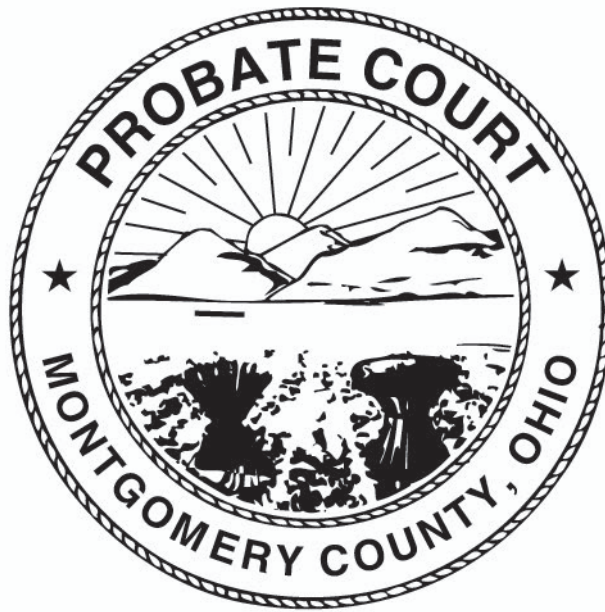


LOCAL RULES



Alice O. McCollum
Judge

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

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Adopted: 2/1/05
Revised: 8/1/14

LOCAL RULE 5.1

ADOPTION, SCOPE AND CONSTRUCTION OF RULES

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

These rules are intended to supplement and complement the Rules of Superintendence.

All persons who appear before the Court should familiarize themselves with the Local Rules of Court, the Rules of Superintendence, and all applicable provisions of the Ohio Revised Code.

See

<http://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/Superintendence.pdf>

Adopted: 2/1/05
Revised: 8/1/14

LOCAL RULE 6.1

ATTORNEY REGISTRATION NUMBERS

All attorneys who make an appearance or submit a signed pleading to the Court shall include the attorney registration number issued to them by the Supreme Court of Ohio on all documents.

Adopted: 2/1/05
Revised: 8/1/14

LOCAL RULE 8.1

COURT APPOINTMENTS

- (A) The Court shall maintain lists of persons who may be appointed as attorneys, guardians ad litem, appraisers, commissioners, fiduciaries, investigators, and mediators. Appointees shall be added to the lists upon request and demonstration that they possess the skill, expertise, and licensure required by these rules and the laws of the State of Ohio.
- (B) Appointments shall be made from the lists taking into consideration the qualifications, skills, expertise, and caseload of the appointee, as well as the type, complexity, and requirements of the case. The Court shall periodically review the lists to ensure the equitable distribution of appointments and that all appointees continue to meet the established qualifications.
- (C) Appointees shall be paid reasonable fees with consideration given to applicable Local Rules, the factors set forth in Rule 1.5 of the Ohio Rules of Professional Conduct, and applicable provisions of the Revised Code, except where otherwise noted.

Adopted: 2/1/05
Revised: 8/1/14

LOCAL RULE 9.1

COURT SECURITY POLICY AND PROCEDURES PLAN

Pursuant to Rule 9 of the Rules of Superintendence, the Court has adopted and implemented a Security Policy and Procedures Plan. This plan is confidential and is not available for public access.

LOCAL RULE 11.1

RECORDING OF PROCEEDINGS

- (A) The Court records hearings electronically and stenographically. If a hearing is recorded electronically, the electronic recording shall be the official record.
- (B) A Read-Only Memory copy of a Compact Disc (CD-ROM) recording of a hearing shall be requested by submission of a Request for Digital Audio Copy of Hearing on CD (MC Form MSC 6) and payment of costs.
- (C) An electronically recorded transcript shall be requested and filed with the Court by submission of an Application to Prepare Transcript on CD-ROM (MC Form 6.1) and payment of costs. A written transcript of the CD-ROM or any portion of the CD-ROM may be prepared by the requesting party at the requesting party's expense.
- (D) A stenographically recorded transcript shall be requested by submission of an Application to Prepare Transcript (MC Form 6.2). The requesting party shall serve a copy of the request upon the Court Reporter and contact the Court Reporter to obtain the costs for preparation of the transcript. The Court Reporter may require a deposit. Upon the requesting party's payment of costs, the Court Reporter shall release the transcript and the requesting party may file the transcript with the Court.
- (E) The Court maintains electronic recordings of hearings for three (3) years from the date of the hearing. Any interested party who desires to preserve the record beyond this period must file a CD-ROM recording of the hearing as part of the record of the case prior to the expiration of the three year period.

LOCAL RULE 12.1

CONDITIONS FOR BROADCASTING AND PHOTOGRAPHING
COURT PROCEEDINGS

Pursuant to Rule 12 of the Rules of Superintendence, the Court may permit the photographing, recording, broadcasting or televising of Court proceedings. The term “proceedings” shall mean public hearings held by the Court.

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

LOCAL RULE 16.1

MEDIATION

(A) Introduction

- (1) A mediator is any individual or agency who mediates a case pursuant to an order of the Court. This includes a court employee, an independent contractor, or a volunteer.
- (2) Any action under the jurisdiction of the Court may be referred to mediation by agreement of the parties, upon a party's motion or upon the Court's own motion.
- (3) The Court incorporates by reference the Uniform Mediation Act, R.C. 2710.01 *et seq.*, and any other pertinent rules and statutes.

(B) Procedures

- (1) The Court shall refer cases to mediation by the Notice of Scheduled Mediation set forth in Appendix G to the Local Rules, which will identify the mediator, the parties, and their counsel, and provide their contact information.
- (2) The Court shall utilize procedures that will do all of the following:
 - (a) Ensure that parties are allowed to participate in mediation and, if the parties wish, that their counsel and other persons whom they designate are allowed to accompany them and participate in mediation.
 - (b) Screen for domestic violence both before and during mediation.
 - (c) Encourage appropriate referrals to legal counsel and other support services for all parties, including victims and suspected victims of domestic violence.
 - (d) Prohibit the use of mediation:
 - (i) As an alternative to the prosecution or adjudication of domestic violence;
 - (ii) In determining whether to grant, modify or terminate a protection order;
 - (iii) In determining the terms and conditions of a protection order; and
 - (iv) In determining the penalty for violation of a protection order.
- (3) Mediation sessions may be held until all issues are resolved in a manner that is acceptable to the disputing parties or until the mediator determines that continued mediation will not be productive.

(C) Compensation

- (1) A mediation session is a four-hour period.
- (2) For the first mediation session, the parties shall be equally responsible for paying one half of the mediator's fee; the Court shall be responsible for paying the remaining half of the fee.
- (3) For additional mediation sessions, the parties shall be equally responsible for paying the mediator's fee.

(D) Mediator's Report

- (1) At the conclusion of mediation, the mediator shall report the status of the mediation, including:
 - (a) Whether mediation occurred or was terminated;
 - (b) Whether a settlement was reached on some, all, or none of the issues;
 - (c) Attendance of the parties;
 - (d) Additional mediation sessions, including dates and times of such sessions;
 - (e) Further action required by the Court.
- (2) If full settlement is reached, the mediator shall report the settlement and identify who will prepare any necessary journal entries.
- (3) The mediator shall submit his or her report to the Court within ten (10) days after the conclusion of mediation.

Adopted: 2/1/05
Revised: 8/1/12

LOCAL RULE 26.1

COURT RECORDS MANAGEMENT AND RETENTION

Pursuant to the Rules of Superintendence, the Court maintains and follows a Schedule of Records Retention and Disposition, which is filed under case number 2004 MSC 00404.

LOCAL RULE 45.1

COURT RECORDS – PUBLIC ACCESS

(A) Definition of Terms

- (1) “Public Access” means both direct and remote access.
- (2) “Direct Access” means the ability of any person to inspect and obtain a copy of a court record at a reasonable time during regular business hours at the place where the record is made available.
- (3) “Remote Access” means the ability of any person to electronically search, inspect and copy a court record at a location other than the place where the record is made available.

(B) Sealed Documents

- (1) Motions for a protective order, motions to file under seal, and proposed orders granting such motions shall include language designating a specific level of access.
- (2) The designated levels of access are the following:
 - (a) No Remote Access by Public; Direct Access by Public; and Access by Judge, Court Staff, Clerk Staff, and Attorneys of Record:

The docket may be accessed either remotely on the Court’s website or directly at the Clerk’s Office. Documents may not be accessed remotely on the Court’s website, but may be accessed directly at the Clerk’s Office.

- (b) No Remote or Direct Access by Public; Access by Judge, Court Staff, Clerk Staff, and Attorneys of Record:

The docket may be accessed either remotely on the Court’s website or directly at the Clerk’s Office. Documents may not be accessed remotely on the Court’s website or directly at the Clerk’s Office. Only the Judge, Court Staff, Clerk Staff, and attorneys of record may access documents.

- (c) Judge Access Only; No Access by Court Staff, Clerk Staff, Attorneys of Record, or the Public:

The docket may be accessed either remotely on the Court’s website or directly at the Clerk’s Office. Documents may not be accessed remotely on the Court’s website or directly at the Clerk’s Office. Only the Judge and assigned Magistrate may access documents.

- (3) Documents shall not be accepted for filing under seal unless there is a previously signed protective order or order to file under seal that includes a designated a level

of access. If the protective order or order to file under seal does not include a designated level of access, the filer shall file a proposed order designating a level of access. Documents shall be accepted for filing under seal once an order is entered that designates a level of access.

- (4) Motions for a protective order, motions to file under seal, and proposed orders granting such motions shall be filed using the following document types: Motion: Protective Order; Motion: Seal; Order: Protective (Proposed); or Order: Seal (Proposed). Documents that are requested to be protected or sealed shall not be attached to such motions, as the motions themselves will not be sealed.
- (5) Documents shall be submitted for filing under seal in a securely sealed envelope. The face of the envelope shall include a conspicuous notation that it contains "Documents Under Seal." It shall also include the case caption; a descriptive title of the document, unless such information has been included among the information ordered protected or sealed; and the date of the order authorizing the document to be protected or sealed.
- (6) The Clerk's Office shall file stamp the face of the envelope, enter on the docket that the document was filed under seal and retain the envelope in a secured location designated by the Judge.

(C) In Camera Documents

- (1) If the Judge or Magistrate orders that documents shall be filed for in camera review, the filer shall follow the procedure set forth in Division B of this Rule, using the following designated level of access: Judge Access Only.
- (2) Otherwise, the filer shall submit, rather than file, documents for in camera review to the Judge or Magistrate.

Adopted: 2/1/05
Revised: 8/1/12

LOCAL RULE 51.1

STANDARD PROBATE FORMS

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

Adopted: 2/1/05
Revised: 8/1/14

LOCAL RULE 52.1

SPECIFICATIONS FOR PRINTING PROBATE FORMS

- (A) Computer generated forms must comply with the specifications prescribed by Rule 52 of the Rules of Superintendence. The signature of the filer or the filer's counsel constitutes a certificate that a form complies with the rule.
- (B) Computer generated forms must use the same format that is used by the standard probate forms.
- (C) The body of computer generated forms must use a type size that is no less than ten (10) point and no greater than twelve (12) point.
- (D) The Court may reject or strike any forms that fail to comply with this rule.

Adopted: 2/1/05
Revised: 8/1/14

LOCAL RULE 53.1

HOURS OF THE COURT

The Probate Court shall be open for the transaction of business from 8:30 a.m. to 4:30 p.m., Monday through Friday. Pleadings requiring a new case number or payment of costs shall be filed by 4:15 p.m. Please refer to the Court's website for holiday and extraordinary closings.

Adopted: 2/1/12
Revised: 8/1/14

LOCAL RULE 54.1

CONDUCT IN THE COURT

- (A) Proper conduct is required of all attorneys, parties, court personnel, and other persons who appear before the Court. Conduct that interferes with the proper administration of justice is prohibited and shall subject the offender to sanctions or removal from the Court.
- (B) Proper attire is required of all persons who appear before the Court. A person who does not appear in proper attire shall be subject to sanctions or removal from the Court.
- (C) No audio or video recording device may be used in any proceeding or communication with the Court, unless expressly permitted by the Court.

Adopted: 2/1/05
Revised: 8/1/14

LOCAL RULE 55.1

EXAMINATION OF PROBATE RECORDS

- (A) Most Probate Court public records may be viewed on the Court's website: www.mcohoio.org/probate
- (B) Public records may be examined at the Court and copies may be obtained at a reasonable cost. Records shall not be removed from the Court.
- (C) Adoption, civil commitment, certain estate tax filings, and mental retardation proceedings are confidential. Records of these proceedings may be accessed only as allowed by law.

Adopted: 2/1/12
Revised: 8/1/14

LOCAL RULE 56.1

CONTINUANCES

- (A) Pursuant to Rule 56 of the Rules of Superintendence, continuances shall not be granted without notice to, or the consent of, the adverse party or the party's counsel.
- (B) If the consent of the parties and/or the parties' counsel has been obtained, an agreed entry for the continuance may be submitted to the Court. It is the responsibility of counsel to obtain the consent of his or her client before he or she consents to the continuance.
- (C) If the consent of 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 provided to all interested parties. The motion shall set forth good cause for the continuance. Failure to object to the requested continuance within seven (7) days after the motion is filed shall constitute consent to the continuance.
- (D) Absent special circumstances, agreed entries and motions for continuances of hearing or trial dates shall be submitted or filed at least ten (10) days before the scheduled hearing or trial date. All continuances shall be made to a new hearing date.

LOCAL RULE 57.1

FILINGS AND JUDGEMENT ENTRIES

- (A) The Court shall not accept filings by facsimile transmission or electronic mail.
- (B) The Court shall accept for filing only those filings that are complete and legible. Filings that are not complete and legible may be rejected.
- (C) If a filing consists of more than one page, the case number shall appear in the upper right portion of each page of the filing, including attachments.
- (D) The address of a fiduciary who is not an attorney must be the fiduciary's permanent address. Attorneys, fiduciaries, and pro se litigants shall notify the Court of address changes.
- (E) The Court does not accept power of attorney signatures on pleadings or any other documents, except as authorized by the Rules of Superintendence and the Uniform Power of Attorney Act, R.C. 1337.21, *et seq.*
- (F) A proposed entry submitted to the Court shall contain a certificate of service that includes the names and addresses of all parties and interested persons required to be served.

Adopted: 12/7/16
Revised:

LOCAL RULE 57.2

ELECTRONIC FILING

The Court will accept only certain case types for electronic filing. Electronic filing in such cases shall be in compliance with the most recent administrative order filed in this Court under case number 2003 MSC 342545.

All documents that are filed electrically shall be filed in the image file only and shall be designated as the official record of the Court. Paper copies of the documents shall not be filed in the tangible (hard copy) file.

Adopted: 2/1/05
Revised: 8/1/14

LOCAL RULE 58.1

DEPOSITS FOR COURT COSTS

The Court accepts cash; money orders; cashier's checks; attorney, title company, or trust company checks; and American Express, MasterCard, or Discover credit or debit cards, with a convenience fee.

- (A) Deposits shall be required upon the initial filing of any action or proceeding. Deposits shall be applied as filings occur and additional deposits may be required. The Court shall maintain and make available a current list of costs.
- (B) Pending cases shall maintain at least \$25.00 on deposit. If there is less than \$25.00 on deposit, the person responsible for the filing shall pay the cost of filing or tender an additional deposit before the filing will be accepted.
- (C) Jury deposits shall be paid contemporaneously with the filing of a jury demand.

Adopted: 2/1/05
Revised: 8/1/14

LOCAL RULE 60.1

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

- (A) Prior to granting an application for authority to administer an estate filed by a person who is not the nominated executor, surviving spouse, next of kin, legatee or devisee of the decedent, the Court shall serve written notice upon the surviving spouse, next of kin, legatees and devisees of the decedent, including persons entitled to an allowance for support. Notice shall be served regardless of the person's residence unless written waivers are submitted with the application. The notice shall include the time, date, and place of hearing. The notice shall be served at least seven (7) days prior to the date set for hearing, in the manner prescribed by Rule 73 of the Ohio Rules of Civil Procedure.
- (B) All executors and administrators shall sign and file a fiduciary's acceptance prior to the issuance of letters of authority.
- (C) Executors who are not residents of Ohio shall keep all assets that were located in Montgomery County at the time of decedent's death, in Montgomery County, until final distribution or further order of the Court.

LOCAL RULE 61.1

APPRAISERS

- (A) Upon application by a fiduciary, the Court may appoint a suitable, disinterested appraiser. The Court maintains a list of approved appraisers from which the fiduciary shall request an appraiser, unless the fiduciary requests and the Court approves a special appraiser.
- (B) Unless there is a dispute or an appraisal is required for other purposes, an appraisal by a Court appointed appraiser shall not be necessary in the following situations:
 - (1) The fiduciary may use the fair market value of real property, as valued by the County Auditor for real estate tax purposes, in lieu of such appraisal. A copy of the Auditor's valuation shall be submitted as proof of value.
 - (2) The fiduciary may use the average trade-in value from any recognized valuation guide for motor vehicles in lieu of such appraisal. A copy of the evaluation shall be submitted as proof of value.
 - (3) The fiduciary may provide an estimate of the fair market value of household goods, excluding jewelry, stamp collections, artwork and antiques, in lieu of such appraisal, unless the estimated value exceeds \$5,000.00.
- (C) Without application to the Court, the fiduciary may compensate the appraiser for his or her services in a reasonable agreed amount or in an amount computed on the gross value of the assets appraised in the estate, as set forth in the inventory, at a rate of \$1.00 per thousand dollars of value with a minimum fee of \$100.00. Fees for appraisals shall be computed on the full value of the property appraised even though the decedent's interest may be fractional.
- (D) If the fiduciary and the appraiser cannot agree upon the amount of the appraiser's compensation and the schedule set forth in Division C of this Rule is not used, the fiduciary shall file an application for allowance of compensation for the appraiser. Otherwise, an order of the Court is necessary before appraisal fees may be paid and credit taken for payment in the next accounting.
- (E) An appraiser or broker shall not directly or indirectly purchase, acquire or negotiate the purchase or sale of any property that he or she appraises.

LOCAL RULE 64.1

ACCOUNTS

Accounts must be signed by the fiduciary and contain the full name, current resident address, and telephone number of the fiduciary and the fiduciary's counsel. If there are multiple fiduciaries, each fiduciary must sign the account.

(A) Decedent's Estates

(1) Time for Filing

- (a) In cases in which the decedent died on or after January 1, 2002, the fiduciary's final distributive account is due within six (6) months after his or her appointment.
- (b) The time period to administer the estate may be extended by filing a Notice to Extend Administration (Form 13.10) or an Application to Extend Administration (Form 13.8) and obtaining approval of the Court. Extensions beyond thirteen (13) months may be obtained only by filing an Application for Additional Extension to Administer Estate (MC Form 13.81) and obtaining permission of the Court.
- (c) If partial accounts are allowed, all subsequent accounts must be filed on an annual basis until administration of the estate is complete and otherwise ordered by the Court.

(2) Assets

At the time of filing a partial account, all intangible personal property remaining in the fiduciary's hands must be verified.

(3) Vouchers

- (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 person requests to view a voucher, the fiduciary shall provide a copy of the requested voucher to the person. If an interested person files exceptions

to an account, the fiduciary shall file the vouchers that relate to the exceptions with the Court at least five (5) days prior to the hearing on the exceptions.

(4) Final Accounts

Final accounts shall be set for hearing with notice. The fiduciary is required to file waivers of notice of hearing or serve notice of hearing on all next of kin or legatees and devisees. The fiduciary shall file proof of service of notice at least five (5) days prior to hearing.

(B) Guardianships and Trusts

(1) Time for Filing

The fiduciary shall file the first account within twelve (12) months from his or her appointment. All subsequent accounts shall be due one (1) year from the ending date of the prior account. Accounts that are not timely filed shall be subject to citation.

(2) Vouchers

The fiduciary shall submit vouchers for all disbursements. The Court shall retain the vouchers for three (3) years from the approval of the final account. The fiduciary and/or the fiduciary's counsel may request the return of the vouchers at the end of this time period. If no request is received, the vouchers shall be destroyed.

(3) Trust Citations

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

(4) Bank Records

A non-corporate guardian shall submit with an account copies of all bank statements covering the time period of the account. The Court shall retain the copies as vouchers, which will not be filed or imaged as part of the account.

LOCAL RULE 65.1

LAND SALES

- (A) In every complaint for land sale filed in the Court, the party requesting the sale shall endorse the following certification:

“The undersigned hereby certifies that an examination of the public records of Montgomery County, Ohio has been made to determine the ownership of subject real estate and all parties who may claim an interest therein, and that, in the opinion of the undersigned, all parties have been named as parties to this action.”

The requesting party shall state as exceptions any interested party not so named.

- (B) In every motion for an order of sale filed in the Court, the party requesting the sale shall endorse the following certification:

“The undersigned hereby certifies that an examination of title to subject real estate has been extended to [date] to determine if any parties have acquired any interest therein subsequent to said previous examination and said examination discloses that, in the opinion of the undersigned, there are no such parties except parties to whom the doctrine of lis pendens applies.”

The requesting party shall state as exceptions any such party not subject to lis pendens. With the motion, the requesting party shall also file an updated title examination.

- (C) A purchaser of real estate through a land sale proceeding shall have thirty (30) days from the date of sale to obtain a title examination. The purchaser may waive any or all of this thirty day period by signing the confirmation order.
- (D) A proposed order to confirm the sale and an order of distribution shall be submitted with the motion to confirm the sale. The distribution of sale proceeds shall be included with the confirmation order.
- (E) In land sale proceedings that have not been concluded within one (1) year from the date of filing, the party requesting the sale shall file a status report.
- (1) The status report shall detail the efforts being made to complete the sale of the real estate; the current physical status of the real estate; the amount and nature of any mortgages or liens; the amount and nature of any outstanding real estate taxes; the name and address of any real estate agency and real estate agent involved in listing the property; and the name, address, and telephone number of the insurance company and insurance agent involved in insuring the property.
- (2) Upon review of the status report, the Court may set the matter for hearing.

LOCAL RULE 66.1

GUARDIANSHIPS

(A) Incompetents

- (1) An applicant to be appointed guardian, except a state agency, shall complete a criminal record check that is acceptable to the Court.
- (2) An applicant to be appointed guardian shall complete and file an Applicant's Report (M.C. Form 5E).
- (3) All guardians shall receive a guardian's handbook issued by the Court. The handbook will provide the guardian with general information regarding the guardian's duties and responsibilities. The cost of the handbook will be assessed to the guardian of the estate.
- (4) Within three months of appointment, the guardian of the person shall file a Report of Ward's Legal Documents (M.C. Form 17.0M). If no guardian of the person was appointed, then the guardian of the estate shall be responsible for filing the report.
- (5) The guardian of the estate shall deposit the ward's will with the Court for safekeeping pursuant to the procedure set forth in R.C. 2107.07.
- (6) The guardian of the person shall file a Guardian's Report (Form 17.7) and Annual Guardianship Plan (M.C. Form 17.0L) annually, on or before the anniversary of their appointment. If no guardian of the person was appointed, then the guardian of the estate shall be responsible for filing the report and plan.
- (7) The guardian who is responsible for filing the report and plan shall file an updated Statement of Expert Evaluation (Form 17.1) biennially with the report and plan. If a physician or licensed clinical psychologist states on the evaluation that, to a reasonable degree of medical certainty, it is unlikely that the ward's mental competence will improve, the guardian may apply to the Court to dispense with the filing of updated statements of expert evaluation.
- (8) An Application for Authority to Expend Funds (Form 15.7) shall not be approved until a Guardian's Inventory (Form 15.5) has been filed. Funds and assets held in the name of the ward shall not be released to the guardian except upon order of the Court. An Application to Release Funds to Guardian (Form 15.6) shall state the value of the funds or assets sought to be released.
- (9) The funds and assets of the ward shall not be accessed through an automated teller machine or debit card. Electronic payment of routine and recurring expenses is permitted with Court approval.

- (10) Guardianships of the estate that involve Veterans' Benefits are subject to and must comply with R.C. Chapter 5905 and all other rules and regulations of the United States Department of Veterans Affairs. Applications for authority to expend funds shall be approved by the Department of Veterans Affairs or shall be set for hearing with notice given to the Department of Veterans Affairs.
- (11) All guardians shall notify the Court of the death of the ward by written notice no later than sixty (60) days after the death of the ward.

(B) Minors

- (1) A certified copy of the minor's birth certificate must be filed with the application for guardianship.
- (2) The Court shall not accept for filing an application for guardianship of the person of a minor where another court has previously acquired jurisdiction over custody of the minor, unless the other court consents to the guardianship or declines jurisdiction by court order.
- (3) The Court shall not accept for filing an application for guardianship of the person of a minor where the sole purpose is to establish residency for school attendance purposes, qualify the minor for health or life insurance or establish placement for adoption.

(C) Emergency

- (1) An emergency guardian may be appointed by the Court if it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of an incompetent or minor.
- (2) The applicant shall file all necessary forms, which include the Supplement for Emergency Guardian (Form 17.1A). This form must be completed by a licensed physician and must be current.
- (3) Simultaneously with the application for an emergency guardian, the applicant shall file an application for a regular guardianship, which must include a Statement of Expert Evaluation (Form 17.1). This form must be completed by a licensed physician or clinical psychologist.
- (4) The Court will review the emergency application forthwith.
- (5) If the application for emergency guardian is denied, the underlying application for guardianship will be heard as the Court's calendar permits.
- (6) If the emergency application is granted, a hearing will be held within seventy-two (72) hours. The emergency guardianship order may be continued for a maximum of 30 days.

LOCAL RULE 66.3

GUARDIANSHIP COMPLAINTS

- (A) Complaints shall be filed in writing using M.C. Form 17.0F, Guardianship Complaint. The complaint shall be accompanied by the appropriate filing fee.
- (B) Upon filing, the complaint will be time stamped and docketed. Absent a court order to the contrary, the complaint will be considered a public document and will be maintained in the Court's file.
- (C) Within ten (10) days of the filing of the complaint, the Guardianship Social Worker will:
 - (1) Add the complaint to the guardianship complaint database for monitoring.
 - (2) Mail a notice to the complainant acknowledging the filing of the complaint.
 - (3) Mail a copy of the complaint to the guardian with a notice advising the guardian of the filing of the complaint.
- (D) The guardian may file a written response to the complaint within ten (10) days of the mailing of the complaint and notice to the guardian. A copy of the written response will be mailed to the complainant by the Court.
- (E) Within thirty (30) days of the filing of the complaint, the Court will review the complaint and develop a plan of action. Plans of action may include any of the following:
 - (1) The matter may be set for hearing, in which case notice of the hearing will be mailed to the complainant, the guardian, and the ward.
 - (2) The Court may order an investigation of the complaint.
 - (3) The Court may determine that, on its face, the complaint does not warrant further action.
- (F) In all cases, the Court will dispose of the complaint by issuing a written order, decision, or entry, which will be mailed to the complainant and the guardian, and will be docketed and maintained in the Court's file.
- (G) Within ten (10) days of the filing of the order, decision, or entry, the Guardianship Social Worker will update the database to reflect the disposition of the complaint.
- (H) The foregoing procedure applies to communications received from the ward. However, the ward is not required to use the designated form nor to pay the filing fee.
- (I) Notwithstanding the foregoing procedure, the Court expressly reserves the right to take immediate action on complaints if such action is necessary in order to protect the safety, health, or welfare of the ward.

Adopted: 4/4/16
Revised: 12/7/2016

LOCAL RULE 66.5

GUARDIANS WITH TEN OR MORE WARDS

Persons who are serving as guardian for ten or more wards shall file Guardians with Ten or More Wards Annual Report and Fee Schedule (M.C. Form 17.0J), on or before January 1 of each year, in case number 2015 MSC 406. Such persons shall attach their certificate of compliance with guardian education requirements to the form and shall not be required to file such certificates in the individual cases in which they are serving as guardian.

LOCAL RULE 66.7

GUARDIAN EDUCATION

(A) Fundamentals of Adult Guardianship

All guardians of adult incompetents shall complete a six-hour Fundamentals of Adult Guardianship course within six months of their appointment.

(B) Continuing Guardian Education

(1) Guardians of adult incompetents who are not related to the ward by consanguinity or affinity shall complete a three-hour continuing guardian education course every year thereafter.

(2) Guardians of adult incompetents who are related to the ward by consanguinity or affinity shall complete a three-hour continuing education course on or before the second anniversary of their appointment.

Guardians who are related to the ward by consanguinity or affinity shall complete a three-hour continuing education course on or before the third anniversary of their appointment.

Guardians who are related to the ward by consanguinity or affinity shall not be subject to any further continuing guardian education requirement, unless otherwise ordered by the Court.

(C) Notice of Completion of Guardian Education

Guardians who are subject to a guardian education requirement in a given year shall file a Notice of Completion of Guardian Education (Form 17.0I) with their annual Guardian's Report or Guardian's Account.

(D) Waiver

Upon application and for good cause shown, the Court may waive the Fundamentals of Adult Guardianship and/or Continuing Guardian Education requirement.

LOCAL RULE 67.1

ESTATES OF MINORS

- (A) 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. The amount of funds involved must be equal to or less than the amount set forth in R.C. 2111.05.
- (B) The application shall set forth the source and amount of funds that will be distributed on behalf of the minor. Unless otherwise ordered by the Court, the funds shall be deposited in an interest bearing account in a financial institution approved by the Court in the name of the minor. The funds shall be impounded and shall be released to the minor only when he or she reaches the age of majority, or as otherwise ordered by the Court.
- (C) The applicant's counsel, or if the applicant is not represented, the payor's counsel, shall immediately deposit said funds and thereafter file a completed verification of receipt and deposit.

LOCAL RULE 68.1

SETTLEMENT OF MINOR'S CLAIMS

- (A) The Court shall require the appointment of a guardian of the estate for any claim in which the net amount of the settlement is greater than the amounts set forth in R.C. 2111.05 and 2111.18.
- (B) A certified copy of the minor's birth certificate must be filed with the application to settle the minor's claim.
- (C) If the settlement of the minor's claim involves a structured settlement, the structured settlement shall be reviewed by the Court before the application for settlement is filed. The application shall also include a statement of the total cost to the defendant of the settlement. This statement shall be used to fix and determine attorney fees.
- (D) If the settlement is to be funded by an annuity, the annuity shall be provided by an annuity carrier that is licensed to write annuities in Ohio. The annuity carrier must have a minimum of \$100,000.00 in capital and surplus, exclusive of any mandatory security valuation reserves. The annuity carrier must have one of the following ratings from the following rating organizations:
 - (1) A++, A+ or A from A.M. Best Company;
 - (2) AAA, Aa1 or Aa2 from Moody's Investors Service;
 - (3) AAA or AA from Standard's & Poor's Corporation.
 - (4) AAA, AA+ or AA from Fitch Ratings.
- (E) 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.

Adopted: 2/1/05
Revised: 8/1/14

LOCAL RULE 70.1

SETTLEMENT OF WRONGFUL DEATH CLAIMS

- (A) Applications to settle wrongful death claims shall be set for hearing. The applicant must be present at the hearing.
- (B) In opening an estate for the primary purpose of settling or resolving a wrongful death claim, the attorney fees associated with opening the estate shall be assessed as a portion of the contingent fee.

LOCAL RULE 71.1

ATTORNEY FEES

The Rules of Professional Conduct and Rules of Superintendence shall govern the reasonableness of all attorney fees. The Court has the ultimate responsibility and authority to review attorney fees as required by such rules.

(A) Decedents' Estates

(1) Partial Accounts

- (a) An application for the payment of attorney fees on a partial account shall set forth the amount of requested fees and an hourly summary of services provided that justifies the requested fees.
- (b) An application for the payment of attorney fees on a partial account shall not be approved as a percentage of the attorney fees computed pursuant to Appendix A to the Local Rules.
- (c) In solvent estates, an application for the payment of attorney fees on a partial account shall not be required if all of the beneficiaries of the estate consent in writing to the payment of such fees. Appendix C to the Local Rules shall be used for written consents.

(2) Final Accounts

- (a) An application for the payment of attorney fees on a final account is not required if any of the following applies:
 - (i) Payment of the fees is included in an accounting or certificate of termination filed by the fiduciary, and the fiduciary is the sole beneficiary of a solvent estate.
 - (ii) All of the beneficiaries and creditors of the estate whose share will be charged with payment of any part of the fees, consent in writing to the specific dollar amount to be paid and the consent is filed with the account that claims credit for payment of the fees.

In such cases, a guardian may consent for the guardian's ward, the fiduciary of a deceased beneficiary's estate may consent for the deceased beneficiary and a testamentary or inter vivos trustee may consent for the trust beneficiaries.

Consents may not be used if a complaint for will contest, determination of heirship, or complaint for any other civil action has been filed that may change the persons who would be the beneficiaries of the decedent's estate.

(iii) A computation of attorney fees pursuant to Appendix A is attached to the account. Appendix A is merely a guideline and shall not be used by the attorney to receive fees that would be unreasonable under the Rules of Professional Conduct or the Rules of Superintendence.

(b) If an application for payment of attorney fees on a final account is signed by the fiduciary and contains an itemized description of the legal services provided, the Court may approve the application without a hearing.

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

(B) Guardianships and Trusts

No hearing shall be required upon an application for attorney fees if all of the following apply:

(1) The application is signed by the fiduciary.

(2) The application contains an itemized statement of the legal services provided with the hourly rate charged.

(3) The order approving payment of the fees contains a statement that a credit for payment of the fees may be taken in the next accounting.

(C) Settlement of Wrongful Death Claims

(1) A contingent fee agreement that does not exceed 33 1/3% of recovery in personal injury matters, 40% if an appeal is taken in personal injury matters, or 40% in a medical malpractice action may be approved by the Court at the settlement hearing without prior approval by the Court.

(2) If the contingent fee agreement exceeds these guidelines, prior approval must be obtained from the Court before the fiduciary may enter into the contract or fee agreement.

(3) In all cases, the Court shall review the reasonableness of fees and costs at the settlement hearing. The foregoing standards shall apply in cases governed by Local Rules 68.1 and 70.1.

(D) Court Appointed Attorney Fees in Guardianships

(1) Appointed counsel for an indigent ward or alleged ward shall be compensated for services provided, at a rate determined by the Court, upon submission of an application for payment that sets forth the date, nature of the services provided, and time expended.

(2) Appointed counsel for a non-indigent ward or alleged ward shall be compensated for services provided, at an approved reasonable hourly rate, upon submission of an application for payment that sets forth the date, nature of services provided, and

time expended. The application must be signed by counsel and the fiduciary and approved by the Court.

(E) Attorney Serving as Fiduciary

- (1)** If the fiduciary of a decedent's estate is also the fiduciary's counsel, or if a member of the fiduciary's law firm is the fiduciary's counsel, the attorney may not take attorney fees computed pursuant to Appendix A if the attorney takes both fiduciary and attorney fees. Rather, the attorney must submit an itemized application for fees showing services provided as a fiduciary and services provided as an attorney.

If the attorney elects to take only one fee, the attorney may take fiduciary fees computed pursuant to R.C. 2113.35 or attorney fees computed pursuant to Appendix A.

- (2)** If the fiduciary of a guardianship or trust estate is also the fiduciary's counsel, the attorney shall submit an itemized application for fees showing services provided as a fiduciary and services provided as an attorney.

Adopted: 2/1/05
Revised: 8/1/14

LOCAL RULE 72.1

EXECUTOR AND ADMINISTRATOR FEES

A computation of fiduciary fees shall be filed with each account in which credit has been taken for payment of fees. Appendix D to the Local Rules or a similar form shall be used to compute the allowable fiduciary fees.

LOCAL RULE 73.1

GUARDIAN FEES

- (A) A guardian may take guardian fees without application or order of the Court if the fees are less than or equal to the sum of the following:
- (1) 5% of income from intangible investments and deposits and installment receipts, such as Social Security or Veterans' Benefits;
 - (2) 10% of gross rentals from real estate actually managed by the guardian (5% if proceeds of a net lease);
 - (3) .25% of intangible personal property investments and deposits for each year of the accounting period;
 - (4) 1% of distribution of personal property corpus at conclusion of the guardianship.
- (B) A computation of fees shall be filed with each account in which credit has been taken for payment of fees. Appendix E to the Local Rules or a similar form shall be used to compute the allowed fees. Existence of the above schedule does not constitute approval by the Court of the reasonableness of the fees taken.
- (C) A corporate guardian that is not required to post bond may take guardian fees in accordance with its published fee schedule, provided the fee schedule has been filed with the Court. A corporate guardian shall file its current published fee schedule with the Court on an annual basis. Any amendments to the schedule must be filed before a fee may be taken in accordance with the amended schedule. Fee schedules shall be limited to a maximum 1% fee for all guardianship estates with a market value of \$75,000.00 or less.
- (D) Applications for guardian fees that are filed by guardians of veterans must comply with R.C. Chapter 5905 and the rules and regulations of the Department of Veterans Affairs.

LOCAL RULE 74.1

TRUSTEE FEES

- (A) Except as provided in the trust instrument, a trustee may take trustee fees without application or order of the Court, if the fees are less than or equal to the sum of the following:
- (1) 5% of income from intangible investments and deposits and installment receipts, such as Social Security or Veterans' Benefits;
 - (2) 10% of gross rentals from real estate actually managed by the trustee (5% if proceeds of a net lease);
 - (3) .25% of intangible personal property investments and deposits for each year of the accounting period;
 - (4) 1% of distribution of personal property corpus at periodic distributions.
- (B) A computation of fees shall be filed with each account in which credit has been taken for payment of fees. Appendix F to the Local Rules or a similar form shall be used to compute the allowed fees. Existence of the above schedule does not constitute approval by the Court of the reasonableness of the fees taken.
- (C) A corporate trustee may take trustee fees in accordance with its published fee schedule, provided the fee schedule has been filed with the Court. A corporate trustee shall file its current published fee schedule with the Court on an annual basis. Any amendments to the schedule must be filed before a fee may be taken in accordance with the amended schedule. Fee schedules shall be limited to a maximum 1% fee for all trust estates with a market value of \$75,000.00 or less.

LOCAL RULE 75.1

LOCAL RULES

(A) Guardians Ad Litem

(1) Qualifications

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

(2) Appointment

(a) Land Sales

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

(b) All Other Matters

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

(3) Fees

(a) Land Sales

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

(b) All Other Matters

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

(B) Marriage Licenses

- (1)** Applicants for a marriage license must review the certified abstract of marriage for accuracy before signing the abstract. In the event errors are discovered on the abstract or marriage certificate after it has been issued, an application to correct the certified abstract of marriage or marriage certificate must be filed with the Court. The application may be filed by the applicants or an interested party and must be accompanied by supporting affidavits. The Court may set the application for hearing. If the Court grants the application, the Court shall issue a judgment entry correcting the certified abstract of marriage or marriage certificate.

- (2) If an officiant fails to timely return a certificate of marriage to the Court, one or both of the applicants for the marriage license may file an application to issue the certificate of marriage, which the Court shall set for hearing. If both applicants for the marriage license do not join in filing the application, the non-joining applicant must be notified of the hearing.

(C) Inventories of Safe Deposit Boxes

If keys are available, the Court shall appoint counsel for the fiduciary of the decedent's estate or a deputy clerk of the Court as a commissioner to list the contents of the box and retrieve the decedent's will and codicils from the decedent's safe deposit box for delivery to the Court.

(D) Compliance With Americans With Disabilities Act

- (1) Persons with disabilities, special needs, or the need for an interpreter shall make requests to the Court Administrator for reasonable accommodations no later than seven (7) days prior to any scheduled hearing or proceeding.
- (2) If the interpreter service is no longer required or if the parties continue the hearing, the person making the request shall immediately notify the Court Administrator to cancel or reschedule the service. Failure to notify the Court may result in the person paying any cancellation fee for the interpreter service.

LOCAL RULE 78.1

CASE MANAGEMENT

For the purpose of ensuring the readiness of proceedings in the Court, the following procedures shall be in effect.

(A) Decedents' Estates

- (1)** Decedent's estate cases shall be assigned to a Magistrate. The Magistrate shall supervise the assigned case and shall hear all related matters except civil actions, unless otherwise referred by the Judge.
- (2)** A copy of the decedent's death certificate must be submitted to open an estate.
- (3)** Each fiduciary appointed in an estate shall sign and file a fiduciary's acceptance.

(4) Inventories

- (a)** Inventories shall be filed within ninety (90) days after the appointment of the fiduciary, unless otherwise ordered by the Court. The citation procedure outlined in the Revised Code shall be utilized to ensure compliance.
- (b)** Each fiduciary must sign the inventory.
- (c)** The fiduciary shall indicate whether the value of a partnership interest was determined by the terms of the partnership agreement or by an appraiser.
- (d)** If an appraiser is used, the appraiser may sign a separate form that is attached to the inventory. This form is required to include the same appraiser's certification language set forth in the inventory and appraisal.

(5) Schedules of Assets

- (a)** Itemized listings of corporate stock owned by the decedent shall be preceded by one of the following symbols:
 - (i)** If the stock is publicly traded and its valuation obtained from any recognized stock exchange or over-the-counter quotation, the listing shall be preceded by the symbol "X";
 - (ii)** If the stock is not publicly traded and represents an investment in what is commonly known as a closely held corporation, the listing shall be preceded by the symbol "CC" and must be valued by a duly appointed, qualified appraiser.
- (b)** Itemized listings of real estate shall include legal descriptions and parcel numbers.

(6) Exceptions to Inventories and Accounts

A hearing shall be scheduled on exceptions to inventories or accounts within sixty (60) days after the filing of exceptions, unless otherwise ordered by the Court.

(7) Status Reports

- (a) The Court may order the fiduciary to file a status report at any time.
- (b) The fiduciary shall file a status report if a partial account or waiver of partial account is filed in the estate.
- (c) The fiduciary shall file an annual status report on the anniversary of the first status report until the estate is completed.
- (d) The status report shall set forth the current status of the estate, the steps remaining to complete the estate, and an estimated time frame for completing the estate.
- (e) The fiduciary shall serve a copy of the status report upon all persons or creditors who have an interest in completing the estate.

(B) Releases of Estates From Administration

- (1) Release of estate from administration cases shall be assigned to a Magistrate. The Magistrate shall supervise the assigned case and shall hear all related matters except civil actions, unless otherwise referred by the Judge.
- (2) The Court shall select and appoint commissioners, when required, as follows:
 - (a) The commissioner shall be a resident of Ohio unless at least one of the following applies:
 - (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;
 - (iv) All of the next of kin, legatees and devisees, and known creditors consent in writing to the person serving as commissioner without bond.

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

(C) Guardianships

- (1) Guardianship cases shall be assigned to a Magistrate. The Magistrate shall supervise the assigned case and shall hear all related matters except civil actions, unless otherwise referred by the Judge.
- (2) In cases in which the applicant represents that there are no next of kin or that the addresses of the next of kin are unknown, the applicant shall file an Affidavit – Search for Address (MC Form 110).
- (3) Inventories shall be filed within ninety (90) days after the appointment of the guardian, unless otherwise ordered by the Court. The citation procedure outlined in the Revised Code shall be utilized to ensure compliance.
- (4) Inventories shall include the expected annual income of the ward.
- (5) Inventories shall include the legal description and parcel number of all real estate of the ward.

(D) Trusts

- (1) Trust cases shall be assigned to a Magistrate. The Magistrate shall supervise the assigned case and shall hear all related matters except for civil actions, unless otherwise referred by the Judge.
- (2) Inventories shall be filed within ninety (90) days after the appointment of the trustee, unless otherwise ordered by the Court. The citation procedure outlined in the Revised Code shall be utilized to ensure compliance.
- (3) Each trustee must sign the inventory.

(E) Adoptions

- (1) The Court shall be responsible for service of all required notices in adoption proceedings, except for service of notices by publication.
- (2) If an adoption involves a child born before January 1, 1997, the putative father shall be named as a respondent. If an adoption involves a child born after January 1, 1997, the petitioner shall request a search of the Putative Father Registry and shall file the response with the Court.
- (3) An original and a copy of all pleadings shall be filed in every adoption case. Additional copies of the adoption petition shall be submitted as required for service.
- (4) A lawful placement must occur pursuant to R.C. 5103.02 et seq. prior to the filing of the adoption petition, except in stepparent, grandparent, and legal custodian adoptions.

- (5) Court costs must be paid at the time of the filing. Before a hearing is set, the petitioner must present all necessary documents to the Court for filing.
- (6) Petitioner's accounts shall be filed in all cases, except in stepparent and adult adoptions.
- (7) Married petitioners must be married for not less than one (1) year prior to the final approval of the petition.

(F) Civil Actions

- (1) In civil cases in which service by publication is required pursuant to Rule 4.4 of the Rules of Civil Procedure, the serving party shall effectuate publication by arranging and paying for publication in a newspaper of general circulation.

Before effectuating publication, the serving party shall file an Affidavit of Search for Address (Form MSC 110).

Within ten (10) days after the final publication, the serving party shall file an affidavit of publication that includes a copy of the published notice and dates of publication.

- (2) After service on all parties an opportunity to respond, the Court may set the matter for pre-trial conference.
- (3) At the pre-trial conference, all counsel must have full authority to enter into binding orders. The following matters and decisions shall be addressed at the pre-trial conference:
 - (a) The possibility of settlement;
 - (b) Discovery deadline dates;
 - (c) A definite date for exchange of expert witness reports;
 - (d) Pleadings, briefing and proposed jury instructions dates;
 - (e) Final pre-trial date, if applicable;
 - (f) Trial date.

(G) Fiduciary Bonds

- (1) A copy of the power of attorney for the bonding agent shall be attached to any bond submitted to this Court. The power of attorney shall set forth the name of the attorney-in-fact who has signed the bond and the bond amount limits, if any. The bond amount limits shall be sufficient to cover the total bonded amount in the case. No bond shall be accepted by this Court without an attached copy of the power of attorney.
- (2) Fiduciaries of decedent's estates 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 estate's personal property, or if the estate has no personal property, in an amount determined by the Court. The amount of the bond is subject to being adjusted upward or downward upon the filing of the inventory, consents to sell real estate, and partial accounts.

- (3) Guardians of the estate shall be required to post a minimum bond. 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 shall not be bonded unless a complaint for land sale has been filed.
- (4) 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.
- (5) Fiduciary bond premiums must be paid when due. If the Court is notified that a fiduciary bond premium is delinquent, the Court may on its own motion move to remove the fiduciary.

(H) 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;
 - (b) The attorney serves the motion to withdraw on his or her client, unless the client approves the motion in writing;
 - (c) The attorney lists in the motion all known filing deadlines; and
 - (d) The attorney gives notice to all attorneys, unrepresented parties, and interested persons. Interested persons shall include next of kin, legatees and devisees, known creditors, trust beneficiaries, and bonding agencies.
- (2) The Court may schedule the motion to withdraw for hearing. If there is a pending hearing in the case, the motion to withdraw shall be set at that time.
- (3) Substitution of counsel shall be in writing signed by the withdrawing attorney or the fiduciary and the substituting attorney. Notice shall be served on all attorneys, bonding agencies, and interested persons.

(I) 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, except to the extent such rules would be clearly inapplicable.

(J) Miscellaneous Matters

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

Adopted: 2/1/05
Revised: 8/1/14

APPENDIX A

ATTORNEY FEES

The following schedule is merely a guide for determining attorney fees in an ordinary estate and shall not be considered to be a minimum or maximum fee schedule. The law requires that attorney fees be reasonable in each case. Acceptance of an account for filing that reflects payment of attorney fees equal to or less than an amount computed upon the following basis does not constitute approval of the reasonableness of the fees taken. The Court may review the attorney fees on the Court's own motion or upon exceptions to the account as provided by law.

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

Transfer of real estate:	2% of appraised value
Proceeds from the sale of real estate sold in land sale:	12% of first \$1,000 9% of first \$3,500 7% of next \$6,000 5% of next \$5,000 3% of balance
Personal property, including gross proceeds from sale of real estate sold with consent or pursuant to power to sell in will:	8% of first \$1000 6% of next \$4000 4% of next \$20,000 3% of next \$125,000 2% of balance

Fees for determination of non-probate property:

- (a) 1% on all other non-probate property, excluding joint and survivorship property between spouses. This percentage fee should only be taken if services on non-probate property were rendered during the administration of the estate.
- (b) In release of estate from administration cases, attorney fees are computed only on the basis of the assets of the probate estate. No fees are allowed on non-probate property.
- (c) No fees are allowed on funds advanced to the estate.

NOTE: By having a fee guideline for attorney fees for non-probate property, the Court is **NOT** establishing that such fees are payable from the probate estate in all cases.

Adopted: 2/1/05
Revised: 8/1/14

APPENDIX B

COMPUTATION OF ATTORNEY FEES

PURSUANT TO APPENDIX A

ESTATE OF _____

CASE NO. _____

Real estate transferred (not sold):

Total value: \$ _____ X 2% (.02) = \$ _____

Proceeds from the sale of real estate in land sale:

Total proceeds: \$ _____

12% (.12) of first \$1,000 of total proceeds: \$ _____

9% (.09) of next \$3,500 of total proceeds: \$ _____

7% (.07) of next \$6,000 of total proceeds: \$ _____

5% (.05) of next \$5,000 of total proceeds: \$ _____

3% (.03) of balance of total proceeds: \$ _____

Personal property, including gross proceeds from the sale of real estate sold with consent or pursuant to power to sell in will:

Personal property: \$ _____

Proceeds: \$ _____

Total value: \$ _____

8% (.08) of first \$1,000 of total value: \$ _____

6% (.06) of next \$4,000 of total value: \$ _____

4% (.04) of next \$20,000 of total value: \$ _____

3% (.03) of next \$125,000 of total value: \$ _____

2% (.02) of balance of total value: \$ _____

Non-probate property, excluding joint and survivorship property between spouses:

Total value: \$ _____ X 1% (.01) = \$ _____

TOTAL FEE: \$ _____

DISCOUNT: (\$ _____)

TOTAL FEE TAKEN: \$ _____

Adopted: 2/1/05
Revised: 8/1/14

APPENDIX C

CONSENT TO PAYMENT OF ATTORNEY FEES ON PARTIAL ACCOUNT

ESTATE OF _____

CASE NO. _____

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

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

The undersigned has been further advised that the Rules of Superintendence for the Courts of Ohio do not allow for the payment of attorney fees on a partial account unless the attorney obtains the approval of the probate court. In order to obtain the approval of the probate court, the attorney must file an itemized application for attorney fees. The application must set forth cause for the payment of the fees on a partial, rather than a final, account.

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

Date: _____

Signature: _____

Witness: _____

Adopted: 2/1/05
Revised: 5/26/17

APPENDIX D

COMPUTATION OF EXECUTOR AND ADMINISTRATOR FEES

R.C. 2113.35

ESTATE OF _____

CASE NO. _____

Real estate transferred (not sold):

Total value: \$ _____ X 1% (.01) = \$ _____

Personal property and income, including gross proceeds from the sale of real estate sold with consent or pursuant to power to sell in will:

Personal property: \$ _____

Income: \$ _____

Total value: \$ _____

4% (.04) of first \$100,000 of total value: \$ _____

3% (.03) of next \$300,000 of total value: \$ _____

2% (.02) of balance of total value: \$ _____

Property not subject to administration, but subject to Ohio estate tax as of December 31, 2012, excluding joint and survivorship property:

Total value: \$ _____ X 1% (.01) = \$ _____

TOTAL ALLOWABLE FEE: \$ _____

TOTAL FEE TAKEN ON PRIOR ACCOUNTS: \$ _____

TOTAL FEE TAKEN ON THIS ACCOUNT: \$ _____

Adopted: 2/1/05
Revised: 8/1/14

APPENDIX E

COMPUTATION OF GUARDIAN FEES

LOCAL RULE 73.1

GUARDIANSHIP OF _____

CASE NO. _____

Income from investments and installment receipts:

Investments: \$ _____
Installment receipts: \$ _____
Total value: \$ _____ X 5% (.05) = \$ _____

Rentals from real estate:

Total value: \$ _____ X 10% (.10) = \$ _____

Intangible personal property invested:

Total value: \$ _____ X .25% (.0025) = \$ _____

Final distributions:

Total value: \$ _____ X 1% (.10) = \$ _____

TOTAL ALLOWED GUARDIAN FEES: \$ _____

Adopted: 2/1/05
Revised: 8/1/14

APPENDIX F

COMPUTATION OF TRUSTEE FEES

LOCAL RULE 74.1

TRUST OF _____

CASE NO. _____

Income from investments and installment receipts:

Investments: \$ _____
Installment receipts: \$ _____
Total value: \$ _____ X 5% (.05) = \$ _____

Rentals from real estate:

Total value: \$ _____ X 10% (.10) = \$ _____

Intangible personal property invested:

Total value: \$ _____ X .25% (.0025) = \$ _____

Periodic distributions of personal property corpus:

Total value: \$ _____ X 1% (.01) = \$ _____

TOTAL ALLOWED TRUSTEE FEES: \$ _____

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

Adopted: 1/29/07
Revised: 8/1/14

APPENDIX G

NOTICE OF SCHEDULED MEDIATION

IN THE PROBATE COURT OF MONTGOMERY COUNTY, OHIO

PLANTIFF, : CASE NO:
Plaintiff, : (McCOLLUM, J.)
v. : NOTICE OF SCHEDULED
DEFENDANT, : MEDIATION
Defendant. :
:

It is hereby ordered that the above-captioned case is referred to mediation. The mediation will be held at the Montgomery County Probate Court, in front of:

Mediator's Name

Address

Telephone Number

The mediation will be held between _____, 20____ and _____, 20_____.

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

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

If opposing parties to any case have either resided in a common residence or are related by blood, adoption or marriage, and have known or alleged domestic abuse at any time prior to the mediation, then the parties or their counsel have a duty to disclose such information to the mediator. Such party shall have a duty to participate in any screening required by Sup.R. 16, both prior to, and, in the mediator's discretion, during the mediation sessions.

Mediation communications are privileged as described in R.C. 2710.03, *et seq.* If the parties believe that confidentiality beyond the scope of the privilege is necessary, then the parties shall effect a written confidentiality agreement prior to the mediation.

IT IS SO ORDERED.

ALICE O. McCOLLUM, JUDGE

Adopted: 1/29/07
Revised: 8/1/14

AGREEMENT TO MEDIATE

IN THE PROBATE COURT OF MONTGOMERY COUNTY, OHIO

PLANTIFF, : CASE NO:
Plaintiff, : (McCOLLUM, J.)
v. : AGREEMENT TO MEDIATE
DEFENDANT, :
Defendant. :
:

We understand and agree to the following:

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

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

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

Any agreements that may be reached by the parties in this mediation do not modify or replace any court orders. If the parties wish to have this agreement made an order of the court in formal cases, as indicated above it must be presented to the court by the parties in the form of an agreed entry.

Date/Signature

Date/Signature

Date/Signature

Date/Signature

Date/Signature

Date/Signature

Date/Signature

Date/Mediator's signature

To the extent allowed by law, the parties may include certain other provisions to the mediation agreement and/or concerning confidentiality:

Initial/date:

Adopted: 1/29/07
Revised: 8/1/14

MEDIATION INTAKE FORM

IN THE PROBATE COURT OF MONTGOMERY COUNTY, OHIO

PLANTIFF, : CASE NO:
Plaintiff, : (McCOLLUM, J.)
v. : MEDIATOR: _____
DEFENDANT, : MEDIATION INTAKE FORM
Defendant. :
:

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

Date: _____, 20____

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

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

_____ Claimant's Attorney _____ Claimant _____ Respondent's Attorney
_____ Respondent _____ Magistrate _____ Judge

CLAIMANT

Name: _____
Address: _____
Telephone: _____

RESPONDENT

Name: _____
Address: _____
Telephone: _____

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

Amount of claim (if applicable): \$ _____

Nature of claim: _____

Statement (please summarize your understanding of the dispute):

Are there any stalking, civil, or temporary protection orders in effect involving any of the parties, to the best of your knowledge? _____ Yes _____ No

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

Are there any pending or prior domestic violence allegations involving any of the parties, to the best of your knowledge? _____ Yes _____ No

If yes, please state the specifics:

Have any of the parties been convicted of child abuse or domestic violence, relative to this case, to the best of your knowledge? _____ Yes _____ No

If yes, please state the specifics:

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

_____ Yes _____ No

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

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

Date: _____

Signature: _____

Upon completion of this form please return it to: _____

Adopted: 1/29/07
Revised: 8/1/14

ORDER TO PAY MEDIATION FEES

IN THE PROBATE COURT OF MONTGOMERY COUNTY, OHIO

PLANTIFF, : **CASE NO:**
Plaintiff, : **(McCOLLUM, J.)**
v. : **ORDER TO PAY MEDIATION**
DEFENDANT, : **FEES**
Defendant. :
:

The Court hereby orders payment to _____, Mediator, from the Court Mediation Fund, in the sum of \$_____, for mediation services rendered on _____, 20_____.

IT IS SO ORDERED.

ALICE O. McCOLLUM, JUDGE