days prior to any hearing on the exceptions.

(4) Certificate of Service

A Certificate of Service of Account to Heirs and Beneficiaries (Standard Probate Form 13.9) shall be signed by the fiduciary and filed with all accounts to certify that the fiduciary has provided a copy of the account to all persons entitled to a copy of the account pursuant to Section 2109.32(B)(1) of the Revised Code.

(5) Final Accounts

All final accounts shall be set for a hearing with notice. The fiduciary is required to file waivers of notice of hearing or serve notice of hearing on all next of kin or legatees and devisees of the estate. The fiduciary shall file proof of service of notice with this Court at least five (5) days prior to any hearing on the approval of the final account.

(1) Time for Filing

In guardianship and trust cases the fiduciary shall file the first account within twelve (12) months from the appointment of the fiduciary. All subsequent accounts shall be filed on an annual basis unless otherwise ordered by the Court. Accounts that are not timely filed are subject to citation.

(2) Vouchers

Vouchers shall be submitted for all disbursements in guardianship and trust cases. The vouchers will be retained for one year from the approval of the final account. The fiduciary and/or counsel of record may request the return of the vouchers at the end of this time period. If no request is made for the return of the vouchers, they will be destroyed.

(3) Citations

The Court will not issue citations on trust cases in January and February of each calendar year.

(4) Bank Records

A copy of all bank statements covering the time period of an account shall be submitted with all guardianship accounts filed by a non-corporate guardian. The bank records will be retained as a voucher and will not be filed and imaged as part of the guardian's account.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 65

[LAND SALES](#)

LOCAL RULE 65 .1

- (A) No order confirming the sale of land by an executor, administrator, or guardian shall be approved by the Court until three (3) days after a written motion has been filed by the fiduciary requesting confirmation of the sale.
- (B) Certification of title examination shall be included on all land sale complaints and motions or entry for the issuance of an order of sale pursuant to Local Rule 2.23 of the General Division of the Montgomery County Common Pleas Court.
- (C) Any purchaser of real estate through a land sale proceeding shall have thirty (30) days from the date of sale to obtain an examination of title as allowed by Local Rule 2.23(VI) of the General Division of the Montgomery County Common Pleas Court. The purchaser may waive any or all of this thirty (30) day period by signing the Confirmation Entry.
- (D) The distribution of sale proceeds must be included with any confirmation order. A proposed entry to confirm the sale and order of distribution must be submitted with all motions to confirm a sale.

Adopted: 2/1/05

Revised: 7/27/2010

SUPERINTENDENCE RULE 66

GUARDIANSHIPS

LOCAL RULE 66.1

(A) All guardians of the person or estate shall receive a guardian's handbook issued by the Court. The guardian's handbook will provide the guardian with general information on the guardian's duties and responsibilities. The cost of the handbook will be assessed to the guardian or the estate of the ward.

(B) The biennial report required to be filed by R.C. 2111.49 shall be filed by the Guardian of the Person of the ward, except that if no Guardian of the Person was appointed then the report shall be filed by the Guardian of the Estate of the ward. The first biennial report is due two (2) years after the date of the appointment of the Guardian. Subsequent reports are due every two (2) years from the date of the filing of the last report.

If a physician or a licensed clinical psychologist states on a statement of expert evaluation form, that to a reasonable degree of medical certainty it is unlikely that the ward's mental competence will improve, the guardian may apply to the court to dispense with the filing of an updated statement of expert evaluation form when filing subsequent annual Guardian's Reports.

(C) None of a ward's assets may be accessed through an automated teller machine or debit card. Electronic payment of routine and recurring expenses is permitted with court approval.

(D) An Application for Authority to Expend Funds shall not be approved until an Inventory has been filed in the case. All funds and assets held in the ward's name shall not be released to a guardian except upon order of the Court.

(E) Any expenditure for gifts from the ward's estate shall be made only with the approval of the Court pursuant to Ohio R.C. 2111.50.

(F) All guardians shall notify the Court of the death of the ward by written notice no later than sixty (60) days after the death of the ward. If the guardian does not notify the Court of the ward's death in the time prescribed, the guardian shall not be entitled to collect guardian fees from the ward's estate unless upon hearing the guardian can demonstrate good

cause for the guardian's failure to comply with this rule. If the guardian is also the attorney for the estate, this rule shall also apply to attorney fees.

- (G) All guardianship estate cases that involve Veterans' benefits are subject to and must comply with R.C. Chapter 5905 and all other rules and regulations of the Department of Veterans Affairs. All applications for authority to expend funds shall also be approved by the Department of Veterans Affairs or said application shall be set for hearing and notice given to the Department of Veterans Affairs.
- (H) The guardian of the estate of an incompetent ward shall deposit the ward's will with the Court for safekeeping pursuant to Ohio R.C. 2107.07.
- (I) The Court will grant an application for emergency guardianship only by testimony, affidavit or other evidence showing that immediate action is required to prevent significant injury to the alleged ward or the property of the alleged ward and that an application for the appointment of a guardian of the person or estate or both has been filed with the Court.
- (J)
 - (1) A certified copy of the minor's birth certificate must be filed with the Court with the application for guardianship of the minor.
 - (2) The Court will not accept for filing any guardianship of the person of a minor where another Court has prior jurisdiction over the custody of the minor unless the other Court consents to the guardianship or declines jurisdiction over the matter by Court order.
 - (3) The Court will not accept for filing any guardianship of the person of a minor where the sole purpose is to establish residency for school attendance purposes, qualify the minor for health/life insurance, or establish the placement for adoption.
 - (4) The Guardian of the person of a minor will be appointed with limited authority and shall not have the authority to create a power of attorney pursuant to R.C. 3109.52.
- (K) Any applicant for guardianship, except a state agency, must complete a criminal record check which is acceptable to the Court. The costs of any criminal record check shall be paid of the applicant.
- (L) All applicants for the appointment of a guardian of an incompetent must complete and file the Applicant's Report on Alleged Ward's Information and Applicant's Information Form.

Adopted: 2/1/05

Revised: 4/6/10

SUPERINTENDENCE RULE 67

ESTATE OF MINORS

LOCAL RULE 67.1

- (A) Any application to dispense with a guardianship pursuant to R.C. 2111.05 shall be submitted by the parent or parents with whom the child resides or by the person who has custody of the child. The amount of funds involved must meet the requirements of R.C. 2111.05.
- (B) The application shall set forth the amount and source of any funds that will be distributed on behalf of the minor child. Unless otherwise ordered by the Court, the funds shall be ordered deposited in an interest bearing account in a financial institution approved by the Court in the name of the minor. The funds shall be impounded and shall be released to the child only when the child reaches the age of majority or as otherwise ordered by the Court.
- (C) The attorney for the applicant or the attorney for the insurance company shall be responsible for depositing the funds in an approved financial institution. The attorney shall also obtain a verification of receipt and deposit (Local Probate Form 22.3) from the financial institution and file the verification with the Court within fourteen (14) days from the issuance of the entry unless otherwise ordered by this Court.

Adopted: 2/1/05

Revised: 4/06/10

SUPERINTENDENCE RULE 68

SETTLEMENT OF INJURY CLAIMS OF MINORS

LOCAL RULE 68.1

SETTLEMENT OF MINOR'S CLAIMS

- (A) The Court will require the appointment of a guardian of the minor's estate for all claims where the net amount of the settlement is in excess of the amounts set forth in R.C. 2111.18.
- (B) 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.
- (C) If the settlement of a minor's claim involves a structured settlement, the proposed structured settlement shall be reviewed with the Court before the application for settlement is filed. The application shall also include a statement of the total actual cost to the defendant of the settlement. This statement shall be used to fix and determine attorney fees.
- (D) If the settlement is to be funded by an annuity, the annuity shall be provided by an annuity carrier that is licensed to write annuities in Ohio. The annuity carrier must have a minimum of \$100,000.00 of capital and surplus, exclusive of any mandatory security valuation reserves. The annuity carrier must have one of the following ratings from the following rating organizations: A++, A+ or A from A.M. Best Company; AAA, Aa1 or Aa2 from Moody's Investors Service; or AAA or AA from Standard's & Poor's Corporation. The annuity insurer issuing an annuity contract may not enter into an assumption reinsurance agreement for the annuity contract without the prior approval of this Court, the owner of the annuity contract, and the claimant having the beneficial interest in the annuity. In all instances of reinsurance, the broker or the annuity insurance carrier shall provide the Court with an affidavit to certify that the carrier meets the standards set forth in this rule.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 70

SETTLEMENT OF WRONGFUL DEATH AND SURVIVAL CLAIMS

LOCAL RULE 70.1

SETTLEMENT OF WRONGFUL DEATH CLAIMS

- (A) All applications to settle wrongful death claims shall be set for hearing. The fiduciary shall serve written notice of the hearing and a copy of the application on all interested persons at least seven (7) day before the hearing.
- (B) Interested persons who are subject to notice, as set forth in R.C. §2125.02, shall include the surviving spouse, the children, the parents and other next of kin of the decedent.
- (C) Interested persons may waive notice and consent to the settlement and allocation and distribution of proceeds in writing.
- (D) The applicant must be present at the hearing.
- (E) The report of distribution of wrongful death and survival claims shall be filed within thirty (30) days of the approval of the settlement unless otherwise ordered by the Court.
- (F) If a wrongful death trust pursuant to R.C. §2125.03 is to receive any settlement proceeds for a minor, approval of the trust must be obtained from the Court prior to filing the application to settle the claim.

Adopted: 2/1/05

Revised: 5/19/08

SUPERINTENDENCE RULE 71

COUNSEL FEES

LOCAL RULE 71.1

Attorney fees in all matters shall be governed by DR 2-106 of the Code of Professional Responsibility. All attorney fees must be reasonable, and the services rendered must be necessary to the administration of the case. The Court may set any fee request for hearing.

(A) ESTATES

(1) Attorney fees, in decedent's estate cases, shall not be paid until the final account is prepared for filing unless otherwise approved by the Court upon application and for good cause shown. Any application for the payment of attorney fees, that is filed before the final account is filed, shall set forth the amount of fees requested and an hourly summary of work performed that justifies the requested fee. Applications for the payment of partial attorney fees will not be approved as a percentage of the attorney fees provided for under Appendix A of the Local Rules. In solvent estates, an application is not required if all of the beneficiaries consent in writing to the payment of the attorney fees on a partial account. Appendix C of the local rules of court shall be used for any written consents. The beneficiaries shall further acknowledge that they have been advised that the fees are not payable on a partial account without the approval of the beneficiaries or the consent of this Court upon application and good cause shown. The beneficiaries shall also be given, and acknowledge that they have been given, a good faith estimate of the percentage of the total attorney fees that will be paid as partial attorney fee.

(2) In a decedent's estate, no application for attorney fees is required on a final account in any of the following cases:

(a) Payment of the fee is included in an accounting or certificate of termination filed by the fiduciary who is also the sole beneficiary of a solvent estate.

(b) If all beneficiaries or creditors, whose share will be charged with the payment of any part of the fee, consent in writing to the specific dollar amount to be paid and the consent is filed with the

account which claims credit for the fee paid. In such cases, a guardian may consent for the guardian's ward, the fiduciary of a deceased beneficiary's estate may consent on behalf of the deceased beneficiary, and a testamentary trustee or inter vivos trustee may consent on behalf of the trust beneficiaries. Consents may not be used if a will contest action, determination of heirship, or any other action has been filed that may change the persons who would be the beneficiaries of the decedent's estate. The probate court may require an application for payment of attorney fees to be filed even when consents have been submitted by all beneficiaries and creditors of the decedent's estate.

(c) A calculation that reflects that the attorney fee taken is within the guidelines contained in Appendix A is attached to the account. Appendix A is merely a guideline and shall not be used by the attorney to receive a fee that would be unreasonable under DR 2-106.

(3) When an application for attorney fees that is signed by the fiduciary, contains an itemized description of the legal services performed, the court may approve the application without a hearing subject to the filing of any exceptions allowed by law.

(4) If the fiduciary is also the attorney for the estate, or if the attorney for the estate is a member of the fiduciary's law firm, the attorney may not use the guideline fees set forth in Appendix A if both attorney fees and fiduciary fees are taken. The attorney must submit an application for attorney fees showing time spent on the estate both as attorney and as fiduciary. If the attorney elects to take only one fee the attorney can use the full attorney fee allowed by Appendix A or the full fee allowed by R.C. 2113.35.

(5) The computation forms for attorney fees (Appendix B) and/or fiduciary fees (Appendix D) must be attached to all estate accounts when fiduciary fees or attorney fees are paid. Appendix B is only required when Appendix A is used to determine attorney fees.

(6) If Appendix A is used as a guide to compute attorney fees, no attorney fees shall be allowed on funds advanced to the estate.

(7) In release of administration cases, Appendix A may be used only as to the probate assets listed in the release. No fees are allowed on assets subject to Ohio or Federal estate tax that are not listed on the release forms.

(B) GUARDIANSHIPS AND TRUSTS

(1) In guardianship and trust cases, no hearing shall be required upon an application for attorney fees if all the following conditions are met:

(a) The application is signed by the fiduciary;

(b) The application contains an itemized statement of the legal services performed with the hourly rate charged;

(c) The order approving the fee requested contains a statement that a credit for the fee allowed may be taken in the next accounting and the attorney fees are subject to exception as provided by law.

(2) In cases where the attorney is also the guardian or trustee, the attorney shall set forth the time expended as both the guardian and attorney or as the trustee and attorney.

(3) All applications for attorney fees in guardianship cases that account for Veteran benefits shall be set for hearing and notice given to the Department of Veterans Affairs, unless a waiver or consent is obtained from the Department of Veterans Affairs.

(C) WRONGFUL DEATHS

A contingent fee agreement that does not exceed 33 1/3% of recovery in personal injury matters, 40% if an appeal is taken in personal injury matters, or 40% in a medical malpractice action may be approved by the Court at the settlement hearing without any prior approval of the Court. If the contingent fee agreement exceeds these guidelines prior approval must be obtained before the fiduciary may enter into the contract or fee agreement. In all cases, the Court will review the reasonableness of all fees and costs at the settlement hearing. The same contingent fee standards shall also apply to Local Rules 68.1 and 69.1.

(D) COURT APPOINTED COUNSEL FEES

(1) Estates and Trusts

See Local Rule 71.1 (A) (1-7).

(2) Guardianships

Whenever counsel is appointed pursuant to R.C. 2111.02, the following applies:

(a) Appointed counsel for an indigent ward or alleged ward shall be compensated for work performed out of Court at the rate of forty dollars (\$40.00) per hour and for work performed in Court at the rate of fifty dollars (\$50.00) per hour upon submission of an application for payment that sets forth the date, nature of the service and time expended. The application must be signed by the attorney and approved by the Court.

(b) Appointed counsel for a non-indigent ward or alleged ward shall be compensated for work performed at an approved reasonable

hourly rate. The application must be signed by the attorney, the fiduciary and approved by the Court.

(3) Mental Health

(a) The Court will allow appointed counsel to be compensated for work performed out of Court at the rate of fifty dollars (\$50.00) per hour and for work performed in Court at the rate of sixty dollars (\$60.00) per hour upon submission of an application for payment that sets forth the date, nature of the service and time expended. The application must be signed by the attorney and approved by the Court.

(b) Counsel shall submit application for payment within fourteen (14) days of services rendered. Untimely applications shall not be paid.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 72

EXECUTOR'S AND ADMINISTRATOR'S COMMISSIONS

LOCAL RULE 72.1

EXECUTOR'S AND ADMINISTRATOR'S COMPENSATION

- (A) Executor or administrator fees shall be allowed pursuant to R.C. 2113.35. A computation of fiduciary fees shall be filed with each account where fiduciary fees have been paid. Appendix D or a similar form shall be used to compute the allowed fiduciary fees.
- (B) Extraordinary fees may be allowed in special circumstances upon application setting forth an itemized statement of all services rendered and the amount of compensation requested pursuant to R.C. 2113.36. Notice of the hearing on the application shall be given to all persons affected by the payment of these fees.
- (C) The Court may reduce fiduciary commissions if the fiduciary is delinquent in filing an inventory, accounts, or if after hearing, the court finds that the fiduciary has not faithfully discharged the duties of the office.
- (D) Co-Executor or Co-Administrator fees shall not exceed the amount that would have been allowed to one fiduciary.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 73

GUARDIAN'S COMPENSATION

LOCAL RULE 73.1

- (A) The compensation that may be taken by guardians as a credit in their accountings, without application and order first obtained, must be less than or equal to that provided by the following schedule:
- (1) 5% of income from intangible investments and deposits and all installment receipts, such as Social Security or Veterans' benefits.
 - (2) 10% of gross rentals from real estate actually managed by the guardian (5% if proceeds of a net lease).
 - (3) \$2.50 per thousand dollars of intangible personal property investments and deposits for each year of the accounting period.
 - (4) 1% of distribution of personal property corpus at conclusion of the guardianship.
 - (5) For corporate guardians: A fee may be charged on the same basis as the corporate guardian charges its clients as trustee of a living trust. Each corporate fiduciary shall file its current fee schedule with this Court. Any amendments to the schedule must be filed before a fee computed under the amended schedule is credited to an account. The fee schedule shall be limited to a maximum 1% fee for all guardianship estates with a market value of \$75,000.00 or less.
 - (6) A computation of fiduciary fees shall be filed with each account where fiduciary fees have been paid. Appendix E or a similar form shall be used to compute the allowed fiduciary fees. Existence of the above schedule is not approval by the Court of the reasonableness of the fee so taken, and any credit for a fee in such amount shall be subject to exceptions to the account as provided by law.
- (B) Additional compensation for extraordinary services, reimbursement for expenses incurred, and compensation of a guardian of the person only may be allowed upon application and hearing. Notice of the hearing on the application shall be given to interested persons as ordered by the Court.

- (C)** The compensation of co-guardians shall not exceed the compensation that would be allowed to one guardian.
- (D)** The Court may deny or reduce compensation if an inventory or account was delinquenty filed, or after hearing, the court finds that the guardian has not faithfully discharged the guardian's duties.
- (E)** All applications for compensation of guardians of veterans must comply with Chapter 5905 of the Ohio Revised Code and all other rules and regulations of the Department of Veterans Affairs.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 74

TRUSTEE'S COMPENSATION

LOCAL RULE 74.1

- (A) The compensation that may be taken by trustees of testamentary trusts as a credit in their accountings, without application and order first obtained, must be less than or equal to that provided by the following schedule:
- (1) 5% of income from intangible investments and deposits and all installment receipts, such as Social Security or Veterans' benefits.
 - (2) 10% of gross rentals from real estate actually managed by the guardian (5% if proceeds of a net lease).
 - (3) \$2.50 per thousand dollars of intangible personal property investments and deposits for each year of the accounting period.
 - (4) 1% of distribution of personal property corpus at periodic distributions.
 - (5) For corporate guardians: A fee may be charged on the same basis as the corporate guardian charges its clients as trustee of a living trust. Each corporate fiduciary shall file its current fee schedule with this Court. Any amendments to the schedule must be filed before a fee computed under the amended schedule is credited to an account. The fee schedule shall be limited to a maximum 1% fee for all guardianship estates with a market value of \$75,000.00 or less.
 - (6) A computation of fiduciary fees shall be filed with each account where fiduciary fees have been paid. Appendix F or a similar form shall be used to compute the allowed fiduciary fees. Existence of the above schedule is not approval by the Court of the reasonableness of the fee so taken, and any credit for a fee in such amount shall be subject to exceptions to the account as provided by law.
- (B) Additional compensation for extraordinary services, reimbursement for expenses incurred, and compensation of a guardian of the person only may be allowed upon application and hearing. Notice of the hearing on the application shall be given to interested persons as ordered by the Court.

- (C) The compensation of co-trustees shall not exceed the compensation that would be allowed to one trustee.
- (D) The court may deny or reduce compensation if an inventory or account was delinquent filed, or after hearing, the Court finds that the trustee has not faithfully discharged the trustee's duties.

Adopted: 2/1/05

Revised: 4/6/10

SUPERINTENDENCE RULE 75

LOCAL RULES

LOCAL RULE 75.1

(A) GUARDIAN AD LITEM

(1) Qualifications

A guardian ad litem shall be an attorney who is not associated with an attorney of record for the proceeding in which the guardian ad litem has been appointed.

(2) Appointment

(a) Land Sales

Subject to approval by the Court, a guardian ad litem will be appointed on recommendation and entry of the attorney or record.

(b) All Other Matters

A guardian ad litem may be appointed without recommendation upon notification of the necessity for appointment.

(3) Fees

(a) Land Sales

Unless ordered by the Court, a fee shall be taxed in the costs of the case for each guardian ad litem in the amount of Ten Dollars (\$10.00).

(b) All Other Matters

Unless ordered by the Court, upon application and entry, a fee based on a reasonable hourly rate for time expended shall be taxed in the costs of the case for each guardian ad litem.

(B) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

(1) Individuals with disabilities, special needs or the need for an interpreter shall make requests to the Court Administrator for reasonable accommodations no later than seven (7) days prior to any scheduled hearing.

(2) If the interpreter service is no longer required or if the parties continue the hearing, the individual making the request shall immediately notify the Court Administrator to cancel or reschedule the service. Failure to notify the Court may result in the individual paying any cancellation fee for the interpreter service.

Adopted: 2/1/05

Revised:

SUPERINTENDENCE RULE 76

EXCEPTION TO THE RULES

LOCAL RULE 76.1

Upon application and for good cause shown, this Court may grant exceptions to the Local Rules and/ or to Rules of Superintendence.

Adopted: 2/1/05

Revised: 5/19/08

SUPERINTENDENCE RULE 78

**PROBATE DIVISION OF THE COURT OF COMMON PLEAS
CASE MANAGEMENT IN DECEDENT'S ESTATES, GUARDIANSHIPS AND
TRUSTS**

CASE MANAGEMENT

LOCAL RULE 78.1

For the purpose of insuring the readiness of proceedings in this Court, the following procedures shall be in effect and referred to as the "case management rule".

(A) DECEDENTS ESTATES

(1) All estate cases shall be assigned to a specific Magistrate. This Magistrate shall supervise the assigned case and will hear all related matters except civil actions unless otherwise referred by the Judge.

(2) All accounts shall be filed pursuant to R.C. 2109.301 as supplemented by Local Rule 64.1. The citation procedure set forth in R.C. 2109.31 shall be used to gain compliance.

(3) A hearing shall be scheduled on objections to inventories or accounts within sixty (60) days after the filing of objections unless otherwise extended by order of the Court.

(4) A Status Report shall be filed whenever a partial account or waiver of partial account is filed in a decedent's estate. The Court may order a status report at any time. The status report shall set forth the current status of the estate, list the steps remaining to complete the estate, and give an estimated time frame for completing the estate. A copy of this status report shall be served upon all persons or creditors that have an interest in completing the estate. The fiduciary shall file an annual status report on the anniversary date of the first status report until the estate is completed. Based upon a review of the status reports, the Court may require the fiduciary and counsel to attend a status conference.

(5) All fiduciaries appointed in estate proceedings shall sign and file a Fiduciary Acceptance Form, Montgomery County Probate Local Form 4.8.

(B) RELEASE OF ESTATE FROM ADMINISTRATION

(1) All release of estate from administration cases will be assigned to a specific Magistrate. This Magistrate shall supervise the assigned case and will hear all related matters unless otherwise referred by the Judge.

(2) Estates may be released from administration pursuant to R.C. 2113.03. The citation procedure set forth in R.C. 2109.31 shall apply to the filing of Commissioner Reports.

(3) The court shall select and appoint Commissioners, when required, in estates released from administration. Commissioner must be residents of the State of Ohio unless either of the following applies:

(a) The proposed commissioner is named as executor in the decedent's will and is related to the decedent by blood or marriage; or

(b) The proposed commissioner is the sole next of kin or legatee and devisee of the estate.

(4) The Commissioner shall be bonded unless one of the following applies:

(a) Named as executor to serve without bond in the decedent's will

(b) The proposed commissioner is the sole next of kin or legatee and devisee

(c) The proposed commissioner is an attorney licensed in Ohio and in good standing

(d) All of the next of kin, legatees and devisees and known creditors consent in writing to the person serving as Commissioner without bond.

(e) Except as otherwise ordered by the Court.

(5) Publication of notice to creditors and interested parties shall be made in all cases except as otherwise ordered by the Court.

(C) INVENTORY

(1) Inventories in trust, guardianship and decedent's estate cases will be filed within ninety (90) days after the appointment of the fiduciary unless the Court otherwise extends this time period. The citation procedure under R.C. 2109.31 shall be utilized to gain compliance.

(2) On the Schedule of Assets (Form 6.1) to be filed in a decedent's estate, every itemized listing of corporate stock owned by a decedent must be preceded by one of the following symbols: If the stock is publicly traded and its valuation obtained from any recognized stock exchange or over-the-counter quotation, the listing shall be preceded by the symbol "X". If the stock is not publicly traded and represents an investment in what is commonly known as a closely held corporation, the listing must be preceded by the symbol "CC" and must be valued by a duly appointed and qualified appraiser.

(3) The Inventory shall be set for hearing no later than thirty-five (35) days after the Inventory is filed.

(4) The Schedule of Assets form in a decedent's estate case and the Inventory form in a guardianship case shall contain the legal description and parcel number of all real estate included in the estate.

(5) If multiple fiduciaries have been appointed by the court, all fiduciaries must sign the Inventory.

(6) In decedent estates, if an appraiser is used, the appraiser may sign a separate form that is attached to the inventory so long as this form has the same certification language set forth on the Inventory form.

(7) The Inventory of a ward shall include the expected annual income of the ward.

(8) The Inventory will not be accepted for filing unless the fiduciary has sufficient fiduciary bond posted, if required.

(9) If a partnership interest is listed as an asset of the decedent's estate on the Inventory, the fiduciary shall note on the Inventory if the value of the partnership interest was determined by the terms of the partnership agreement or by the provisions of R.C. §1779.01.

(D) GUARDIANSHIPS

(1) All guardianship cases shall be assigned to a specific Magistrate. This Magistrate shall supervise the assigned case and will hear all related matters except for civil actions unless otherwise referred by the Judge.

(2) Guardianships are subject to R.C. 2109.032 and R.C. Chapter 2111 and Local Rules 66.1 and 73.1. The citation process set forth in R.C. 2109.31 will be utilized to insure compliance.

(E) TRUSTS

(1) All trust cases shall be assigned to a specific Magistrate. This Magistrate shall supervise the assigned case and will hear all related matters except for civil actions unless otherwise referred by the Judge.

(2) Trusts are subject to R.C. 2109.303 and Local Rule 74.1. The citation process set forth in R.C. 2109.31 will be utilized to insure compliance.

(3) The written acceptance of duties required by R.C. 2109.02 must be executed in the presence of the magistrate to be assigned to the case if the fiduciary is being appointed as a testamentary trustee, except as otherwise ordered by this Court. This rule shall not apply to attorneys or corporate fiduciaries.

(F) LAND SALES

(1) All land sales actions shall be assigned to a specific Magistrate. This Magistrate shall supervise the assigned case and will hear all related matters.

(2) All land sales that have not been concluded within one (1) year from the date of filing shall be set for status conference by plaintiff's counsel within thirty (30) days following the expiration of one (1) year anniversary of the filing of the land sale action. The fiduciary and the fiduciary's attorney must attend the status conference.

(3) A written status report shall be filed with the Court no later than seven (7) days before the status conference. The status report shall address the issue of the effort being made to complete the sale.

(4) At the status hearing, the fiduciary shall show cause why the Court should not order public sale of the real estate.

(G) ADOPTIONS

(1) The court shall be responsible for all required notices in adoption proceedings except for notices by publication.

(2) If an adoption involves a child born before 1-01-97 the putative father shall be named. If an adoption involves a child born after 1-01-97, petitioner's counsel or petitioner shall request a search of the Putative Father's Registry and shall file the response with the Court.

(3) An original and a copy of all pleadings shall be filed in every adoption case. Additional copies of the petition shall be submitted as required for service.

(4) Except in stepparent and grandparent adoptions, prior to the filing of the Petition for Adoption, a lawful placement must occur pursuant to R.C. 5103-5103.16.

(5) In all adoption cases, Court costs are required to be paid at the time of the filing. Before a hearing is set the petitioner must present all necessary documents to the Court for filing.

(6) Petitioner's accounts shall be filed in all cases except stepparent and adult adoptions.

(7) In all adoptions, married petitioner(s) must be married for not less than one (1) year prior to the final approval of the adoption.

(8) All adoption petitions and placement proceedings shall be reviewed annually, and the Court shall order further action as necessary.

(H) WRONGFUL DEATH SETTLEMENTS

All hearings shall be heard within sixty (60) days of the filing of any application for settlement. If a guardian or guardian ad litem is required, the hearing shall be held within thirty (30) days after the appointment of the guardian ad litem or within the original sixty (60) day period, whichever is greater, except as otherwise ordered by the court.

(I) MOTIONS

(1) The moving party shall, and the opposing party may, serve and file a brief written statement supporting or opposing the motion and include a list of citations of authorities in support or opposition to the motion.

(2) Unless otherwise disposed of by the Court, the moving party shall cause the motion to be set for hearing within sixty (60) days after the filing of the motion.

(3) The trial date shall be continued only upon motion demonstrating good cause and order of the Court.

(J) MENTAL ILLNESS AND MENTAL RETARDATION

All hearings pursuant to R.C. Chapter 5122 and R.C. Chapter 5123 shall be conducted pursuant to the standards and procedures set forth in these Chapters of the Revised Code.

(K) NAME CHANGES

All applications for a change of name shall be set for hearing at the time of filing. Upon failure to appear a notice of intention to dismiss shall be issued.

(L) CIVIL VERSUS ACTIONS (EXCLUDING LAND SALES)

(1) A pretrial conference shall be conducted in all cases prior to trial except land sale proceedings.

(2) Within thirty (30) days after the answer day, plaintiff or plaintiff's counsel shall request a pretrial conference.

(3) Plaintiff's counsel shall give not less than fourteen (14) days of the conference to all counsel of record and/or parties not represented by counsel who have entered an appearance. Requests for continuance of the conference shall be in writing and timely filed with the Court.

(4) All counsel must have full authority to enter into binding orders. Unless otherwise ordered by the court, the following matters and decisions shall be addressed at the pretrial conference:

- (a) The possibility of settlement;
- (b) Discovery deadline dates;
- (c) A definite date for the exchange of expert witness reports;
- (d) Pleadings, briefing and proposed jury instructions dates;
- (e) Final pretrial date, if applicable;
- (f) Trial date.

(5) All parties must be present unless their presence has been excused by the Court.

(M) FIDUCIARY BONDS

(1) A copy of the Power of Attorney for all bonding agents shall be attached to all bonds submitted to this Court. This Power of Attorney must have the name of the Attorney-In-Fact that has signed the bond and the bond amount limits, if any. The bond amount limits must be sufficient to cover the total bonded amount in the case. No bond will be accepted by this Court without an attached Power of Attorney.

(2) In guardianships of the estate, bond shall be posted in an amount of double the value of the personal assets from all sources plus double the amount of the ward's annual income. Real property is not bonded unless a land sale proceeding has been filed. All guardians of a ward's estate shall be required to post a minimum bond as determined by the Court.

(3) A fiduciary bond shall be filed by all fiduciaries appointed in decedent estate case unless waived by will or excused by law. The initial fiduciary bond shall be twice the value of any personal property assets in the estate. The amount of the fiduciary bond is subject to being adjusted upward

or downward upon the filing of an inventory, consents to sell real estate, and/or upon the filing of any partial accounts. In all cases where the posting of a fiduciary bond is not waived or excused by law a minimum fiduciary bond shall be posted even if there are no personal property assets or other type of assets in the probate estate.

(4) In testamentary trust cases a fiduciary bond shall be posted unless waived by the decedent's will or by law. The initial fiduciary bond that is posted shall be double the value of the personal assets subject to the trust plus double the projected annual income of the trust.

(5) Fiduciary bond premiums must be paid when due. If the Court is notified that a fiduciary bond premium is delinquent, the Court may, on its own motion, file proceedings to remove the fiduciary.

(N) WITHDRAWAL OF COUNSEL

(1) Counsel who has entered an appearance in a case shall remain in the case until the case is concluded. The Court may permit counsel to withdraw if:

(a) Counsel files a motion to withdraw demonstrating good cause;

(b) The motion to withdraw is served on the client unless the client approved the motion in writing;

(c) Counsel lists in the motion all known filing deadlines; and

(d) Notice is given to all attorneys, unrepresented parties, and interested persons. Interested persons shall include next of kin, legatees and devisees, known creditors, trust beneficiaries and bonding agencies.

(2) The Court may schedule the motion to withdraw for hearing. If there is a pending hearing in the case, the motion to withdraw shall be set at that time.

(3) Substitution of counsel shall be in writing signed by the withdrawing counsel or the fiduciary and the substituting counsel. Notice shall be served on all counsel, bonding agencies, and all other interested parties.

(O) JURY MANAGEMENT PLAN

The jury management plan for this Court shall be the same as the jury management plan for the General Division of the Montgomery County Common Pleas Court as set forth in Local Rule 1.23 of the Rules for the General Division of the Montgomery County Common Pleas Court, except to the extent the Rules of the General Division would be clearly inapplicable.

(P) MISCELLANEOUS MATTERS

All miscellaneous matters shall be reviewed annually, and the Court shall order further action as necessary.

Adopted: 2/1/05

Revised:

APPENDIX A

ATTORNEY FEES

The following schedule is merely a guide for determining attorney fees in an ordinary estate and shall not be considered to be a minimum or maximum fee schedule. The Law requires that attorney fees be reasonable in each case. Acceptance of an account for filing that reflects payment of attorney fees equal to or less than an amount computed upon the following basis **IS NOT APPROVAL OF THE REASONABLENESS OF THE FEE TAKEN**. The Court may review the fee on the Court's own motion or upon exceptions to the account as provided by law.

It is the responsibility of each fiduciary to review any and all attorney fee requests to determine if they are reasonable and are based upon necessary services for the estate. The fiduciary and/or beneficiaries of all estates have the right to object to any attorney fee that is not reasonable or necessary. If an objection to the attorney fee is filed with this Court the attorney must produce hourly time records of services provided to the estate. Any finding that the attorney fees exceed reasonable and necessary fees will be a finding against the fiduciary if the fiduciary has paid the attorney fees.

For transfer of real estate	2% of appraised value
For personal property accounted for including proceeds of real estate sold under a power in the will or by consent (R.C. 2127.011)	8% of 1st. \$1000.00 6% of next \$4000.00 4% of next \$20,000.00 3% of next \$125,000.00 2% of Balance
Proceeds of real estate sold in Land Sale	12% of 1st. \$1,000.00 9% of next \$3,500.00 7% of next \$6,000.00 5% of next \$5,000.00 3% of Balance

Fees for determination of estate tax upon non-probate property:

- 1% on joint and survivorship property between husband and wife.
- 2% on all other non-probate property included for Ohio estate tax determinations.

In release of administration cases the attorney fees are computed only on the assets of the probate estate. No fees are allowed on property subject to Ohio or Federal estate tax.

No fees are allowed on funds advanced to the estate.

NOTE: By having a fee guide for attorney fees for determination of tax upon non-probate property, the Court is **NOT** establishing that such fees are payable from the probate estate in all cases. Also, because of the wide variance in the amount of legal responsibility for determination of tax in such cases, the guide should be used in light of a careful view of the services actually performed in a given case; the nature of the assets included; and the potential amount of tax payable.

Adopted: 2/1/05

Revised:

APPENDIX B

COMPUTATION OF ATTORNEY FEES

PURSUANT TO APPENDIX A

Real Estate Transferred \$ _____ x 2% = _____

Personal property and proceeds from the sale of real estate
Sold with consent or pursuant to power to sell in Will:

Total Value: _____

8% of first \$1000 (80)	_____	
6% of next \$4000 (240)	_____	
4% of next \$20,000 (800)	_____	
3% of next \$125,000 (3750)	_____	
2% of balance _____	_____	= _____

Proceeds sale of real estate in Land Sale:

12% of first \$1000 (120)	_____	
9% of next \$3,500 (315)	_____	
7% of next \$6,000 (420)	_____	
5% of next \$5,000 (250)	_____	
3% of balance _____	_____	= _____

Estate Tax property:

1% of Joint and Survivorship property between spouses:

_____ x 1% _____ = _____

2% of all other taxable non-probate property:

_____ X 2% _____ = _____

TOTAL FEE = _____

DISCOUNT = (_____)

TOTAL FEE TAKEN = _____

Adopted: 2/1/05

Revised:

APPENDIX C

CONSENT TO PAYMENT FEES

Estate of _____

Case No. _____

CONSENT TO PAYMENT OF ATTORNEY

FEES ON PARTIAL ACCOUNT

The undersigned, being an heir, devisee, or legatee of this estate has been advised by the attorney for the estate that the attorney is requesting the payment of _____ in attorney fees on a partial account.

The undersigned has further been advised that the above attorney fee represents payment for approximately _____% of total attorney work that will need to be performed in this estate. The undersigned acknowledges that he/she is aware that additional fees _____ will be or _____ will not be requested at a later date.

The undersigned has been further advised that the Rules of Superintendence of the Ohio Supreme Court do not allow for the payment of attorney fees on a partial account unless the attorney obtains the approval of the Probate Court. In order to obtain the approval of the Probate Court, the attorney would have to file an itemized application for attorney fees with the Court. The application would have to set forth cause for this payment of these fees on a partial and not a final account.

The undersigned consents to the payment of attorney fees in the sum of \$_____ and waives any requirement of a written application and approval of the Probate Court.

Date: _____ X _____

Witness: _____

Adopted: 2/1/05

Revised:

APPENDIX D

COMPUTATION OF FIDUCIARY FEES IN ESTATE CASES

R.C. 2113.35

Personal Property and Income (Including gross proceeds of real estate sold under authority of Will):

Personal Property _____
Income _____
TOTAL _____

4% of First \$100,000.00 \$ _____
3% of Next \$300,000.00 \$ _____
2% of Balance \$ _____

Real Estate Transferred (Not Sold)

1% of \$ _____ \$ _____

Non-Probate Assets (Subject to Ohio Estate Tax – Except Joint Survivorship Property):

1% of \$ _____ \$ _____

TOTAL ALLOWABLE FEE: \$ _____

TOTAL FEE TAKEN ON PRIOR ACCOUNTS: \$ _____

TOTAL FEE TAKEN ON THIS ACCOUNT: \$ _____

Adopted: 2/1/05

Revised:

APPENDIX E

COMPUTATION OF GUARDIAN'S FEES

Local Rule 73.1

(1) Income from Investments: _____
Installment Receipts: _____

Total _____

Total _____ X .05 = _____

And, if applicable:

(2) Total Rentals from Real Estate: _____

Total _____ X 10% = _____

And, if applicable:

(3) Total Intangible Personal
Property Invested: _____

Total _____ divided by
1000 = _____ X \$2.50 = _____

And, if applicable:

(4) Total Final Distributions: _____

Total _____ X 1% = _____

Equals:

Total Allowed Guardian Compensation: _____ = _____

Adopted: 2/1/05

Revised:

APPENDIX F

COMPUTATION OF TRUSTEE'S FEES

Local Rule 74.1

(1) Income from Investments: _____
Installment Receipts: _____

Total _____

Total _____ X .05 = _____

And, if applicable:

(2) Total Rentals from Real Estate: _____

Total _____ X 10% = _____

And, if applicable:

(3) Total Intangible Personal
Property Invested: _____

Total _____ divided by
1000 = _____ X \$2.50 = _____

And, if applicable:

(4) All Periodic Distributions of
Personal Property Corpus: _____

Total _____ X 1% = _____

Equals:

Total Allowed Trustee Compensation: _____

Note: Per Local Rule 74.1 (A)(5), Corporate Trustee Fees can be determined as follows: A fee may be charged on the same basis as the corporate guardian charges its clients as trustee of a living trust. Each corporate fiduciary shall file its current fee schedule with this Court. Any amendments to the schedule must be filed before a fee computed under the amended schedule is credited to an account. **The fee schedule shall be limited to a maximum 1% fee for all guardianship estates with a market value of \$75,000.00 or less.**

**IN THE PROBATE COURT OF MONTGOMERY
COUNTY, OHIO**

Plaintiff : **CASE NO.:**
Plaintiff(s) : **(McCOLLUM, J.)**
vs. :
Defendant : **NOTICE OF SCHEDULED
MEDIATION**
Defendant(s) :
:

It is hereby ORDERED that the above-captioned case is referred to mediation. The mediation will be held at the Montgomery County Probate Court, in front of [NAME OF MEDIATOR AND MEDIATION OFFICE ADDRESS AND TELEPHONE]. The mediation will be held between _____, 20__ and _____, 20__.

Trial counsel, all parties and, if applicable, all with authority to settle, shall personally attend all mediation sessions prepared to discuss all relevant issues, including settlement terms. A party other than a natural person must be represented by a person other than counsel.

If counsel or any mediation party becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but who has not yet been joined as a party in the pleadings, they shall promptly inform the mediator as well as the Judge of such fact.

If opposing parties to any case 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 the mediation, then the parties or their counsel have a duty to disclose such information to the mediator. Such party shall have a duty to participate in any screening required by the Supreme Court of Ohio's Rules of Superintendence Rule 16 both prior to, and, in the mediator's discretion, during the mediation sessions.

Mediation communications are privileged as described in Ohio Revised Code 2710.03-2710.05 . If the parties believe that confidentiality beyond the scope of the privilege is necessary, then the parties shall effect a written confidentiality agreement prior to the mediation.

ALICE O. McCOLLUM, JUDGE

Agreement to Mediate

**IN THE PROBATE COURT OF MONTGOMERY
COUNTY, OHIO**

Plaintiff : **CASE NO.:**
Plaintiff(s) : **(McCOLLUM, J.)**
vs. :
Defendant : **AGREEMENT TO**
Defendants(s) : **MEDIATE**
:

We understand and agree to the following:

The mediator is not a judge or magistrate and has no authority to force the parties to reach an agreement. An agreement shall be reached only if the parties believe the agreement is fair and in their best interests. The mediator is not authorized to give the parties legal advice at any time. The mediator and/or parties do have the right to consult an attorney at anytime during the mediation.

The mediator is an impartial facilitator. The mediator is not an advocate for any party. The mediator and the parties agree that there are no potential conflicts of interest that may prevent or interfere with the mediation process. The mediator and each participant have the right to withdraw from mediation at any time.

Parties agree that by signing this agreement, nothing said in the mediation or any written communications (except for written agreements all parties to the case wish to be made an Order of the Court) resulting from this mediation may be used against any participant in any Court Proceeding. However, the mediator may inform the Court or report to proper authorities certain information including 1) allegations of abuse or neglect of a child, 2) certain threats of harm, 3) things said during the mediation process to plan or hide crime, and 4) things said during the mediation process that reveal a felony crime. Other than these exceptions and absent a specific agreement between and among the parties, the only information that the mediator provides to the Court is party attendance and the outcome of the mediation.

Any agreements that may be reached by the parties in this mediation do not modify or replace any Court Orders. If the parties wish to have this

Mediation Intake Form

**IN THE PROBATE COURT OF MONTGOMERY
COUNTY, OHIO**

Plaintiff : **CASE NO.:**
Plaintiff(s) : **(McCOLLUM, J.)**
vs. : **MEDIATOR:_____**
Defendant : **MEDIATION INTAKE**
Defendant(s) : **FORM**
:
:

Upon referral to or request for mediation, each party must complete this form. Please respond to each question. Thank you for your cooperation.

Date:

Person completing form is (check one): ___ Claimant ___ Respondent

This matter is being referred for mediation upon request of (check all that apply):

___ Claimant ___ Claimant's Attorney ___ Respondent ___ Respondent's Attorney
___ Judge ___ Magistrate

Claimant

Name: _____

Address: _____

Telephone: _____

Respondent

Name: _____

Address: _____

Telephone: _____

If children are at issue in this matter please give the full name, date of birth and address of each.

Amount of Claim (if applicable): _____

Nature of Claim: _____

Statement (please summarize your understanding of the dispute).

Are there any Stalking, Civil or Temporary Protections orders in effect involving any of the parties to your knowledge? ___yes ___no

If yes, please state which type of order and to whom it is against _____

Are there any pending or prior Domestic Violence allegations involving any of the parties? ___yes ___no

If yes, please give specifics, to the best of your knowledge _____

Have any of the parties been convicted of child abuse or domestic violence, relative to this case, to your knowledge? ___yes ___no

If yes, please state the specifics to the best of your knowledge(who, when, where).

Would you prefer to have someone accompany you if the matter is mediated?

___yes ___no

If yes, please state the person's name, full contact information, relationship to you and describe how that person will be of help to you in the mediation:

I certify that to the best of my knowledge, the above information is accurate and I have circled the information, if any, that must be kept confidential:

Signature

Date

Upon completion of this form please return it to: _____

Order to Pay Mediation Fees

**IN THE PROBATE COURT OF MONTGOMERY
COUNTY, OHIO**

Plaintiff : **CASE NO.:**
Plaintiff(s) : **(McCOLLUM, J.)**
vs. :
Defendant : **ORDER TO PAY**
Defendant(s) : **MEDIATION FEES**
:

In the above captioned case, the Court hereby orders payment to
_____, Mediator, the sum of \$_____ for mediation services
rendered on _____, 20_____.

The Court orders this fee paid from the Court Mediation fund.

IT IS SO ORDERED.

ALICE O. McCOLLUM, JUDGE