



Montgomery County Probate Court
Judge David D. Brannon

Local Rules of Court
Fall 2021

Montgomery County Probate Court
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Dayton, Ohio 45402
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Index

Rule	Title	Page
5.1	Adoption, Scope and Construction of Rules	3
8.1	Court Appointments	4
9.1	Court Security Policy and Procedures Plan	5
16.1	Mediation	6
51.1	Standard Probate Forms	7
54.1	Conduct in the Court	8
56.1	Continuances	9
57.2	Electronic Filing	10
60.1	Application for Letters of Authority to Administer Estate and Notice of Appointment ...	17
61.1	Appraisers	18
62.1	Claims Against Estate	19
64.1	Accounts	20
67.1	Estates of Minors Of Not More Than Twenty-Five Thousand Dollars	23
68.1	Settlement of Minor's Claims	24
70.1	Settlement of Wrongful Death and Survival Claims	27
78.1	Case Management	20
78.2	Decedent's Estate	29
78.3	Case Management in Probate Litigation Matters	39
78.4	Name Change, Name Conformity and Birth Certificate Correction Proceedings	43

LOCAL RULE 5.1

ADOPTION, SCOPE AND FORMAT OF RULES

All persons before this Court shall familiarize themselves with all applicable laws and Rules.

(A) Adoption of Local Rules.

- (1) The Probate Division of the Common Pleas Court for Montgomery County, Ohio (“Court”), hereby adopts the following Rules applicable to all functions and services of the Court.
- (2) These Rules shall supplement and complement the Ohio Rules of Civil Procedure (“Civ.R.”), the Rules of Superintendence for the Courts of Ohio (“Sup.R.”), the Ohio Revised Code (“R.C.”) and all other applicable authority.
- (3) These Rules are effective as of November 1, 2021 and may be amended as appropriate to facilitate the expeditious disposition of cases.
- (4) These Rules and corresponding local probate forms shall be maintained by the Court under case number 2003 MSC 342545.

(B) Format of the Local Rules.

- (1) Pursuant to Sup. R. 75, Local Rules shall be numbered to correspond with the number of the Superintendence Rule it is intended to supplement. For example, a local rule that supplements Sup. R. 61 shall be designated County Local Rule 61.1.
- (2) The preferred short form citation to these Rules is “Mont. Co. P.C.R.”.
- (3) The preferred short form citation to the Standard Ohio Supreme Court Forms and Local Forms is “Mont. Co. P.C.F.”

LOCAL RULE 8.1

COURT APPOINTMENTS

(A) Appointments. Pursuant to Sup.R. 8, this Court shall adopt the following Rule regarding Court appointments for the following types of appointees:

- (1) Attorneys;
- (2) Guardians;
- (3) Trustees;
- (4) Guardians ad litem;
- (5) Appraisers;
- (6) Estate fiduciaries;
- (7) Investigators; and
- (8) Mediators.

(B) List. The Court shall maintain a list of appointees pre-qualified to serve in the capacity designated by the Court.

(C) Procedure for Selecting. To ensure equitable distribution of appointments, the Court shall utilize a rotary system from a graduated list that pairs the seriousness and complexity of the case with the qualifications and experience of the person to be appointed. The Court may maintain separate lists for different types of appointments.

- (1) Applicants seeking appointment shall submit an application to the Court Administrator and candidates shall be selected based on the factors enumerated in Sup.R. 8(D).
- (2) Applicants shall be notified of their acceptance or denial as a potential appointee and the type(s) of matters the appointee may be appointed.
- (3) All appointees shall be consulted prior to any appointment(s) to ensure acceptance and compensation, if any, related to the appointment.

(D) Removal. The Court reserves the right to add or remove appointees from any appointment list.

(E) Compensation. The compensation appointees will receive for services provided and expenses incurred as a result of the appointment shall be determined as follows:

- (1) If a party or other person is required to pay all or a portion of the fees payable to an appointee, the appointee promptly shall notify that party or person of the appointment and the applicable fee schedule.
- (2) The Court shall require the appointee to file with the Court or division and serve upon any party or other person required to pay all or a portion of the fee, an itemized fee and expense statement on a regular basis as determined by the Court. If the party or other person required to pay all or a portion of the fees claims that the fees are excessive or unreasonable, the burden of proving the reasonableness of the fees is on the appointee.
- (3) If the Court is required to pay all or a portion of the fees payable to an appointee, the Court shall follow its appointment compensation schedule, which is based on Sup.R. 8(C).

Revised: DATE

LOCAL RULE 9.1

COURT SECURITY POLICY AND PROCEDURES PLAN

- (A) Pursuant to Sup.R. 9, the Court has adopted and implemented a Security Policy and Procedures Plan.
- (B) This plan is confidential and not available for public access.

LOCAL RULE 16.1

MEDIATION

- (A) **General.** Any action under the jurisdiction of the Court may be referred to mediation upon request and consent of all the parties or by order of the Court.
- (B) **Definitions.** R.C. Chapter 2710 “Uniform Mediation Act” (UMA), including all definitions found in R.C. 2710.01, are incorporated by reference and adopted by this Court through this Local Rule pursuant to Sup.R. 16.21.
- (C) **Case Types.** The following case types shall be eligible for mediation, including but not limited to disputes involving:
- (1) Adversarial civil actions;
 - (2) Guardianships;
 - (3) Competing fiduciaries; and/or
 - (4) Estates.
- (D) **Referral to the General Division’s Mediation Office.** The Probate Court and General Division of the Montgomery County Court of Common Pleas have partnered whereby Probate Court may utilize the General Division’s Mediation Office as codified under the General Division’s Mont. Co. C.P.R 2.39, incorporated herein. Generally, the process works as follows:
- (1) The Court shall identify any matter as a candidate for mediation or upon request of the parties. Upon identification, the Court shall refer the matter to the General Division’s Mediation Office.
 - (2) The Mediation Office will contact all counsel and/or parties to set a scheduling conference.
 - (3) The Court will attempt to accommodate any mediation deadlines with the Court’s final pretrial order.
 - (4) With input from the parties, the scheduling conference should result in the referral to mediation, identification of mediator, mediation date and finalization of all other matters for mediation. An entry will be prepared by the Montgomery County Probate Court and docketed in the underlying matter.
 - (5) After the mediation conference is complete, the Mediator shall notify the Court as to whether the matter was settled or not settled, and an entry will be prepared and docketed stating the same by the Montgomery County Probate Court. The Court will take appropriate action to continue the matter or close the matter after mediation.
 - (6) In all General Division Mediation Office mediations, costs shall be taxed to the parties as court costs, to be split equally among parties, unless agreed otherwise among the parties.
- (E) **Referral to Private Mediation.** Parties are encouraged to utilize all forms of alternative dispute resolution, including mediation. See Sup.R. 79 for guidance and other options through the Court.
- (F) **Confidentiality and Privilege against Disclosure.** All communications and similar matters are governed by the UMA. See R.C. 2710.01 et seq.

LOCAL RULE 51.1

STANDARD PROBATE FORMS

(A) Standard Probate Forms.

- (1) Pursuant to Sup.R. 51, standard Ohio Supreme Court and local probate forms shall be used in all matters. All forms are available for download and modification on the Court's website: www.mcoho.org/probate. Forms are subject to change at any time.
- (2) All filings shall comply with the specifications set forth in Sup.R. 52.

LOCAL RULE 54.1

CONDUCT IN THE COURT

- (A) **Conduct in the Court.** Pursuant to Sup.R. 54, appropriate decorum and attire in the Court are required of all parties and visitors. Any conduct that interferes or tends to interfere with the proper administration of the Court's business is strictly prohibited and will be addressed by the presiding judicial officer.
- (B) **Recording.** No audio or video recording device, other than a device used by the Court, may be used in any proceeding or communication with the Court, unless expressly permitted in writing by the Court in advance of any communication, hearing or trial pursuant to Sup.R. 12.
- (C) **Disruptions.** All mobile phones, pagers and other electronic devices must be placed on silence or vibrate, or turned off, while in the Court. No person may text, email, or otherwise engage in activities not directly related to the purpose at hand during any formal or informal proceedings. The Court may ask any person who violates this Rule to leave the Court if the disruption continues.
- (D) **Sanctions.** The Court reserves the right to remove and/or fine parties or counsel up to \$100 for infractions.

LOCAL RULE 56.1

CONTINUANCES

- (A) Notice.** Pursuant to Sup.R. 56, a party's motion for continuance shall not be granted without notice to, or the consent of, any adverse party or the party's counsel.
- (B) Client Consent.** It is the responsibility of counsel to obtain client consent prior to making a request for continuance.
- (C) Proposed Order.** If the consent of the parties and the parties' counsel has been obtained, an agreed entry for the continuance shall be submitted to the Court as a proposed order.
- (D) By Motion.** If the consent of all the parties and/or the parties' counsel has not been obtained, a written motion for the continuance may be filed with the Court. Written notice of the motion shall be served on all interested parties. The motion shall set forth good cause for the continuance. Failure to object to the requested continuance within a reasonable time may waive an opportunity to object to the request.
- (E) Timing.** Agreed entries and motions for continuances of hearing or trial dates shall be submitted or filed at least seven (7) days before the scheduled hearing or trial date.
- (F) Failure to Observe.** Failure to request a continuance within these parameters may result in the denial of a request for continuance absent extraordinary circumstances.

LOCAL RULE 57.2

ELECTRONIC FILING

(A) **Definitions.** The following terms shall be defined as follows:

- (1) **Case Management System (CMS).** A system that manages the receipt, processing, storage and retrieval of data associated with a case and performs actions on the data.
- (2) **Clerk Review.** A review of documents by the Clerk in accordance with Court rules, policies, procedures, and practice. The Clerk may review the data and documents electronically submitted to ensure compliance with Court rules, policies, procedures and practices before creating a docket entry or before docketing the case.
- (3) **Court Initiated Filings.** Official Court documents entered into the docket, such as notices or orders. The term “Court initiated filings” is a simplification to indicate that documents will be submitted as part of the electronic court record, but could be submitted using exactly the same process as hard copy filings.
- (4) **Document.** A filing made with the Clerk in either electronic format or paper form, becoming part of the Court’s official record.
- (5) **Document Management System (DMS).** A system that manages the receipt, indexing, storage, and retrieval of documents associated with a matter.
- (6) **Electronic Filing (eFile).** The electronic filing of documents with the Clerk using the Electronic Filing System.
- (7) **Electronic Service (eService).** The electronic transmission of document(s) to all registered users of the Court’s eFile system via the efile system. Upon the completion of any transmission to the eFile system, an electronic receipt shall be issued to the sender acknowledging receipt by the eFile system.
- (8) **Filer.** Any registered user who electronically files a document using the Electronic Filing System or otherwise causes a document to be eFiled on his or her behalf.
- (9) **Registered User.** Any person who has agreed to the terms of the Electronic Filing System’s User Agreement, has provided his or her credentials through the eFiling System, and has been provided with a user name and password for the eFiling System.

(B) **Mandatory eFiling for Case Categories.** The Court designates the following case categories and case types that shall utilize the Court’s eFiling System including, but not limited to:

- (1) **Miscellaneous and Civil (“MSC”) case types:**
 - (a) Adult Protective Services
 - (b) Assign Lottery Prize
 - (c) Change of Name – Adult
 - (d) Change of Name – Minor
 - (e) Concealment of Assets
 - (f) Correction of Birth

- (g) Correction of Marriage
- (h) Declaration of Paternity
- (i) Declaratory Judgment
- (j) Designation of Heir
- (k) Determination of Heirship
- (l) Disinterment
- (m) Presumption of Death
- (n) Production of Will
- (o) Registration of Birth
- (p) Sale of Real Estate-Estate
- (q) Sale of Real Estate – Guardianship
- (r) Successor Custodian on Account
- (s) Transfer of Rights
- (t) Validity of Will
- (u) Will or Trust Construction
- (v) Will or Trust Contest
- (w) All other civil and/or adversarial matters

(2) Estate (“EST”) case types:

- (a) Ancillary Administration
- (b) Foreign Records (Authenticated Copies)
- (c) Full Administration with Will
- (d) Full Administration without Will
- (e) Full Successor Administration with Will
- (f) Full Successor Administration without Will
- (g) Probate of Will Only
- (h) Release of Administration with Will
- (i) Release of Administration without Will
- (j) Release of Administration with Will for Record Only
- (k) Summary Release
- (l) Summary Release, Will for Record Only
- (m) Tax Only
- (n) Transfer of Real Estate Only; with will
- (o) Transfer of Real Estate Only; without Will
- (p) Will Filed without Probate
- (q) Will Filed without Probate/Tax
- (r) Will Filed with Notice of Intent
- (s) Bond Filed with Notice of Intent

(3) Guardianship (“GRD”) case types:

- (a) Custodianships
- (b) Guardianship of the Person – Adult
- (c) Guardianship of the Person –Minor
- (d) Guardianship of the Estate—Adult
- (e) Guardianship of the Estate—Minor

(4) Adoptions (“ADP”) case types

(5) Trust (“TST”) case types:

- (a) Testamentary Trust
- (b) Successor Trust
- (c) Wrongful Death Trust
- (d) Special Needs Trust

(C) User Registration.

- (1) All persons filing documents in the eFile System shall be registered as users of the eFile System.
- (2) All attorneys shall register with the eFile System.
- (3) Registered users shall be responsible for the security, use, and confidentiality of their user name and password. All documents shall be deemed to have been filed with the authorization of the registered user to whom a user name has been assigned, unless the registered user demonstrates otherwise, by clear and convincing evidence.

(D) Time, Effect and Process of eFiling.

- (1) Registered users may electronically file documents in eFile case types at any time. To be considered timely when filing, documents must be electronically submitted by 11:59 p.m. on the date they are due.
- (2) Upon electronic submission, the eFile System will issue a confirmation that a document has been received. The confirmation will include the date and time of receipt. The confirmation does not mean that the document has been filed. Documents shall not be considered filed until they have been reviewed by a Clerk and accepted for filing.
- (3) Upon acceptance for filing, the eFile System will issue a notification that the document has been accepted for filing, including the date and time of acceptance.
- (4) Upon acceptance, the filing will receive an electronic stamp including the date and time the document was filed.
- (5) Upon rejection of a filing, the eFile System will issue a notification that the filing has been rejected for filing and the reason for rejection. The document shall not become part of the Court Record and the Filer shall resubmit the document as instructed.
- (6) If a submission is not received by the Court because of a System Error or outage, the Court may, upon satisfactory proof, enter an order permitting the filing to be filed nunc pro tunc to the date it was submitted.

(E) Format of Filing. All pleadings, motions, briefs, and other documents shall be formatted in accordance with the following:

- (1) **File format.** Documents shall be submitted in Portable Document Format (.pdf), with the exception of proposed orders and entries, which may be submitted in Microsoft Word format (.doc or .docx).
- (2) **Size of filing.** Individual documents shall be limited in size to three megabytes (3MB). Multiple documents in a single transmission shall be limited in size to a combined total of thirty megabytes (30MB).
- (3) **Font style and size.** With the exception of Standard Probate Forms and local probate forms, documents shall be double-spaced, in Times New Roman or similar font and at least 12 point type. Standard Probate Forms and local probate forms shall use the font style and size prescribed by Sup.R. 52 and applicable orders and local rules.
- (4) **Margins.** With the exception of Standard Probate Forms and local probate forms, the first page of a document shall have a top margin of at least 1.5 inches and side and bottom margins of at least 1 inch. Subsequent pages shall have top, bottom, and side margins of at least 1 inch. Standard Probate Forms and local probate forms shall have the margins prescribed by Sup.R. 52 and applicable orders and local rules.
- (5) **Filer signatures.**
 - (a) **Filer signatures.** A conformed signature on an electronically filed document shall constitute a signature on the document for the purposes of signature requirements imposed by all applicable law and rules.
 - (i) Documents requiring the signature of a Filer should be signed with a conformed signature format as follows:
/s/ [Name of Filer]

- (ii) The conformed signature of an attorney should be signed with a conformed signature format as follows:
 - /s/ (Name of Attorney)
 - Name of Attorney
 - Supreme Court ID Number
 - Attorney for (Party Designation)
 - Law Firm
 - Address
 - Telephone Number
 - Email Address
 - Fax Number

(b) Other signatures. It is advisable to use scanned digital images of original signatures on eFiled documents whenever possible and appropriate. Documents using conformed signatures of someone other than the Filer (ie beneficiaries or next of kin) may be used by the Filer, so long as:

- (i) The Filer confirms in writing that the contents of the document are acceptable to all persons requested to sign the document and express written permission is provided to the Filer;
- (ii) The Filer shall indicate the agreement of such persons at the appropriate place in the document, usually on the signature line;
- (iii) The Filer shall electronically sign the document on behalf of such person(s) and electronically file the document as provided in Mont. Co. P.C.R. 57.2(E)(5)(a)(i);
- (iv) The Filer or the Filer's counsel as the case may be, shall maintain the original signed document or writing consenting to the use of a conformed signature at least until the case is closed and the time for appeal has expired, or any appeals have been heard or denied;
- (v) These rules are in addition to any attorney file retention requirements, and shall not excuse any legal or ethical obligation on attorneys to retain client files; and
- (vi) If any questions arise as to the scanned original signature(s) or express consent to use a conformed signature, the Filer or Filer's counsel as the case may be, shall provide the original hard copy or express written consent to the confirmed signature to the Court or other interested party for inspection.

(c) Original signatures. Documents requiring an original signature, such as an affidavit or other notarized documents, shall be eFiled as a .pdf.

- (i) These rules are in addition to any attorney file retention requirements, and shall not excuse any legal or ethical obligation on attorneys to retain client files; and
- (ii) If any questions arise as to the scanned original signature(s), the Filer or Filer's counsel as the case may be, shall provide the original hard copy to the Court or other interested party for inspection.

(d) Judge and Magistrate signatures. eFiled documents may be signed by a Judge or Magistrate via conformed signature or a digitized image of his or her signature combined

with a digital signature page. All orders, decrees, judgments and other documents signed in this manner shall have the same force and effect as if the Judge or Magistrate had affixed his or her signature to a paper copy of the order and journalized it.

(F) Service.

- (1) Original compliant.** Civ.R. 4 through 4.6 shall apply in all probate proceedings requiring service of summons, including eFiled matters, unless otherwise provided by law. See Civ.R. 73(E).
- (2) Instructions for service.** When electronically filing a complaint, third party complaint, or any other initial pleading, the Filer shall also electronically file instructions for service. The Clerk shall issue a summons and process the method of service requested. Instructions for Service shall be filed as a separate document.
- (3) Service and filing of pleadings and other documents subsequent to the original complaint.** Pleadings and documents other than those requiring service of summons pursuant to Civ.R. 4 through 4.6 shall be served as follows:
 - (a)** In any proceeding where any type of notice (other than service of summons is required by law or deemed necessary by the court) and the statute providing for notice neither directs nor authorizes the court to direct the manner of its service, notice shall be given in writing and served pursuant to Civ.R. 5 and 73(E).
 - (b)** When a submission is deemed eFiled filed pursuant to Mont. Co. P.C.R. 57.2(D)(3), the eFile system shall generate a Notification of Electronic Filing to the filer and any other party who is a registered user of the eFile system. The Notification of Electronic Filing (“NEF”) shall constitute service under Civ. R. 5.
 - (c)** The Filer or the Filer’s counsel as the case may be, shall be responsible for serving all documents pursuant to Civ.R. 5 on all parties or their attorneys, including pro se participants, who are not registered with the eFile System.
 - (d)** A certificate of service shall be required when a Filer electronically files any document other than standard probate forms. The certificate of service shall state the date and manner in which service was accomplished, including electronic service if applicable, on each case participant.
 - (e)** Court-initiated documents that are electronically filed shall be electronically served on case participants who are Registered Users. Paper copies of Court-initiated documents shall be conventionally served on pro se case participants who are not Registered Users.
- (4)** A Filer who electronically submits a proposed order shall electronically serve or conventionally serve the proposed order on all case participants and/or counsel, whether Registered Users or not.
- (5)** Upon the Judge’s or Magistrate’s signing and filing of the proposed order, the eFile System will generate and deliver an NEF to the case participants who are represented by counsel or who are Registered Users. The party or counsel who submitted the proposed order shall also serve the executed version of the proposed orders conventionally on case participants who are not Registered Users.
- (6)** If electronic service of a document on a case participant fails, the case participant to be served may, upon motion, be entitled to an order extending the deadline by which to respond or act in response to the document.

(G) Confidential or Personal Information in Documents.

- (1) Documents that are electronically filed shall not include personally identifiable information unless such inclusion is necessary, relevant and appropriate safeguards are made by the Filer.
- (2) Personally identifiable information includes personal identifiers including, but not limited to Social Security Numbers, financial account numbers, driver's license numbers and other personal identifiers as set forth in Sup.R. 44(H).
- (3) If inclusion of personal or private information is necessary and relevant to the case, the Filer is responsible for redacting the document and filing Form 45(D) (Confidential Disclosure of Personal Identifiers).
- (4) The Filer or Filer's counsel as the case may be, is responsible for redacting personal and private information. The Clerk shall not review each document for compliance with this Rule; however, the Clerk may refuse to accept any document that contains personally identifiable information that has not been redacted or submitted in accordance with this Rule.

(H) Exceptions to eFiling. The following types of documents may be filed conventionally, unless expressly required to be electronically filed by the Court:

- (1) **Documents filed under seal.** Documents shall be filed under seal only with prior Court authorization. Documents shall be filed under seal by submitting them to the Clerk's Office in accordance with the process set forth in Loc.R. 45.1(B).
- (2) **Documents presented for in camera review.** Documents shall be presented for in camera review by submitting them to the Judge or Magistrate in accordance with the process set forth in Mont. Co. P.C.R 45.1.
- (3) **Exhibits.** Exhibits, transcripts, audio recordings, video recordings, and/or other items that cannot be captured, stored or submitted in an electronic format may be filed and served conventionally. Such exhibits, transcripts, or other items shall be identified by a cover page bearing the case caption, case number, assigned Judge or Judicial Officer, and name and party designation of the filer.
- (4) **Persons with disabilities.** Persons with disabilities that prevent them from using the eFile System may move the Court for leave to file and serve documents conventionally. The motion for leave may be filed conventionally.
- (5) **Unregistered Users.** Filers who are not registered users of the Court's eFile system may file documents in paper form with the Clerk in person, by U.S. Mail, or by using the Clerk's Public Access Terminal. Documents filed in accordance with this Rule shall be deemed filed and shall become the Court's official court record when they are entered by the Clerk in the Court's eFile system.
- (6) **Original Last Will and Testament, Codicil or Fiduciary Bond.** An original Will, Codicil or Fiduciary Bond must be presented to the Court for review before the matter may be opened by the Filer using the eFiling System, in order to allow the Court the opportunity to verify that the document is an original document and not a copy.
 - (a) **Wills or codicils.** In the case of wills or codicils, an Applicant (usually the Filer) shall submit all original wills or codicils with a Notice of Deposit of Original Will/Codicil form

(2.0A) to the Clerk's Office. The Notice Form also states which subsequent action will be filed in the eFile System. The Court will review the document and if the document is an original the document, a case number will be assigned. This case number is used for all subsequent filings in the matter. The Court reserves the right to require a hearing on the admission of any document that is represented to be an original that does not appear to the Court to be an original when examined by the Court.

- (b) Fiduciary bond.** The original Fiduciary Bond, with an attached power of attorney or power of attorney subject to a standing order, shall be presented to the Court with a Notice of Deposit of Fiduciary Bond form (4.2B). The original Fiduciary Bond will be held by the Court until the fiduciary is appointed and then the original Fiduciary Bond will be filed. If an Applicant has submitted an original fiduciary bond and he or she is not appointed, the Court may order the return of the original Fiduciary Bond before it is filed.
- (c) Case dismissal.** If the matter receives a case number and does not proceed after submission of original will, codicil and/or fiduciary bond within ninety (90) days of filing with the Court, the Court may close the case administratively, subject to the case being reopened at a later date.

(I) Official Court Record.

- (1)** The electronic version of a document that has been electronically filed, or has been scanned, uploaded and electronically filed with assistance from the Clerk, shall constitute the Official Court Record.
- (2)** When the law requires the filing of an original document, such as a will, voucher, bond, oath, mortgage document, birth certificate, foreign judgment, or other certified or verified document, the Filer must scan the original document and electronically file the scanned document. The Filer must either:
 - (a)** Retain the original document until the case is closed and the time for appeal has expired or any appeals have been heard or denied or
 - (b)** File the original document with the appropriate agency or office as may be required by law.
- (3)** Notwithstanding these Local Rules, attorneys and all others shall abide by all relevant document retention mandates.

(J) Payment of Filing Deposits. In all eFiled matters, deposits required as security for costs and filing fees shall be paid electronically. Filers who are required to post a deposit are required to maintain a positive balance on deposit. If a positive balance is not maintained and a document is electronically submitted, the Court may charge the credit card on file without notifying the Filer prior to charging the credit card.

LOCAL RULE 60.1

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

(A) Notice.

- (1) Notice of an application for appointment of administrator shall be served by the applicant at least seven (7) days prior to the date set for hearing.
- (2) Notice of the application and paper hearing shall be served by the applicant to the known surviving spouse and next of kin, including residents and nonresidents.
- (3) If there is no known surviving spouse or next of kin, the notice shall be served upon persons designated by the Court.
- (4) The administrator shall give notice of the appointment within seven (7) days after the appointment to all persons entitled to inherit, including persons entitled to an allowance for support, unless waivers are obtained.
- (5) The Court shall serve the spousal citation and summary of rights required by R.C. 2106.02 to the surviving spouse within fourteen (14) days of the appointment of administrator or executor.

(B) Fiduciary Acceptance. All executors and administrators shall sign and file a fiduciary's acceptance prior to the issuance of letters of authority.

LOCAL RULE 61.1

APPRAISERS

(A) When Required. If the value of an asset is not readily ascertainable or has not otherwise been dispensed with by the Court, the Fiduciary shall apply to the Court for appointment of a suitable and disinterested person to appraise personal and/or real property.

(B) Appointment.

(1) Standard Appraiser List. The Court maintains a List of pre-approved appraisers located on the Court's website for real property, from which the Fiduciary may request the appointment of a pre-approved appraiser.

(a) There is no requirement to provide supporting documentation as to the suitability of an appraiser on the Standard Appraiser List.

(b) Applicants seeking appointment as an appraiser on the Standard Appraiser List may do so pursuant to Mont. Co. P.C.R. 8.1.

(c) It may be prudent for the Fiduciary or Counsel to contact pre-approved appraisers (on the Standard Appraiser List) before designating an appraiser to ensure fees, availability and other details.

(d) Any application for a standard appraiser shall use Mont. Co. P.C.F. 3.0 which includes a proposed order appointing the proposed appraiser.

(2) Special Appraiser. Upon application by a Fiduciary, the Court may appoint a suitable, disinterested appraiser to appraise assets.

(a) The Fiduciary shall present sufficient information with the application to establish that the proposed Appraiser maintains the appropriate expertise by reason of education, special training, skill, licensing, experience or otherwise, to render a lawful valuation of the asset(s).

(b) Any application for a special appraiser shall use Mont. Co. P.C.F. 3.1 which includes a proposed order appointing the proposed appraiser.

LOCAL RULE 62.1

CLAIMS AGAINST ESTATE

- (A) **Notice of Creditor Claims.** A copy of any creditor claims pursuant to R.C. 2117.06 et seq. shall be filed in the probate estate for the purpose placing all interested parties and the Court on notice of any claims presented against the estate.
- (B) **Rejection of Creditor Claims.** If a creditor presents a claim under R.C. 2117.06 et seq. and the Fiduciary later rejects that claim, the Fiduciary shall file the rejection of the claim in the probate estate.
- (C) **Resolution of Claims.** A Fiduciary may not seek to close an estate until all claims have been resolved.
- (D) **Liability of Fiduciary.** Pursuant to R.C. 2117.06(K) and R.C. 2113.53, if a distribution of assets is made by the Fiduciary prior to resolution of all claims, the Fiduciary may be personally liable to the estate if creditor claims are deemed lawful and estate assets are insufficient to pay valid claims.

LOCAL RULE 64.1

ACCOUNTS

The requirements in this Rule apply to all accounts, unless specified otherwise.

(A) Format of Accounts. All accounts shall conform substantially to the following requirements:

- (1) **Beginning Balance.** Each account must begin with the total asset value shown on the inventory for first accounts and then the ending balance from the immediately preceding account for all subsequent accounts.
- (2) **Receipts.** The account must add to the beginning balance all assets acquired or discovered, all income received and other forms of financial gain (realized and unrealized) since the beginning of the administration on first accounts or since the last accounting on all subsequent accounts. All receipts must be subtotaled by class, with all subtotals added to determine the total receipts during the accounting period.
- (3) **Disbursements.** Any account must subtract all expenses paid, distributions made, amounts lost (realized and unrealized) and all other forms of expenditure since the beginning of the administration on first accounts or since the last accounting on subsequent accounts. All disbursements must be subtotaled by class, with all subtotals added to determine the total disbursements during the accounting period.
- (4) **Ending Balance.** The result from adding the total receipts to the beginning balance and then subtracting the total disbursements must be shown as the ending balance for the accounting period.

(B) Assets Remaining in Fiduciary's Hands. All accounts must itemize and describe assets and respective values that remain in the Fiduciary's hands, which together comprise the ending balance shown on the account. On all accounts that are not final accounts, or are not final and distributive accounts in a decedent's estate, the Fiduciary must provide the Court with written proof of the identity and current value of all assets remaining in the Fiduciary's hands pursuant to Sup.R. 64(D) and these Rules.

(C) Court Costs. Pursuant to Sup.R. 64(E), a final or distributive account shall not be approved until all court costs have been paid.

(D) Accounts that are not timely filed shall subject the Fiduciary and/or counsel to citation.

(E) The Court may order accounts at any time.

(F) Accounts of Administrators and Executors.

(1) Time for Filing. The Fiduciary of a decedent's estate shall file a final and distributive account or a certificate of termination within six (6) months after the date of appointment, unless extended by the Court for the following reasons:

- (a) **Notice to Extend Administration.** If the estate qualifies for extended administration beyond six months under one or more of the circumstances described in R.C. §2109.301(B)(1)(a) – (e), the Fiduciary shall file a Notice to Extend Administration (Mont. Co. P.C.F. 13.10). The notice shall be filed no later than the date the initial six-month administration period elapses, and Court approval is not required for filing.

- (b) Application to Extend Administration. If the estate does not qualify for extended administration under subparagraph (a) above, and the Fiduciary contends that the estate qualifies for extended administration under R.C. §2109.301(B)(1)(g), the Fiduciary shall file an Application to Extend Administration (Mont. Co. P.C.F. 13.8). The Application shall be filed no later than the date the initial six-month administration period elapses, and Court approval is required
- (c) An Application for Extension of Time (Mont. Co. P.C.F. 3D), requesting an extension of time for filing an account, will only be approved by the Court after a Notice to Extend Administration has been filed or an Application to Extend Administration has been ordered.
- (d) Filing a partial account before the expiration of the initial six-month administration period will not extend the administration without the filing of a Notice or Application to Extend Administration.
- (e) If partial accounts are filed, then all subsequent accounts must be filed annually until administration of the estate is complete or otherwise ordered by the Court.

(2) Partial Accounts.

- (a) Waivers. Partial accounts submitted after the first partial account may be waived pursuant to R.C. 2109.301(A), unless the Court orders a full accounting for a particular accounting period. Waiver of a partial account does not waive the requirement of filing a status report.
- (b) Status Report. A status report signed by the Fiduciary shall be filed with the Court when filing a partial account or waiver of partial account. Status reports shall include pertinent information such as the status of administration, efforts to close the estate, the steps needed to be completed before the estate may be closed and any other pertinent information to apprise the Court.

(3) Supporting Documentation or Vouchers. All disbursements in all accounts must be supported by corresponding receipts, vouchers, cancelled checks, written acknowledgments or other appropriate evidence of payment. The following Rules set forth whether or not vouchers and other supporting documentation must be filed with the Court.

- (a) Except as provided herein, the fiduciary is not required to submit vouchers for disbursements.
- (b) The fiduciary shall submit a voucher or receipt for a disbursement made on behalf of a minor or an incompetent.
- (c) The fiduciary shall submit a voucher or receipt for a disbursement made to a fiduciary appointed by another court, as well as a certified copy of the fiduciary's letters of authority.
- (d) The fiduciary shall collect and retain vouchers for his or her records. If an interested party or the Court requests to view a voucher, the fiduciary shall provide a copy of the requested voucher to the interested person or Court.
- (e) A statement from a bank or other financial institution showing the date, amount, payee and purpose of a payment may be used as evidence of payment.

(4) Certification of Service of Account. Every Fiduciary in a decedent's estate shall provide a copy of each account to all heirs or beneficiaries in compliance with R.C. 2109.32(B).

- (a) Before or simultaneously with filing any account, the Fiduciary shall file with the Court a Certification of Service of Account (Mont. Co. P.C.F. 13.9).
 - (b) In the alternative to providing signed green return receipt cards, acknowledgements of receipt or other proof of service, the Fiduciary or the Fiduciary's attorney may attach to the certificate an affidavit evidencing service of the account.
 - (c) The Court may require the Fiduciary to produce the original signed green return receipt cards, acknowledgements or other proof of service in addition to scanned images at any time.
- (5) **Hearing on Account.** The Court shall set every account for a paper hearing not earlier than thirty (30) days upon filing pursuant to R.C. 2109.32(A).
- (a) The Court may convert any paper hearing to an in-person hearing.
 - (b) No hearing is required upon the filing of a certificate of termination under R.C. 2109.301(B)(2), unless the Court orders otherwise.

(G) Accounts of Guardians and Conservators.

(1) Time for Filing.

- (a) Every Fiduciary shall file the first account within one (1) year from the date of appointment.
- (b) Generally, all subsequent accounts shall be due one (1) year from the ending date of the prior account.
- (c) Every Fiduciary shall file a final account within thirty (30) days after filing a notice of the death of a ward or other termination of guardianship, unless the Court orders otherwise.

(2) Supporting Documentation or Vouchers. The fiduciary shall submit vouchers for all disbursements pursuant to R.C. 2109.302.

(3) Hearing. Mont. Co. P.C.R.64.1(F)(6) shall apply to hearings on guardianship accounts.

(H) Accounts of Testamentary Trustees and other Fiduciaries. All accounts of testamentary trustees and other fiduciaries shall be subject to Montgomery Mont. Co. P.C.R. 64.1(F), except as provided in R.C. 2109.303(B).

LOCAL RULE 67.1

ESTATES OF MINORS OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS

- (A) **Applicant.** An application to dispense with guardianship shall be submitted by the parent(s) with whom the minor resides or the person who has custody of the minor pursuant to Sup.R. 67(A).
- (B) **Value.** The value of property shall be equal to or less than the amount set forth in R.C. 2111.05.
- (C) **Application.** The application shall set forth the depository authorized to receive fiduciary funds or suitable person designated by the Court to maintain property pursuant to Sup.R. 67(B).
- (D) **Counsel deposits property.** The applicant's counsel, or if the applicant is not represented, the payor or payor's counsel, shall immediately deposit said funds with the depository or deliver property to the person designated by the Court.
- (E) **Verification.** Upon deposit of property, counsel shall obtain from the financial institution or person designated by the Court to hold the property, a completed verification of receipt and deposit (Mont. Co. P.C.F. 22.3).
- (1) This shall be filed with the Court within seven (7) days from the issuance of the Entry.
 - (2) Failure to file a verification may result in a citation or other sanction.

LOCAL RULE 68.1

SETTLEMENT OF MINOR'S CLAIMS

(A) Guardianship of the Estate. The Court requires the appointment of a guardian of the minor's estate if the net proceeds of the settlement exceed twenty-five thousand dollars (\$25,000.00) under R.C. 2111.05. The guardianship shall be administered until the assets fall below twenty-five thousand dollars (\$25,000.00) and the Court terminates the guardianship or the minor reaches eighteen (18) years of age in which case the guardianship terminates by operation of law.

(B) Net Proceeds less than one thousand dollars (\$1,000.00). If the net settlement proceeds do not exceed \$1,000.00 and the applicant is parent or legal custodian of the minor, the applicant may apply for the net proceeds to be paid to either or both of the minor's parents for the benefit of the minor in place of a minor guardianship or impounded (controlled) account. The parent(s) receiving the settlement proceeds must file an acknowledgment of responsibility (GC Form 68.1-A edited for Mont. Co. P.C.F.) before the Court will approve the settlement. The Court generally will not approve distribution of net settlement proceeds exceeding \$1,000.00 directly to the parent(s), absent a showing of exceptional circumstances.

(C) Net Proceeds less than twenty-five thousand dollars (\$25,000.00). If the net settlement proceeds do not exceed \$25,000.00, the Court will generally order that the funds be deposited into an impounded (controlled) account in the name of the minor at a local financial institution until the minor reaches the age of eighteen (18), in place of a minor guardianship.

(D) Application.

- (1)** The guardianship, unless dispensed with, must be established before the hearing on the settlement of the minor's claim.
 - (a)** If the net settlement proceeds to the minor do not exceed twenty-five thousand dollars (\$25,000.00), an Application to Dispense with Minor Guardianship shall be filed. See Mont. Co. P.C.F. 16.0A.
 - (b)** If the guardianship is dispensed with, bond requirements will be waived.
 - (c)** If the guardianship is dispensed with, no inventory or accountings will be required.
 - (d)** If the guardianship is dispensed with, the legal or custodial parent(s) shall sign an Acknowledgement of Responsibility (Mont. Co. P.C.F. 16.0C).
- (2)** The application shall be brought by the guardian. If there is no guardian, the application shall be brought by the parent(s) of the child or individual(s) having legal custody of the child.
- (3)** The applicant shall file a true and accurate copy of the minor's certified birth certificate with any application.
- (4)** The application shall be accompanied by a current statement of an examining physician in respect to the injuries sustained, the extent of recovery, and the permanency of any result of the incident causing the injury to the minor. See Sup.R. 68(B).

- (5) The application shall include the attorney fee agreement, any release(s) and statement of facts.
- (6) The application shall state what additional consideration, if any, is being paid to persons other than the minor as a result of the incident causing the injury to the minor.

(E) Notice of Hearing.

- (1) The noncustodial parent(s) shall be entitled to seven (7) days notice of the application to settle the minor's claim which notice may be waived. The Applicant or Applicant's counsel shall serve a copy of the Application in writing and pursuant to Civ.R. 73(E) to all interested parties.
- (2) The injured minor and applicant shall be present at the hearing pursuant to Sup.R. 68(C) unless waived in writing by the Court in advance of the hearing. School or extracurricular activities are not excuses for the minor's failure to attend the hearing.
- (3) A hearing may be dispensed with if all of the following apply:
 - (a) The gross amount of the proposed settlement must not exceed \$10,000.00; and
 - (b) There must not be any disputed claims on any portion of the settlement proceeds.
- (4) If the guardianship is dispensed with because assets do not exceed twenty-five thousand dollars (\$25,000.00), a Verification of Receipt and Deposit form (Mont. Co. P.C.F. 22.3) shall be executed by the financial institution and filed with the court within seven (7) days from the issuance of the entry approving pursuant to Civ.R. 67(C).
- (5) A Report of Distribution of Minor's Claim (Mont. Co. P.C.F. 22.4 shall be filed with the Court no later than sixty (60) days after the entry approving the minor settlement.

(F) Structured Settlements.

- (1) If the settlement of the minor's claim involves a structured settlement, a copy of the proposed structured settlement shall be attached to the application. A statement disclosing the total actual cost of the structured settlement shall be included.
- (2) If the structured settlement is to be funded by an annuity, an affidavit or other similar proof verifying that the insurer issuing the annuity funding the structured settlement meets the following qualifications must also accompany the application.
 - (a) Licensing. 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 company issuing the annuity must be licensed and in good standing to write annuities in Ohio.
 - (b) Capital Reserves. The company issuing the annuity must have a minimum of \$100,000,000.00 in capital reserves and surplus, exclusive of mandatory security valuation reserves.
 - (c) Rating. The company issuing the annuity must have one of the following present ratings:
 - (i) A++, A+ or A from A.M. Best Company;
 - (ii) AAA, Aa1 or Aa2 from Moody's Investors Service;
 - (iii) AAA or AA from Standard's & Poor's Corporation. Or
 - (iv) AAA, AA+ or AA from Fitch Ratings.

(3) The annuity carrier issuing the annuity contract may not enter into an assumption reinsurance agreement for the contract without the prior approval of the Court, the owner of the contract, and the claimant having the beneficial interest in the annuity. In all instances of reinsurance, the broker or annuity carrier shall provide the Court with an affidavit to certify that the carrier meets the standards set forth in this rule.

(G) **Guardians Ad Litem.** The Court may appoint a guardian ad litem sua sponte or upon motion of an interested party.

LOCAL RULE 70.1

SETTLEMENT OF WRONGFUL DEATH AND SURVIVAL CLAIMS

This Rule provides requirements in the settlement and apportionment of wrongful death and survival claims.

(A) Application.

- (1) All applications shall be filed in compliance with Sup.R. 70.
- (2) The attorney fee agreement relating to the underlying wrongful death and survival claims shall be filed with the application.
- (3) The applicant shall use Mont. Co. P.C.F. 14.4 and 14.5, which identifies all individuals (ie “other next of kin”) entitled to notice of the application under R.C. 2125(A)(1).
- (4) If the application involves minor(s), see Mont. Co. P.C. R. 68.1.

(B) Notice. The Fiduciary or Fiduciary’s counsel shall serve a copy of the full Application and notice of hearing, in writing, to all interested parties pursuant to Civ.R. 73(E).

- (1) Notice must be served at least seven (7) days prior to any hearing.
- (2) Interested parties include the decedent’s surviving spouse, children, parents and all “other next of kin.” See Mont. Co. P.C.F. 14.4; *In re Estate of Payne*, 10th Dist. Franklin No. 04AP-1176, 2005-Ohio-2391.
- (3) Proof of service shall be filed with the Court prior to the hearing.
- (4) In the alternative to providing signed green return receipt cards, acknowledgements of receipt or other proof of service, the Fiduciary or the Fiduciary’s attorney may attach waivers as proof of service.
- (5) The Court may require the Fiduciary to produce the original signed green return receipt cards, acknowledgements or other proof of service at any time.

(C) Hearing. The Court shall set all applications for settlement of wrongful death and survival claims for hearing.

- (1) A hearing may be dispensed with if all of the following apply:
 - (a) The gross amount of the proposed settlement must not exceed \$10,000.00.
 - (b) There must not be any disputed claims on any portion of the settlement proceeds.
- (2) After the first hearing, the Court may dispense with the requirement of additional hearings in cases where there is the possibility of multiple separate settlements, unless there are changes in the beneficiaries or percentages to be apportioned (i.e. mass tort litigation settlements).
- (3) A Report of Distribution of Minor’s Claim (Mont. Co. P.C.F. 14.3) be filed with the Court no later than sixty (60) days after the entry approving the minor settlement.

(4) All applicants must file a report of distribution, or a verification of receipt and deposit if applicable, with the Court no later than thirty (30) days after the entry approving the minor settlement.

(D) Guardian Ad Litem. The Court may appoint a guardian ad litem sua sponte or upon motion of an interested party.

LOCAL RULE 78.1

CASE MANAGEMENT

This Rule governs case management of all proceedings in this Court that are not addressed elsewhere in these Local Rules.

(A) Multiple Fiduciaries. In cases in which more than one Fiduciary is serving simultaneously, all documents requiring the Fiduciary's signature shall be signed by all Co-Fiduciaries.

(B) Preparation for Court Hearings. In all matters, the Applicant, Fiduciary, Movant, Plaintiff or other party or their counsel, shall examine the docket and/or Court records prior to every hearing or trial to ensure all requisite service has been perfected.

(1) The individual or individual's counsel responsible for service of notice shall notify the Court at least two (2) days prior to a court hearing if service of notice appears incomplete or deficient.

(2) If service is deficient, the individual or individual's counsel responsible for service shall contact all interested parties and notify the Court so that prompt action may be taken to remedy or reset the service failure.

(C) Fiduciary Bonds.

(1) Fiduciaries of decedent's estates shall be required to post a minimum bond (no less than twenty thousand dollars ((\$20,000.00)) pursuant to R.C. 2109.04, unless bond is waived by last will and testament or excused by law.

(a) Unless otherwise ordered by the Court, bond shall be posted in an amount double the value of the estate's personal property, or if the estate has no personal property, in an amount determined by the Court.

(b) The amount of the bond is subject to being adjusted upward or downward upon the filing of the inventory, consents to sell real estate, partial accounts, disputes and other matters that may involve a fiduciary's access to assets.

(c) Bond will be increased if Mont. Co. P.C.F. 11.0 (Consent to Power to Sell Real Estate) is filed.

(2) Guardians of the estate shall be required to post a minimum bond (no less than twenty thousand dollars ((\$20,000.00)). Unless otherwise ordered by the Court, bond shall be posted in an amount double the value of the ward's personal property plus double the amount of the ward's annual income. Real property need not be bonded unless a complaint for land sale has been filed. The amount of the bond is subject to being adjusted upward or downward upon the filing a land sale, consents to sell real estate, partial accounts, disputes and other matters that may involve a fiduciary's access to assets.

(3) Trustees of testamentary trusts shall be required to post a minimum bond, unless bond is waived by the will or excused by law. Unless otherwise ordered by the Court, bond shall be posted in an amount double the value of the trust's personal property plus double the amount of the trust's projected annual income.

(4) 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 move to remove the fiduciary.

(D) Original Documents.

(1) Filing Original Last Will and Testament. See Mont. Co. P.C.R. 57.2(H)(6)(a).

(2) Filing Original Bond. See Mont. Co. P.C.R. 57.2(H)(6)(b).

(E) Multiple or Related Cases. In all matters in which there are multiple case numbers and/or related matters, all case numbers to open cases shall be listed in the caption of any and all filings made and filed under all case numbers.

(1) A related case shall include, but not be limited to any and all matters in which the same individual is a ward and/or decedent in an open estate in this Court (ie ward expires and a decedent's estate is opened for administration).

(2) A related case shall include, but not be limited to any and all matters in which one matter may impact parties, assets or other related proceedings (ie will contest and estate administration).

(F) Jury Management Plan. The jury management plan for this Court shall be the same as the jury management plan set forth in Local Rules of Practice and Procedure for the General Division of the Montgomery County Common Pleas Court.

(G) Withdrawal of Counsel.

(1) An attorney who has entered an appearance in a case shall remain in the case until the case is concluded. The Court may permit an attorney to withdraw if all of the following apply:

(a) The attorney files a motion to withdraw demonstrating good cause, served on the client(s) pursuant to Civ.R. 73(E);

(b) The attorney lists in the motion or consent all known filing deadlines; and

(c) The attorney serves notice (ie certificate of service) to all attorneys, unrepresented parties and interested persons. Interested persons include, but are not limited to next of kin, legatees and devisees, known creditors, 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 attorney or the fiduciary and the substituting attorney. The Substitution shall contain a Certificate of Service providing notice to the fiduciary and notice shall be served on the fiduciary, all attorneys, bonding agencies, and interested persons of record.

(H) Citations to File Account, Inventory, Certificate of Notice of Probate of Will, or Report.

(1) Generally. Each fiduciary and fiduciary's counsel shall adhere to the statutory or court-ordered time period for filing the inventory, account, certificate of notice of probate of will, report of distribution, fiduciary's report or other required filing pursuant to Sup.R. 78(A) and R.C. 2109.31. Failure to adhere to any deadline(s) subjects the fiduciary and counsel of record to the citation process as set forth below.

(2) Procedure.

(a) Timing. The Court will issue a citation promptly after expiration of the required due date. The Court may not send any prior notice or reminders that the filing is overdue.

- (b) Content. The citation may contain the following:
 - (i) A statement that the particular account, inventory, certificate of notice of probate of will, report or other delinquent filing is overdue;
 - (ii) An order to the fiduciary to file the account, inventory, certificate of notice of probate of will, report, delinquent filing or otherwise to appear before the court on a specified date for an in-person hearing, typically no less than thirty (30) days from the original deadline;
 - (iii) A statement that, upon the issuance of the citation, an extension to file the account, inventory, certificate of notice of probate of will, report or other delinquent filing may be obtained from the court only on or after the date specified date for an in-person hearing.
 - (iv) The fiduciary shall remedy any and all defects noted in the citation at least ten (10) days prior to the hearing date specified in the citation.

(3) Citation Hearing.

- (a) The Fiduciary and the attorney of record shall appear in person at all citation hearings unless excused by the Court.
- (b) Counsel has no authority to excuse attendance of the fiduciary.
- (c) This in-person appearance requirement applies to all Fiduciaries and attorneys, regardless of where they reside.
- (d) The attorney of record may not send any other attorney in his or her place unless a suitable and well-informed substitute enters an appearance prior to the hearing.
- (e) Failure to appear by the Fiduciary or counsel constitutes contempt of court.
- (f) The Court will only grant a continuance of the citation hearing upon a showing of exceptional circumstances.
 - (i) A request for a continuance of the citation hearing shall be filed at least seven (7) days before the scheduled citation hearing; and
 - (ii) Any request for a continuance of the citation shall be in writing and a proposed order granting the continuance shall accompany the written request.
- (g) At the conclusion of the citation hearing, the Court will issue an order imposing, sanctions as set forth below. The order will also set a deadline by which the Fiduciary must file all delinquent documents.
- (h) The Court may also issue further orders as the Court deems necessary under the circumstances.

(4) Fiduciary Sanctions. Pursuant to R.C. 2109.31(C), if a citation is issued to a fiduciary or counsel, and if the fiduciary fails to file the account, inventory, certificate of notice of probate of will, or report prior to the appearance date specified in the citation, the court may order, on that date, one or more of the following:

- (a) The removal of the fiduciary;
- (b) A denial of all or part of the fees to which the fiduciary otherwise would be entitled;

- (c) A continuance of the time for filing the account, inventory, certificate of notice of probate of will, or report;
 - (d) A continuance or continuance in progress of the hearing;
 - (e) An assessment against the fiduciary of a penalty of one hundred dollars and costs of twenty-five dollars for the hearing, or a suspension of all or part of the penalty and costs;
 - (f) That the fiduciary is in contempt of the court for the failure to comply with the citation and that a specified daily fine, imprisonment, or daily fine and imprisonment may be imposed against the fiduciary, beginning with the appearance date, until the account, inventory, certificate of notice of probate of will, or report is filed with the court;
 - (g) If the fiduciary does not appear in the court on the specified appearance date, that the fiduciary is in contempt of the court for the failure to comply with the citation, and that one of the following may occur:
 - (i) The fiduciary shall be taken into custody by the sheriff or a deputy sheriff and brought before the court.
 - (ii) The fiduciary shall appear before the court on a specified date or otherwise be taken into custody by the sheriff or a deputy sheriff and brought before the court.
- (5) **Attorney Sanctions.** Pursuant to Sup.R. 71, 77 and 78, in addition to any sanction listed above under Mont. Co. P.C.R. 7831(H)(4) set forth above, counsel may face reduced or denied attorney fees. Counsel may also be denied appointments in other cases in this Court as well as barred from being appointed in any new proceeding before the court or serving as attorney of record in any new estate, guardianship, or trust until all of the delinquent pleadings are filed.
- (I) **Unknown Addresses.** In all matters, whenever a fiduciary, applicant or other party that maintains the burden of notice and/or service under the law claims that addresses for interested parties entitled to notice are unknown, then an Affidavit for Search of Address (Mont. Co. P.C.F. 11.) shall be filed with the Court.
- (J) **Definitions.**
- (1) **Paper Hearing.** A hearing date set by the Court whereby attendance is not required at the hearing. Typically, it is treated as a deadline unless a party files an objection before the deadline passes, in which case the Court will direct the parties as to whether attendance is mandatory.

LOCAL RULE 78.2

DECEDENT'S ESTATES

This Rule addresses case management issues in decedent's estate cases.

(A) All Types.

- (1) Last Will and Testament.** Before any filings are made, the Applicant or the Applicant's attorney shall investigate the matter to determine whether a decedent's last will and testament is on deposit with the Probate Court.
- (2) Death Certificate.** A copy of the decedent's death certificate shall be filed when opening every decedent's estate matter.
 - (a)** The Applicant shall redact the decedent's social security number and date of birth from the death certificate before it is filed.
 - (b)** If the county of residence on the death certificate is other than Montgomery County, Ohio, the Applicant shall file an affidavit setting forth the additional facts known to the Applicant that has caused the Applicant to determine that the decedent was domiciled in Montgomery County, Ohio at the time of his or her death.
- (3) Deceased Heir or Beneficiary.** If a person who is the decedent's next of kin, or a beneficiary under the decedent's will, is deceased, the name and date of death of that individual shall be provided on the Mont. Co. P.C.F. 1.0. The Applicant should consult R.C. 2105.06 to determine the level of consanguinity to include on the 1.0 (i.e. parents take before siblings). For example, deceased parents should be shown on the Mont. Co. P.C.F. 1.0 anytime siblings or lower relationships of consanguinity are the next of kin).
- (4) Trusts.** The Court reserves the right to review, in camera, any and all trust documents that may relate to an estate (ie trustee named beneficiary of a pour-over will).
- (5) Alternate Appraisal Methods.** Certain assets may be valued without the appointment of appraisers.
 - (a) Real Property.** The Fiduciary may use the total valuation of any real property by the county tax auditor pursuant to R.C. 2115.06.
 - i.** A copy of the Auditor's property record summary which should include basic information such as total valuation for tax purposes, owner(s), square footage, year built, legal description, etc. shall accompany any inventory or appraisal filing with the Court.
 - ii.** If the decedent owned less than the entire interest in a particular asset, the asset description must reveal the fractional interest the decedent owned and the value of that fractional interest.
 - (b) Motor Vehicles.** The Fiduciary may use the average trade-in value as shown on generally recognized valuation resources for motor vehicles (i.e. N.A.D.A. or Kelly Blue Book) as the

fair market value of the motor vehicles. A copy of the valuation must accompany any inventory or appraisal filing with the Court. If the condition of the vehicle warrants a deviation to the “high” or “low” trade-in value, then sufficient explanation should be provided on the inventory to justify the deviation from average trade-in value.

- (c) **Businesses.** In situations where the decedent was the sole owner of an entity, and the only asset(s) of the business are readily ascertainable, the business may be appraised at the readily ascertainable amount (i.e. decedent died as sole member and manager of LLC which consists of a single operating bank account). A copy of the valuations supporting the readily ascertainable value must accompany any inventory or appraisal filing with the Court. Ongoing or complicated businesses with accounts receivable, good will, stock interests, and/or payroll, etc., should utilize an appropriate professional(s) such as a CPA to value the business pursuant to Local Rule 61.1(B)(2) above.
- (d) **Personal Property worth less than \$5,000.** The Fiduciary may provide an estimate of the fair market value of household goods, excluding jewelry, stamp collections, artwork, antiques and similar items, in lieu of such appraisal, unless the estimated value exceeds \$5,000.
- (e) All valuations shall reflect the value of the asset as of the date of death.
- (6) **Automobile Transfers.** The appropriate Montgomery County prescribed forms shall be used for all automobile transfers. All portions of the forms shall be completed upon filing. An Executor with the power of sale under a will may, but is not required to, file automobile transfer forms to transfer automobiles that are subject to probate administration.
 - (a) Mont. Co. Form 78.2-A is used for automobiles;
 - (b) Mont. Co. Form 78.2-B is used for watercraft, mobile homes, motors, trailers and recreational vehicles.
- (7) **Inventories.** Upon the filing of an inventory, the Court shall set a date and time for a paper hearing on the approval of the Inventory no more than one month after the day the inventory was filed. R.C. 2115.16
 - (a) Notice must be served on the surviving spouse by the Fiduciary pursuant to R.C. 2115.04.
 - (b) The contents of the Inventory shall be pursuant to R.C. 2115.09.
 - (c) A copy of the inventory shall be served to the heirs at law in an intestate estate or beneficiaries in a testate estate, by any method permitted by Civ.R. 73(E).
 - (iii) In the alternative to 73(E), the fiduciary may acquire and submit waivers; or
 - (iv) Instead of providing green return receipt cards, USPS tracking reports, acknowledgements of receipt or other proof of service with the certificate, the Fiduciary or the Fiduciary’s attorney may attach to the certificate an affidavit evidencing service of the inventory.
 - (d) Transfers of real property (ie certificates of transfer) and automobile transfers shall not receive Court approval until an inventory is filed with the Court.

(8) Exceptions to Inventories and Accounts.

- (a)** When exceptions to the Inventory or Account are filed, the Court may set the matter for a pretrial conference within thirty (30) days after the exceptions are filed, unless otherwise ordered by the Court.
- (b)** If an interested party files exceptions to an account, the fiduciary shall file all vouchers relating to the exceptions with the Court at least five (5) days prior to the hearing on the exceptions or provide all vouchers to all interest parties.
- (c)** If a party files exceptions to the account after the time permitted in R.C. 2109.33, the Court may allow further time for filing the exceptions and will consider the exceptions, unless the Fiduciary proves that the person filing the exceptions received notice of the hearing on said account.

(9) Certificates of Transfer. All proposed Certificates of Transfer submitted to the Court for approval shall be typed. Before filing a certificate of transfer with the Court, the person filing the certificate must verify that the filing is in compliance with all appropriate county offices and rules.

(10) Consent to Power to Sell Real Estate. All Consents to Power to Sell Real Estate (Mont. Co. P.C.F. 11.0) pertaining to a parcel of real property shall be filed at once.

(11) Consent of Parties to Alternate Distribution of Personal Property. Heirs or beneficiaries may consent to an alternate distribution of personal property in an estate proceeding as an assignment of their interest.

- (a)** The consent of all parties with an interest in that property is necessary to approve any distribution different than stated in a decedent's will, or under the laws of intestate succession.
- (b)** If any interested party fails to agree to an alternate distribution, or if there is a disagreement regarding tangible personal property that is not otherwise bequeathed, the Fiduciary may file SC Form 10.0, application to distribute in kind, for the Court's determination.
- (c)** All parties consenting to an alternate distribution assume any risks as to tax, creditor and other liabilities that may result from such consent.

(12) Notice of Intent to File Disclaimers. The following rules apply to disclaimers filed pursuant to R.C. 5815.36. The purpose of this section is to avoid the unintended consequences that flow from the mistaken view that using a disclaimer has the same effect of an assignment.

- (a)** Prior to filing a disclaimer, a notice of intent to file the disclaimer shall be filed with the Court and served on the Fiduciary and all next of kin of the disclaimant who may be affected by the filing of the disclaimer.
 - i. The notice of intent shall include an unsigned copy of the proposed disclaimer as an attachment.
 - ii. The notice of intent shall state with particularity what the disclaimant intends as a result of the execution of any disclaimer and specify the names of the heir(s) who may inherit as a result of the disclaimer.

(b) The Court shall set a paper hearing within thirty (30) days of the filing of the notice of intent to file disclaimer.

- (c) The disclaimant or disclaimant's counsel shall serve a copy of notice of intent to file disclaimer and all attachments to the Fiduciary and all next of kin of the disclaimant who may be affected by the filing of the disclaimer pursuant to Civ.R. 73(E).
- (d) The Court may, but is not required to, make a finding as to the implication of the proposed disclaimer which may change the person or persons entitled to receive assets in the decedent's estate. If there is no finding by the Court, the disclaimant may file the executed disclaimer.
- (e) Upon the filing of any disclaimer, the Fiduciary or Fiduciary's counsel shall review the disclaimer to determine if the filing of the disclaimer changes the next of kin, legatees and/or devisees of the estate as to any assets of the estate. If required, the Fiduciary shall amend the Form 1.0 to properly reflect the lawful beneficiaries of the decedent's estate.

(13) Contingent Trust as a Beneficiary. If the decedent's will provides that the interest of a vested beneficiary shall be held in trust if said beneficiary is under a certain age, then the date of birth or age of said beneficiary shall be indicated on Mont. Co. P.C.F. 1.0.

(B) Summary Release from Administration. In addition to the requirements in subparagraph (A) of this Rule, the following requirements apply to all summary releases from administration cases pursuant to R.C. 2113.031.

- (1) Funeral Bill. A copy of the funeral bill with proof that it has been paid, or if not yet paid, a copy of the signed funeral services contract showing who is responsible for payment, must be filed with the application for summary release.
- (2) Last Will and Testament. The original Last Will shall be filed for record only.
- (3) No bond is required unless the Court orders otherwise.
- (4) Asset Value Verification. The value of all assets included in a Summary Release must be established/proven by appropriate documentation.

(C) Release of Estate from Administration. In addition to the requirements in subparagraph (A) of this Rule, the following requirements apply to all release from administration cases pursuant to R.C. 2113.03.

- (1) Eligibility to Serve as Commissioner. The Court shall appoint a commissioner based on the following:
 - (a) The commissioner shall be a resident of Ohio unless at least one of the following apply:
 - (i) The commissioner is named as executor in the decedent's will and is related to the decedent by blood or marriage;
 - (ii) The commissioner is the sole next of kin, or legatee and devisee, of the estate;
 - (b) The commissioner shall be bonded unless at least one of the following applies:
 - (i) The commissioner is named as executor, to serve without bond, in the decedent's will;
 - (ii) The commissioner is the sole next of kin, or legatee and devisee, of the estate;

(iii) The commissioner is an attorney licensed in Ohio and in good standing; or

(iv) All of the next of kin, legatees and devisees.

(2) Last Will and Testament.

(a) If applicable, the original Last Will shall be filed with the Court.

(b) If there is a Will, within two weeks of the admission of the will to probate, the Applicant shall give notice as described in R.C. 2107.19(A) and Civ.R. 73(E).

(c) Additionally, if there is a Will, a Certificate of Service of Notice of Probate of Will (Form 2.4) and all supporting documents shall be filed within two (2) months after appointment of the fiduciary.

(3) Bond. For bond requirements, see Mont. Co. P.C.R. 78.1(C).

(4) Publication. Publication of notice to creditors and interested parties shall be made in all cases, unless otherwise ordered by the Court.

(5) Distributions of property. There shall be no distributions of property, including, without limitation, certificates of transfer, until Mont. Co. P.C.F. 2.4 has been filed with the Court.

(6) Report of Distribution. The commissioner shall file a report of distribution in all release from administration cases within sixty (60) days of the date of the entry relieving the estate from administration, unless the Court directs otherwise.

(7) Insolvent Estate. An Application to Relieve Estate from Administration will not be accepted for filing if the estate is insolvent, or will not be approved if the estate is determined to be insolvent after the action is filed.

(D) Special Administration. In addition to the requirements in subparagraph (A) of this Rule, the following requirements apply to all special administrator cases pursuant to R.C. 2113.15 and R.C. 2113.16.

(1) An Applicant shall disclose the express purpose of why the Applicant is seeking to be appointed special administrator (e.g., service of creditor claim, last will and testament search, etc.). Failure to adequately disclose the purpose of appointment may result in dismissal of the matter or rejection of the attempted filing.

(2) Notwithstanding the scope of authority a special administrator maintains under R.C. 2113.15, any authority beyond those powers and duties must be expressly requested by the applicant, inserted into the proposed Letters of Authority and then approved by this Court.

(3) Any costs, fiduciary fees or attorney fees charged to the special administration will be reviewed by the Court upon proper application for costs and fees.

(4) Procedure. An Applicant for appointment as a special administrator shall initiate the process by completing the following:

(a) Filing Mont. Co. P.C.F. 4.0, modified to indicate the applicant is seeking appointment as a special administrator and expressly stating the purpose for seeking the appointment.

(b) Filing a completed Mont. Co. P.C.F. 1.0;

(c) Filing a copy of the decedent's death certificate with the decedent's social security number redacted.

(d) All special administrators shall comply with the Fiduciary bond requirements in Rule Mont. Loc.R. 78.1(C).

(e) Notice/Hearing.

LOCAL RULE 78.3

CASE MANAGEMENT IN PROBATE LITIGATION MATTERS

(A) Civil and Adversarial Actions.

- (1) All civil and/or adversarial matters shall be subject to the following Rules unless otherwise directed by the Court or other authority.
- (2) A matter before this Court may be subject to this Rule when the matter becomes contested or adversarial, regardless of case type.

(B) Special Statutory Proceedings. The following special statutory proceedings shall be filed separately and with no other causes of action accompanying the pleading or initiating filings including, but not limited to:

- (1) R.C. 2107.71 (will contests);
- (2) R.C. 2109.50 (concealment of assets);
- (3) R.C. 2121 (presumption of death);
- (4) R.C. 2123 (determination of heirship); and
- (5) R.C. 2127 (land sales).

(C) Dismissal. Failure to file separate civil actions in all special statutory proceedings may result in dismissal.

(D) Consolidation. Civil matters may be consolidated with special statutory proceedings only upon motion and approval by the Court.

(E) Service of Summons. Civ.R. 4 through 4.6 shall apply in all probate proceedings requiring service of summons, unless otherwise provided by law. See Civ.R. 73(D).

(1) Instructions for Service shall be filed as a separate document in the following circumstances:

- (a) When a party files a document that requires service by the Clerk, or when a party files a document for which the party is requesting that service be initiated or made by the Clerk;
- (b) When a party files a document subject to a special statutory proceeding expressly instructing the Clerk as to how service be made by the Clerk; and/or
- (c) If service is to be made by any method other than service by FedEx Corporation, the instructions for service to the Clerk must so specify

(2) The default method of service by the Clerk is by FedEx Corporation.

(F) Service of Notice. In any proceeding where any type of notice other than service of summons is required by law or deemed necessary by the court, and the statute providing for notice neither directs

nor authorizes the court to direct the manner of its service, notice shall be given in writing and served pursuant to Civ.R. 73(E).

- (1) In accordance with Civ. R. 5, unless the filer requests service by the Clerk and files the Instructions for Service, the filer, not the Clerk, shall be responsible for serving all documents filed subsequent to the original complaint on all parties or their attorneys.
- (2) When a submission is deemed filed pursuant to the eFile system, the eFile system shall generate a Notification of Electronic Filing to the filer and any other party who is a registered user of the eFile system. The Notification of Electronic Filing shall constitute service under Civ. R. 5.
- (3) The filer shall serve a paper copy of the document on all pro se and other parties who are not registered users of the Court's eFile system, in accordance with Civ. R. 5
- (4) All Documents filed shall contain a Certificate of Service evidencing proof of service pursuant to Civ. R. 5(B)(4)

(G) Pleadings. All Pleadings filed subsequent to the initial pleading shall specify:

- (7) The case number and any and all open related case number(s);
- (8) the name of the assigned Judge or the name of the Judge who heard the case and the Magistrate, if applicable;
- (9) the signature of the attorney who is making the filing; and
- (10) A contain a Certificate of Service.

(H) Motions.

(1) Moving Parties. All moving parties shall file and serve their motions with the following:

- (a) A brief written memorandum that shall:
 1. state with particularity the grounds in support of the motion;
 2. set forth the relief or order sought; and
 3. specify the citations of the authorities upon which the motion is based.
- (b) Copies of all photographs or documentary evidence that will be used in support of the motion, if the motion requires the consideration of facts that do not appear in the record.
- (c) A proposed order or entry. Substantive motions (i.e. motions for summary judgment in cases) do not require a proposed order or entry to be filed unless otherwise ordered by the Court.
- (d) If a memorandum in opposition is filed, a moving party may file a reply memorandum within seven (7) days from the date on which the memorandum in opposition is filed.

(2) Opposing Parties. All parties opposing motions shall file and serve a memorandum in opposition to the motion that has been filed and served against them. All memoranda shall:

(a) be accompanied by copies of all photographs or documentary evidence that will be used in opposition to the motion, if the motion requires the consideration of facts that do not appear in the record; and

(b) be filed and served within fourteen (14) days from the date on which the motion was served for all motions other than motions for summary judgment or otherwise directed by the Court. Memoranda in opposition to motions for summary judgment shall be filed and served within 28 days from the date on which the motion for summary judgment was served. If no memorandum is filed within this time limit, the motion may be decided forthwith.

(3) Memoranda in support or in opposition to any motion or application to the Court shall not exceed twenty (20) pages. Reply Memoranda shall not exceed ten (10) pages. These page limitations may be modified by the Court for good cause shown and upon such conditions as set by the Court. This rule shall not apply to any motion made pursuant to Civ. R. 55.

(I) Pretrial Conference. After service has been perfected on all parties and responses have been filed or otherwise parties are in default for failure to answer, the Court may set a pretrial conference for the case.

(1) Notice of the pretrial conference shall be given to all counsel of record and pro se parties by mail, facsimile, e-mail and/or by telephone by the Court not less than fourteen (14) days prior to the conference. Any application for continuance of the conference shall be in writing and filed with the Court in a timely manner.

(2) The following matters may be addressed at the pretrial conference and ordered by the Court, including but not limited to:

(a) The possibility of settlement or mediation;

(b) Necessary parties, jurisdiction and venue;

(c) Discovery exchange, including but not limited to expert witness and report disclosure;

(d) Deadlines for the filing of all motions, pretrial statements, and exhibit exchange, which date shall not be later than seven (7) days before the trial;

(e) Any jury demand;

(f) Final pre-trial conference date, if applicable; and

(g) Trial date.

(3) After the scheduling conference, the Court will issue a final pretrial order.

(J) Status Conferences. The Court may order conferences as appropriate upon the motion of a party, counsel and/or sua sponte, with reasonable notice to all parties and/or counsel.

(K) Final Pretrial Conference. If a pretrial conference is ordered:

- (1)** All parties shall be present or available.
- (2)** The following matters may be addressed at the pretrial conference including, but not limited to:
 - (a)** The possibility of settlement;
 - (b)** If there is a jury demand, proposed jury instructions and interrogatory deadlines;
 - (c)** Pending motions; and
 - (d)** Any other matters related to trial.

LOCAL RULE 78.4

NAME CHANGE, NAME CONFORMITY AND BIRTH CERTIFICATE CORRECTION PROCEEDINGS

This Rule governs name change and name conformity proceedings under R.C. Chapter 2717 and Birth Record Corrections under R.C. Chapter 3705.

(A) Choosing the Correct Proceeding.

- (1) A name change proceeding seeks to change all or part of a person's name to a different name going forward.
- (2) A name conformity proceeding is solely to correct misspellings, inconsistencies or other errors on one or more official identity documents evidencing a person's current legal name. A name conformity corrects errors that occurred in the past. It does not change a person's name, but identifies conflicting problems in their official identity documents and corrects those problems by a Court Order so that all of the person's official identity documents are consistent and conformed to prove the applicant's chain of identity and reflect the already-correct, existing legal name the person currently uses.
- (3) A birth record correction proceeding only corrects clerical errors in the birth record of a person who was born in Ohio. A birth record correction proceeding may not be substituted for a name change proceeding or name conformity proceeding.

(B) Residency Required for Name Change or Name Conformity.

An applicant for name change or name conformity must set forth that the applicant has been a bona fide resident of the county for at least sixty (60) days prior to the filing of the application, and the reason for which the change of name is sought or an explanation of the misspelling, inconsistency, or other error in name.

(C) Affidavit. An application for name change or name conformity shall be supported by an affidavit verifying all of the following:

- (1) The applicant's residency in the county for a period of at least sixty days;
- (2) That the application is not made for the purpose of evading any creditors or other obligations;
- (3) That the applicant is not a debtor in any currently pending bankruptcy proceeding;
- (4) That all of the documentary evidence submitted under section R.C. 2717.07 with the application is true, accurate, and complete;
- (5) That the applicant has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for identity fraud or does not have a duty to comply with section 2950.04 or 2950.041 of the Revised Code because the applicant was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense; and
- (6) Any other information the court may require.

(D) Name Change Proceedings.

(1) Documentation Requirements on Name Change Proceedings.

An applicant seeking a name change must provide photocopies of the following documents relating to the adult applicant or minor with the application:

- Birth Certificate (most recent and/or updated certified copy)
- Social Security Card
- Driver's License or State issued photo ID Card (if any)

Upon review of the application, the Court may order the submission of other documents the Court deems relevant to the application.

The applicant must redact (black out) social security numbers, driver's license numbers, and driver's license issuance and expiration dates on all documents submitted to protect the privacy and confidential information of the applicant or minor.

(2) For notice and hearing requirements, see section 78.4 (H) and (I)

(E) Name Conformity Proceedings.

(1) Documentation Requirements on Name Conformity Proceedings.

An applicant seeking to conform a legal name must provide photocopies of all official identity documents relating to the applicant or minor with the application, including:

- Certified Copy of the Birth Certificate
- Social Security Card
- Driver's License or State issued ID Card (if any)
- Marriage Record (if any)
- Divorce Decree (if any)
- Passport (if any)

(2) Upon review of the application, the Court may order the submission of other documents the Court deems relevant to the application.

(3) The applicant must redact (black out) social security numbers, driver's license numbers, and driver's license issuance and expiration dates on all documents submitted to protect the privacy and confidential information of the applicant or minor.

(F) Birth Record (Birth Certificate) Corrections.

(1) Pursuant to R.C. 3705.15, a person born in the state of Ohio may file an application to correct a birth record with the probate court for the county in which the person was born, or in which their mother resided at the time of their birth, or in the County where the person currently resides. Errors might include time, place, or date of birth, one or more misspellings on the birth certificate, parents' places of birth or the like.

(2) Documentation Requirements on Birth Certificate Correction Proceedings.

An applicant seeking to correct a birth certificate must provide photocopies of all official identity documents relating to the applicant or minor with the application, including:

- Certified Copy of the Birth Certificate

- Social Security Card
- Driver's License or State issued ID Card (if any)
- Marriage Record (if any)
- Divorce Decree (if any)
- Passport (if any)

(3) Upon review of the application, the Court may order the submission of other documents the Court deems relevant to the application.

(4) The applicant must redact (black out) social security numbers, driver's license numbers, and driver's license issuance and expiration dates on all documents submitted to protect the privacy and confidential information of the applicant or minor.

(5) Upon the filing of the application the court may fix a date for a hearing, which shall not be less than seven days after the filing date. The court may require one publication of notice of the hearing in a newspaper of general circulation in the county at least seven days prior to the date of the hearing. The application shall be supported by an affidavit of the physician or certified nurse-midwife in attendance. If an affidavit is not available, the application shall be supported by the affidavits of at least two persons having knowledge of the facts stated in the application, by documentary evidence, or by other evidence the court deems sufficient.

(6) The probate judge, if satisfied that the facts are as stated, shall make an order correcting the birth record, except that in the case of an application to correct the date of birth, the judge shall make the order only if any date shown as the date the attending physician or certified nurse-midwife signed the birth record or the date the local registrar filed the record is consistent with the corrected date of birth. If supported by sufficient evidence, the judge may include in an order correcting the date of birth an order correcting the date the attending physician or certified nurse-midwife signed the birth record or the date the local registrar filed the record.

(G) Gender Identity Designation Corrections to Birth Records. An adult may file to correct (or change) the gender identity designation on their birth certificate.

(1) The process and requirements are the same as those for correcting birth records above, except the verified application for changing gender designation does not require an affidavit of a physician or certified nurse-midwife in attendance or affidavits of at least two persons having knowledge of the facts stated in the application.

(2) Documentation Requirements on Gender Identity Designation Correction to Birth Record Proceedings. An applicant seeking to change gender identity on a birth record must provide photocopies of all official identity documents relating to the applicant or minor with the application, including:

- Certified Birth Certificate
- Social Security Card
- Driver's License or State issued ID Card (if any)
- Passport (if any)
- Affidavit of Correct Gender Marker in Birth Record (if an adult)
- Affidavit to Correct Gender Marker in Birth Record for a Minor (if a minor)
- Proof of the applicant's legal relationship to the minor (if a minor)
- Certified copy of court order appointing applicant as the minor's legal guardian or custodian (if any)

- (3) Applications to change identity designation will not be placed online, and will have restricted access pursuant to Sup. R. 45(E).

(H) Service of Notice.

(1) Service of Notice on Minor Name Changes and Minor Name Conformity Proceedings

Any legal parent or alleged father who has not consented to a minor's name change or name conformity shall be served by the Court with notice of the hearing pursuant to Civ. R. 73.

If a parent or alleged father's whereabouts are unknown, the Applicant must state "unknown" in the Application. The Court will then publish notice of the hearing, at the applicant's expense, in a newspaper of general circulation in Montgomery County, one time at least 30 days before the hearing pursuant to R.C. 2717.14. The Court will file proof of publication of the notice with the Court no later than five Calendar Days before the date of hearing on the application.

(2) Service of Notice on Adult Name Changes and Adult Name Conformity Proceedings.

Generally, for adult name changes, the Court dispenses with notice requirements and will not require notice on an adult name change or an adult name conformity proceeding. The Court may require notice if the Court determines that the application presents any irregularities or issues, or if the Court determines that the legal interests of another party may be affected by the proceeding. If the Court requires a notice, it will determine the manner, scope and content of the hearing notice. The applicant is responsible for serving the hearing notice.

(I) Hearings.

(1) Hearings on Adult Name Change and Adult Name Conformity Proceedings. Generally, the Court will not require a hearing on an adult name change or an adult name conformity proceeding. The Court may require a hearing if the Court determines that the application presents any irregularities or issues, or if the Court determines that the legal interests of another party may be affected by the proceeding. If the Court requires a hearing, it will determine the manner, scope and content of the hearing.

(2) Hearings on Minor Name Change and Minor Name Conformity Proceedings. In uncontested name change proceedings and name conformity proceedings for a minor in which the consent of both natural or adoptive parents or guardians or custodians of the minor is filed with the application, the Court generally will not require a hearing and will dispense with notice pursuant to R.C. 2717.14.

(3) If an application for name change of a minor or application to conform name of a minor is filed without the written consent of both natural or adoptive parents, or if the Court determines that the application presents any irregularities or issues, the Court will schedule the application for a hearing. Notice of the hearing will comply with paragraph (D)(6) of this Rule. The applicant must appear at the hearing. The minor should attend the hearing and must attend the hearing if the minor's age is greater than ten (10) years of age, unless the Court orders otherwise.

(J) Contested Proceedings.

If any name change proceeding, identity marker or name conformity proceeding becomes contested, the Court will convert the scheduled hearing date to a pretrial conference, during which the Court will set a new hearing date. At the pretrial conference, the Court will determine whether to excuse a minor who is the subject of the action from appearing at the hearing and whether the Court will conduct an in camera interview of the minor. The applicant and the person contesting the application must attend the pretrial conference personally or through their legal counsel.

(K) Application to File Under Seal. The Court may seal a name an application for name change or name conformity upon request or in extraordinary circumstances.

- (1) To request that a name change application proceed without notice of the hearing, the applicant must first file an Application to File Under Seal explaining why the notice of the hearing would jeopardize the applicant's safety. The Court will then schedule a hearing on the Application at a later date. At the hearing, applicant must present sufficient evidence to prove that keeping the filings and proceedings public will jeopardize the applicant's personal safety, including any official or certified copies of police reports, court orders, protection or stalking orders, or other relevant documents or evidence.
- (2) When an applicant seeks to seal an application for name change of a minor, notice of the application must still be given to the minor's parents pursuant to R.C. 2717.01(B), although if granted, the applicant may then omit address information. Applications which are granted shall be restricted from public access pursuant to Sup.R. 45(E).