



Montgomery County Probate Court
Judge David D. Brannon

Local Rules of Court

Montgomery County Probate Court
41 N. Perry Street, 2nd Floor
Dayton, Ohio 45402
mcoho.org/probate
937-225-4640

LOCAL RULE 2.1
DEFINITIONS

As used in these Rules:

- (A) **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.
- (B) **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.
- (C) **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.
- (D) **Document.** A filing made with the clerk in either electronic format or paper form, becoming part of the Court’s official record.
- (E) **Document Management System (DMS).** A system that manages the receipt, indexing, storage, and retrieval of documents associated with a matter.
- (F) **Electronic Filing (eFile).** The electronic filing of documents with the clerk using the Electronic Filing System.
- (G) **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.
- (H) **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.
- (I) **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 or other interested person files an objection before the deadline passes, in which case the Court will direct the parties as to whether attendance is mandatory.
- (J) **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 username and password for the eFiling System.

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 (“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 probate forms and local probate forms is “Mont. Co. P.C.F.”

(C) Technology Plan.

- (1) Pursuant Sup.R. 5(E), the Court shall adopt and maintain a Technology Plan, which will include:
 - (a) A comprehensive strategy for implementing and maintaining technology solutions for conducting remote hearings, electronic service, the acceptance of electronic signatures, and any other technology-related solutions utilized by the Court; and
 - (b) Procedures for notifying and providing instructions to the public on how to use the technology solutions implemented by the Court and how the solutions will comply with any accessibility accommodation requirements, including any applicable requirements of the “Americans with Disabilities Act.”
- (2) This Technology Plan will be available from the Clerk’s Office.

Adopted: 2/1/05
Amended: 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 their full name, address, telephone number, email address and attorney registration number issued by the Supreme Court

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) Attorney;
- (2) Guardian;
- (3) Trustee;
- (4) Guardian ad litem;
- (5) Appraiser;
- (6) Estate fiduciary;
- (7) Investigator; and
- (8) Mediator.

(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).

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 11.1
RECORDING OF PROCEEDINGS

- (A) Official Record.** The Court records all hearings electronically, which shall serve as the official record of the Court.
- (B) Stenographers.** Any parties who desire(s) to have a contemporaneous stenographic record of the proceeding(s) may do so, so long as the following criteria are met:
- (1) The requesting party provides at least twenty-four (24) hours of notice to the Court and all other parties; and
 - (2) The requesting party makes all arrangements and pays all costs associated with the court reporter.
- (C) Recordings.** An electronic recording of most proceedings is available via a secure file transfer, Compact Disc (CD-ROM), flash memory drive and/or other digital storage device directly from the Court. To acquire a digital recording:
- (1) File a Request for Digital Copy of Hearing (Mont. Co. P.C.F. 6.0) with the Clerk; and
 - (2) Pay costs.
- (D) Transcripts.** A written transcript used for appeal, objection to a magistrate's decision and/or additional court proceedings shall be prepared in accordance with Rule 9(A) of the Rules of Appellate Procedure. The Court contracts with third-party vendors for written transcripts. A written transcript shall be obtained by:
- (1) Filing and serving a praecipe with the Clerk requesting that a proceeding be transcribed;
 - (2) The Court will then serve a copy of the request upon the third-party court reporter (currently eScribers) and provide the court reporter a digital copy of the proceedings.
 - (3) The third-party court reporter will contact the requesting party to take payment and make additional arrangements.
 - (4) Once the third-party court reporter delivers a copy of the written transcript to the requesting party, the party may file it with the Court.
- (E) Record Retention.** 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 digital recording of the hearing as part of the record of the case prior to the expiration of the three-year period.
- (F) Recordings by Individuals other than the Court are Prohibited.** No individual(s), including media representatives, may make, or cause to be made, any other audio or video recording of any proceeding in the Court without the Court's prior permission.

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

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) **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. 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.** This Court and the General Division of the Montgomery County Court of Common Pleas (“General Division”) have partnered whereby this Court may utilize the General Division’s Mediation Office as codified under Rule 2.39 of the Local Rules of Practice and Procedure for the General Division of the Montgomery County Common Pleas Court, incorporated herein. Generally, the process works as follows:
- (1) This Court shall identify any matter as a candidate for mediation or upon request of the parties. Upon identification, this Court shall refer the matter to the General Division’s Mediation Office.
 - (2) The Mediation Office will contact all attorney and/or parties to set a scheduling conference.
 - (3) This Court will attempt to accommodate any mediation deadlines with this 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 this Court and docketed in the underlying matter.
 - (5) After the mediation conference is complete, the Mediator shall notify this Court as to whether the matter was settled or not settled, and an entry will be prepared and docketed by this Court stating the same. This 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 the parties, unless agreed otherwise among the parties.

(E) Referral to Private Mediation. Parties are encouraged to utilize all forms of alternative dispute resolution including, without limitation, mediation. See Sup.R. 79 for guidance and other options through this Court.

(F) Confidentiality and Privilege against Disclosure. All communications and similar matters are governed by the UMA. See R.C. 2710.01 et seq.

Adopted: 2/1/05
Amended: 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

This Rule addresses requests to Restrict Public Access to case records pursuant to Sup.R. 45(E).

(A) Definitions.

- (1) “Public Access” means both direct and remote access. Sup.R. 44(I).
- (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 Clerk’s office. Sup.R. 44(J).
- (3) “Remote Access” means the ability of any person to electronically search, inspect and copy a court record at a location other than the Clerk’s office (e.g. online). Sup.R. 44(K).
- (4) “Judge Access Only” means access to certain filings on the record will be limited to the Judge.
- (5) “In Camera Documents” means access to certain documents that are not part of the record are limited to Judge and Court staff.

(B) Levels of Access in Restricting Public Access to a Case Record(s).

(1) **No Remote Access by Public.** Access to a case record(s) is limited to Direct Access only; there is no Remote Access to the public. Specifically:

- The record(s) is available via visiting the Clerk’s office;
- The record(s) is **not** available on the Court’s website;
- The record(s) is available via the Court’s eFile System to case participants, who are Registered Users;
- The record(s) is filed and served via the Court’s eFiling System to all case participants, who are Registered Users; and
- The record(s) is served, in accordance with the Ohio Rules of Civil Procedure, upon case participants, who are not Registered Users.

(2) **No Remote Access or Direct Access by Public.** Access to a case record(s) is limited to Judges, Magistrates, Clerks and other Court staff, and counsel of record(s). Specifically:

- The record(s) is **not** available via visiting the Clerk’s office;
- The record(s) is **not** available on the Court’s website;
- The record(s) is available via the Court’s eFile System to case participants, who are Registered Users;
- The record(s) is filed and served via the Court’s eFiling System to all case participants, who are Registered Users; and

- The record(s) is served, in accordance with the Ohio Rules of Civil Procedure, upon case participants, who are not Registered Users.

(3) Confidential Access Only to Court and Clerk Staff. Access to all case records is limited to Judges, Magistrates, Clerks, and other Court staff. Specifically:

- The entire case is marked **confidential**;
- Records are **not** available via visiting the Clerk's office;
- Records are **not** available on the Court's website;
- Records are **not** available via the Court's eFile System;
- Although case participants will continue to eFile documents, case participants will **not** receive eService – Notice of Electronic Service (NEF) - through the eFiling System; and
- Records are **not** served by the Clerk or Court upon case participants. It is the responsibility of counsel or party to serve other individuals as required by law.

(4) Judge Access Only. Access to a case record(s) is limited to the Judge solely. No access is permitted to Magistrates, Clerks, other Court staff or counsel of record.

- The record(s) is only available to the Judge;
- Any and all filings permitted to be filed with the designation of Judge Access Only **shall** be filed by the filer in-person, with the Clerk's office, in accordance with subparagraph (D)(10) below;
- Case participants will continue to eFile other documents that have not been designated Judge Access Only;
- The record(s) is **not** available via visiting the Clerk's office;
- The record(s) is **not** available on the Court's website;
- The record(s) is **not** available via the Court's eFile System;
- Case participants will **not** receive eService – Notice of Electronic Service (NEF) - through the eFiling System for documents designated Judge Access Only; and
- The record(s) is **not** served by the Clerk or Court upon case participants. It is the responsibility of counsel or party to serve other individuals as required by law.

(C) In Camera Documents. Access to a case document(s) is limited to the Judge solely.

- The document(s) is only available to the Judge and staff, as permitted by the Judge.
- Any and all documents submitted for in camera review **shall** be submitted in-person to the Judge via the Clerk's office, in accordance with subparagraph (D)(11) below;

- The document(s) submitted in camera is **not** part of the record.

(D) Process in Asking the Court to Restrict Public Access to Court Records.

- (1) A motion and proposed order shall be electronically filed by the party or other interested person, requesting that the Court restrict public access to records or documents.
- (2) The Clerk shall not accept with the motion any document(s) that the movant seeks to restrict.
- (3) The motion and proposed order shall designate one of the following levels of access when asking the Court to restrict public access to court records:
 - (a) No Remote Access by Public.
 - (b) No Remote Access or Direct Access by Public.
 - (c) Confidential Access Only to Court and Clerk Staff.
 - (d) Judge Access Only.
 - (e) In Camera Documents.
- (4) The movant shall state clearly whether the request is related to the entire case, certain records or documents, or for all future records or documents.
- (5) The Court shall give notice of the motion (or if restricted on the court's own order, then the order) to all case participants.
- (6) The Court may schedule a status conference or hearing before ruling on the motion.
- (7) The Court shall restrict public access if it finds by clear and convincing evidence that the presumption, allowing public access, is outweighed by a higher interest after considering the factors set forth in Sup.R. 45(C)(2)(a)-(c).
- (8) If the motion to restrict public access is denied, records and documents shall be filed and/or maintained with the presumption of public access, pursuant to Sup.R. 45(A).
- (9) If the motion to restrict public access is granted, all records or documents subject to the order to restrict public access shall be filed and maintained as required by the designated level of access under these Rules:
 - **NO REMOTE ACCESS BY PUBLIC;**
 - **NO REMOTE ACCESS OR DIRECT ACCESS BY PUBLIC;**
 - **CONFIDENTIAL;**
 - **JUDGE ACCESS ONLY;** or
 - **IN CAMERA DOCUMENTS.**

- (10) If the Judge orders a record(s) to be filed for “Judge Access Only,” the record(s) shall be filed with the Clerk in-person, secured in a sealed envelope, with the face of the envelope containing the case caption, a descriptive title of the record(s) (unless such information has been included among the information sealed), the date of the order permitting the record(s) to be designated Judge Access Only, and a conspicuous notation stating, **“RECORD(S) DESIGNATED JUDGE ACCESS ONLY.”**

If “Judge Access Only,” the Clerk shall file-stamp the face of the envelope, enter on the docket that the record(s) was filed with “Judge Access Only,” and retain the envelope in the Clerk’s office.

- (11) If the Judge orders a document(s) to be submitted for in camera review, the document(s) shall be submitted with the Clerk in-person, secured in a sealed envelope, with the face of the envelope containing the case caption, a descriptive title of the document(s) (unless such information has been included among the information sealed), the date of the order permitting the document(s) to be submitted for in camera review, and a conspicuous notation stating, **“DOCUMENT(S) FOR IN CAMERA REVIEW.”**

LOCAL RULE 51.1
STANDARD PROBATE FORMS

- (A) Pursuant to Sup.R. 51, standard Ohio Supreme Court and local probate forms shall be used in all matters.
- (B) Most forms are available for download and modification on the Court's website: www.mcoho.org/probate. Mental illness, adoption and several other forms are not available online. Please contact the Clerk's Office to request any specific forms you may be seeking.
- (C) All filings shall comply with the specifications set forth in Sup.R. 52.
- (D) Forms are subject to change at any time.

Adopted: 2/1/15
Amended: 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: 2/1/15
Amended: 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.

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 and/or attorneys up to \$100 for infractions.

Adopted: 2/1/05
Amended: 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.mcoho.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.

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 adverse party's attorney.
- (B) **Client Consent.** It is the responsibility of attorney to obtain client consent prior to making a request for continuance.
- (C) **Proposed Order.** If the consent of the parties and the parties' attorneys 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' attorney 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 prior to 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 57.1
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.

LOCAL RULE 57.2
ELECTRONIC FILING

(A) 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) Assignment of Lottery Prize
- (c) Change of Name – Adult
- (d) Change of Name – Minor
- (e) Concealment of Assets
- (f) Correction of Birth Certificate
- (g) Correction of Marriage
- (h) Declaration of Paternity
- (i) Declaratory Judgment
- (j) Designation of Heir
- (k) Determination of Heirship
- (l) Disinterment
- (m) Gender Identity Correction
- (n) Presumption of Death
- (o) Production of Will
- (p) Registration of Birth
- (q) Sale of Real Estate – Estate
- (r) Sale of Real Estate – Guardianship
- (s) Successor Custodian on Account
- (t) Transfer of Rights
- (u) Validity of Will
- (v) Will or Trust Construction
- (w) Will or Trust Contest
- (x) 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 with 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
- (f) Injury Settlements – Minor
- (g) Injury Settlement – Adult

(4) Adoptions (“ADP”) case types:

- (a) Agency
- (b) Stepparent
- (c) Adult
- (d) Legal Placement
- (e) Independent
- (f) Foreign Adoption
- (g) Petition for Release of Adoption Information
- (h) Request for Notification

(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 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 usernames and passwords. All documents shall be deemed to have been filed with the authorization of the Registered User to whom a username 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 Ohio Supreme Court 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 Ohio Supreme Court 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 Ohio Supreme Court 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 Ohio Supreme Court 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 (e.g. 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) as provided in Mont. Co. P.C.R. 57.2(E)(5)(a)(i) and electronically file the document;

(iv) The Filer or the Filer's attorney, 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 attorney, as the case may be, shall provide the original hard copy or express written consent to the conformed 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 attorney as the case may be, upon request, 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 hard 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 pursuant to Mont. Co. P.C.R. 57.2(D)(3), the eFile System shall generate a Notification of Electronic Filing ("NEF") to the Filer and any other party who is a Registered User of the eFile System. The NEF shall constitute service under Civ.R. 5.

(c) The Filer or the Filer's attorney, 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 eFiled by the Court shall be electronically served on case participants who are Registered Users through the Court's eFile System. The NEF shall constitute legal service for all matters including, but not limited to, citations and final appealable orders. It is the obligation of all Registered Users to check their email and/or case notifications for NEFs. Hard copies of Court-initiated documents shall be served on pro se case participants who are not Registered Users as the Court may direct.
- (4) A Filer, who eFiles a proposed order, shall electronically serve or conventionally serve the proposed order on all case participants and/or attorneys, whether Registered Users or not.
- (5) Upon a judge's or magistrate's signing and filing of the proposed order, the eFile System will generate and deliver a NEF to the case participants, who are represented by an attorney or who are Registered Users. The party or attorney 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 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 the Confidential Disclosure of Personal Identifiers form (Mont. Co. P.C.F. 45D).
- (4) The Filer or Filer's attorney, as the case may be, is responsible for redacting personally identifiable information. The clerk may 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 eFiled 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 Mont. Co. P.C.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(B) and (C).
- (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 hard copy 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, and/or Fiduciary Bond.** An original last will, codicil and/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) **Last Wills or Codicils.** In the case of last wills or codicils, an applicant (usually the Filer), shall submit all original last wills or codicils to the Clerk's Office along with the Notice of Deposit of Original Will/Codicil form (Mont. Co. P.C.F. 2.0A). The Court will review the document that is being presented as a last will or codicil, and if the document is an original, a case number will be assigned. This case number shall be used for all subsequent filings in the matter. The Court may require a hearing on the admission of any document that is represented to be an original.
- (b) **Fiduciary Bond.** The original fiduciary bond (or a copy), with an attached power of attorney or power of attorney subject to a standing order, shall be submitted to the Court via the Court's eFiling System, or alternatively may be presented in hard copy to the Court, with the Notice of Deposit of Fiduciary Bond (Mont. Co. P.C.F. 4.2B). The hard copy original bond or eFiled bond will be held by the Court until a fiduciary is appointed, and then the bond will be filed by the Court. If an applicant has submitted an original fiduciary bond and the applicant is not appointed, the Court may order the return of the original fiduciary bond. Any additional bond, rider or other bond-related document may be eFiled after the initial Notice of Deposit of Fiduciary Bond is filed. It is the responsibility of the Fiduciary or Fiduciary's counsel to notify the Court or bond provider(s) of any issues related to premiums, cancellation, coverage or other matters related to the bond.
- (c) **Case dismissal.** If the matter receives a case number and subsequently fails to proceed within ninety (90) days of the filing with the Court of the original last will, codicil, and/or fiduciary bond, 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 scanned, uploaded or otherwise electronically filed, shall constitute the Official Court Record.
- (2) When the law requires the filing of an original document, such as a last will, voucher, bond, oath, mortgage document, birth certificate, foreign judgment, or other certified or verified document, the Filer must scan the original document and eFile 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.

Adopted: 2/1/05
Amended: 12/20/18

LOCAL RULE 58.1
DEPOSITS FOR COURT COST

The Court accepts cash; money orders; cashier's checks; attorney, title company, or trust company checks; and American Express, MasterCard, Visa 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)** In all 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.
- (C)** Costs related to a jury demand shall be paid upon order of the Court.

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 Court at least seven (7) days prior to the date set for hearing, pursuant to Sup.R. 60(A).
- (2) Notice of the application and hearing shall be served by the Court to the known surviving spouse and next of kin, including residents and nonresidents.
- (3) If there is no known surviving spouse nor next of kin, the notice shall be served upon persons designated by the Court.
- (4) Pursuant to Sup.R. 60(B), the administrator shall give notice of the appointment within seven (7) days after 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 of real property, located on the Court's website, from which a 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 a fiduciary or attorney to contact pre-approved appraisers, listed 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 the Appointment of Appraiser form (Mont. Co. P.C.F. 3.0), which includes a proposed order, appointing the proposed standard 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 the Judgment Entry Appointing Additional Appraisers (Mont. Co. P.C.F. 3.1), which includes a proposed order appointing the proposed special appraiser.

LOCAL RULE 62.1
CLAIMS AGAINST ESTATE

- (A) 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 Official Court Record for the probate estate.
- (B) Resolution of Claims.** A fiduciary may not seek to close an estate until all claims have been resolved.
- (C) 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 first account must begin with the total asset value shown on the inventory. All subsequent accounts must begin with the ending balance from the immediately preceding account.
- (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 the first account 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 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) through (g), 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; 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;
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 (Mont. Co. P.C.F. 13.10) has been filed or an Application to Extend Administration (Mont. Co. P.C.F. 13.8) has been granted.
- (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 to Extend Administration (Mont. Co. P.C.F. 13.10) or the granting of an Application to Extend Administration (Mont. Co. P.C.F. 13.8).
- (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 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 to or for 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 of a decedent's estate shall provide a copy of each account to all heirs or vested beneficiaries in compliance with R.C. 2109.32(B).

(a) Before or simultaneously with the filing of any account, the fiduciary shall file 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 Certification of Service of Account (Mont. Co. P.C.F. 13.9), 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 (Mont. Co. P.C.F. 13.6) under R.C. 2109.301(B)(3), unless the Court orders otherwise.

(E) 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 or conservatorship, 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(D)(5) shall apply to hearings on guardianship accounts.

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

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
ESTABLISHMENT OF GUARDIANSHIPS

This Rule shall supplement all laws related to guardianships, including Sup. R. 66.

(A) Adult Guardianships

(1) Residence or Legal Settlement. The last county of residence or legal settlement in Ohio in which the proposed ward resided or had legal settlement, prior to losing the cognitive ability to choose, shall be the proposed ward's county of residence or legal settlement for the purposes of establishing a guardianship, unless determined otherwise by the Court, pursuant to Sup. R. 66.04(B) and R.C. 2111.02(A).

If the proposed ward's current address is different than the last county of residence or legal settlement as set forth above, then an affidavit shall be filed with the application, indicating the basis for the claimed residence or legal settlement address in the application.

(2) Pre-Appointment Meeting. An applicant shall meet with the proposed ward, at least once, prior to appearing before the Court for a guardianship appointment, unless such meeting is excused for good cause shown to the Court, pursuant to Sup. R. 66.08(B).

(3) Criminal Background Check/Certificate of Good Standing. All individual applicants in all guardianships shall complete a criminal background check, pursuant to Sup. R. 66.05(A)(1), unless the applicant is a licensed Ohio attorney in good standing with the Ohio Supreme Court.

(a) Applicants shall have their criminal background checks processed through the Ohio Attorney General's Bureau of Criminal Investigation (BCI) or, if the applicant resides outside of the state of Ohio, a like-kind agency. A list of local providers of BCI background checks can be found on the Ohio Attorney General's website at www.ohioattorneygeneral.gov/backgroundcheck.

(b) Criminal background checks must be received by the Court directly from the criminal background check processor (i.e. the Ohio Attorney General's BCI). An applicant shall instruct the criminal background check processor to send the criminal background check directly to the Court at Montgomery County Probate Court, 41 North Perry Street, Second Floor, Dayton, Ohio 45422.

(c) The criminal background check must be received by the Court by the time of the guardianship hearing or Letters of Guardianship may be delayed or not issued.

(d) An applicant, who is a licensed Ohio attorney, may file a certificate of good standing with disciplinary information issued by the Supreme Court of Ohio, in a guardianship case, in place of a criminal background check.

(e) If an applicant is an individual, an attorney, and/or a corporate guardian with ten (10) or more wards, see Mont. Co. P.C.R. 66.6.

(4) Affidavit of Guardian. All applicants shall execute and file an Affidavit of Guardian (Mont. Co. P.C.F. 66.05), affirming whether the applicant has any pending misdemeanor or felony charges, has been convicted of or pleaded guilty to any misdemeanor or felony offense, and acknowledging the applicant's duty to notify the Court within seventy-two (72) hours of any change in status, pursuant to Sup. R. 66.05(A)(2).

If an applicant is an individual, an attorney, and/or a corporate guardian with ten (10) or more wards, see Mont. Co. P.C.R. 66.6.

(5) Weight of Disclosures in Background Checks and Affidavits of Guardian. The Court shall determine what weight, if any, to give to any pending charges or convictions of misdemeanor or felony offenses as disclosed in the criminal background check or the affidavit upon application, pursuant to Sup. R. 66.05(A)(3).

(6) Notice of Hearing

(a) Next of Kin. All applicants shall submit a complete Mont. Co. P.C.F. 15.0 Next of Kin Form. Next of kin means any known person, who would be entitled to inherit under the statutes of descent and distribution from the proposed ward, if the proposed ward were to die intestate.

(i) If a person, who would be the proposed ward's next of kin is deceased, the name and date of death of that individual shall be provided on Mont. Co. P.C.F. 15.0. The Applicant shall consult R.C. 2105.06 to determine the level of consanguinity to include on Mont. Co. P.C.F. 15.0. For example, deceased parents should be shown on Mont. Co. P.C.F. 15.0 anytime siblings or more distant relationships of consanguinity are listed as the next of kin.

(ii) In addition to the other notice requirements of R.C. 2111.04, the Court shall serve the Notice of Hearing for Appointment of Guardian of Alleged Incompetent Person (Mont. Co. P.C.F. 17.4) upon all of the proposed ward's known next of kin, who are nonresidents of Ohio, as well as the proposed ward's next of kin, who are residents of Ohio, unless such notice to the proposed ward's next of kin, who are nonresidents of Ohio, is excused by the Court for good cause shown.

(b) Person Nominated to be Guardian. If an applicant is aware that a person, other than the applicant, has been nominated in a writing pursuant to R.C. 1337.28 or R.C. 2111.121 to be guardian of the proposed ward, then the applicant shall include that information and the nominee's name and address as a note on Mont. Co. P.C.F. 15.0 and the Court shall serve the Notice of Hearing for Appointment of Guardian of Alleged Incompetent Person (Mont. Co. P.C.F. 17.4) upon that nominee.

(c) Power of Attorney. If an attorney-in fact (agent designated in a power of attorney) is known, then the applicant shall include that information and the attorney-in-fact's name and address as a note on Mont. Co. P.C.F. 15.0 and the Court shall serve the Notice of Hearing for Appointment of Guardian of Alleged Incompetent Person (Mont. Co. P.C.F. 17.4) upon the attorney in-fact.

(7) Applicant's Report. All applicants shall complete and submit an Applicant's Report (Mont. Co. P.C.F. 5E) upon application for guardianship.

(a) If the Applicant's Report indicates a power of attorney exists and a copy is available, a copy of such power of attorney shall be submitted to the Court as a supporting document upon the filing of an application for guardianship.

(b) The applicant shall provide the Court with a list of names of any persons or entities whom the applicant seeks to exclude from visiting or communicating with the proposed ward.

(8) Statement of Expert Evaluation.

(a) Pursuant to Sup. R. 66(A), if an application for the appointment of a guardian is on the grounds of incompetency as defined by R.C. 2111.01(D), the application shall be accompanied by a Statement of Expert Evaluation (Mont. Co. P.C.F. 17.1), completed by a physician or clinical psychologist, who has evaluated or examined the proposed ward within three months prior to the date of the application.

In the event that a Statement of Expert Evaluation is unavailable due to one of following reasons, then the applicant shall file a motion for the appointment of an independent medical examiner and include the basis for such motion as set forth herein:

(i) The prospective ward is refusing to submit to an examination;

(ii) The agent of the prospective ward is refusing to consent to an examination;

(iii) The person having physical custody of the prospective ward is refusing to make the prospective ward available for the examination; or

(iv) A medical professional is refusing to complete the examination.

(b) The Court may require the applicant to make an advance deposit of an amount that the Court determines is necessary to defray the anticipated costs of an independent medical examinations of an alleged incompetent.

(9) Interpreter. If a proposed ward requires an interpreter, the applicant shall notify the Court of the type of interpreter needed when filing the guardianship application, through the filing of a motion.

(10) Investigator Review of Visitation Preferences. The Court shall direct the Court investigator to inquire into the visitation history and preferences of the prospective ward during the service of notice and initial guardianship investigation pursuant to R.C. 2111.041 or at any time the Court directs. The investigator shall provide a written report of the visitation recommendation to the Court.

(11) Indigent Guardianships.

- (a)** For purposes of indigent status for payments from the indigent guardianship fund, a ward or alleged incompetent may be declared to have indigent status upon the filing of an Affidavit of Indigency (Mont. Co. P.C.F. 3B) with sufficient documentation that their personal property is worth less than \$2,000.00 and their annual income is less than the U.S. Department of Health and Human Services Poverty Guidelines (aspe.hhs.gov/poverty-guidelines), or if after a hearing, the Court, for good cause shown, orders indigent status for the ward or alleged incompetent.
- (b)** An adult ward or an alleged incompetent with a special needs trust, irrevocable trust, or other available resource, does not qualify for indigent status.

(12) Employee of Corporate Guardian. Sup. R. 66.01 through Sup. R. 66.09 shall apply to the employees of a corporation who provide guardianship services in adult guardianship cases where the Court appoints the corporation as guardian.

(B) Minor Guardianships

(1) Application

- (a) Birth Certificate.** A copy of the minor's certified birth certificate (most recent and/or updated certified copy) shall be filed with the Application for Appointment of Guardian of Minor (Mont. Co. P.C.F. 16.0).
- (b) Selection of Guardian by Minor.** Minors, who are over fourteen (14) years of age, may execute a Selection of Guardian by Minor over Fourteen Years of Age (Mont. Co. P.C.F. 16.2).
- (c) Jurisdiction.** The Court shall not accept for filing an application for guardianship of the person of a minor where a juvenile court, domestic relations court or similar family court has previously acquired jurisdiction over custody or other matters of the minor, unless the other court consents to the guardianship or declines jurisdiction by court order.
- (d) Application Prohibition.** The Court shall not accept for filing an application for guardianship of the person of a minor where the sole or primary purpose is to establish residency for school enrollment purposes or qualify the minor for health or life insurance.

(2) Notice of Hearing. In addition to the other notice requirements of R.C. 2111.04(A)(1), the Court shall serve the minor, if over the age of fourteen (14), by personal service at the Clerk's office at the Court, at least 7 days prior to the hearing. It is the responsibility of the applicant to coordinate transportation to the Court. If special arrangements need to be made for service upon the minor, the applicant shall notify the Court through the filing of a motion.

(3) Immigration Status. Minors who do not have legal status for U.S. immigration purposes are not considered by this Court to be residents or have legal settlement as set forth in R.C. 2111.02(A).

LOCAL RULE 66.2
EMERGENCY GUARDIANSHIPS

Pursuant to Sup.R. 66.03(A) and R.C. 2111.02(B)(3), the following process shall apply in emergency guardianship matters.

(A) Legal Standard. An emergency guardian may be appointed by the Court if it is shown by clear and convincing evidence that it is reasonably certain that immediate action is required to prevent significant injury to the person and/or estate of an incompetent or a minor.

(B) Application.

(1) The applicant shall file an Application for Appointment of Guardian (Mont. Co. P.C.F. 17.0) in a related regular guardianship case simultaneously with the Application for Appointment of Emergency Guardian (Mont. Co. P.C.F. 17.03) filed in the emergency guardianship case. The emergency guardianship filing may not be accepted, absent good cause shown, unless a related regular guardianship is filed simultaneously.

(2) If an Application for Appointment of Emergency Guardian is on the grounds of mental incompetency as defined by R.C. 2111.01(D), the application shall be accompanied by:

(a) A Supplement for Emergency Guardian (Mont. Co. P.C.F. 17.1A) filed in the emergency guardianship case or a Statement of Expert Evaluation (Mont. Co. P.C.F. 17.1), filed in the related regular guardianship case, each of which is completed by a physician or clinical psychologist, who has evaluated or examined the proposed ward within three (3) months prior to the date of the application;

(b) Or a motion to waive these requirements for the reasons set forth in Mont. Co. P.C.R. 66.1(A)(8).

(3) The applicant shall prepare and submit to the Court, with the initial Application for Appointment of Emergency Guardian, a Notice of Emergency Guardianship (Mont. Co. P. C.F. 17.06) for the proposed ward and for each of the proposed ward's next of kin, as defined in Mont. Co. P.C.R. 66.1(6).

(4) The Court shall serve the Notices of Emergency Guardianship upon the proposed ward and the proposed ward's next of kin as set forth below.

(C) The Court shall review the Application for Appointment of Emergency Guardian as soon as possible. Upon review of the Application for Appointment of Emergency Guardianship, the Court may:

(1) Grant the Emergency Guardianship. If it appears that an emergency exists and that it is reasonably certain that immediate action is required to prevent significant injury to the person and/or estate of the proposed ward, the Court may issue a Judgment Entry Appointment of Emergency Guardian (Mont. Co. P.C.F. 17.04) that (i) appoints the emergency guardian for a period of seventy-two (72) hours on an ex parte basis. and (ii) sets for hearing the issue of whether the emergency guardianship should be extended for a up to an additional thirty (30) days. The Court will concurrently serve

the Judgment Entry Appointment of Emergency Guardian (Mont. Co. P.C.F. 17.04) and the Notice of Emergency Guardianship (Mont. Co. P.C.F. 17.06) upon the ward. The Court will serve the Notice of Emergency Guardianship (Mont. Co. P.C.F. 17.06) upon the ward's next of kin.

If the initial emergency guardianship application is granted ex parte for a period of seventy-two (72) hours, then a hearing will be held within those seventy-two (72) hours on the issue of whether the emergency guardianship should be extended. After hearing and upon good cause shown, the emergency guardianship may be extended for a specified time period, not to exceed an additional thirty (30) days;

- (2) Deny the Emergency Guardianship.** The Court may determine that the Application for Appointment of Emergency Guardian, on its face, fails to demonstrate that an emergency exists and/or that it is reasonably certain that immediate action is required to prevent significant injury to the person and/or estate of the proposed ward, and the Court may deny the Application for Appointment of Emergency Guardian; or
- (3) The Matter May be Set for Hearing.** The Application for Appointment of Emergency Guardian may be set for hearing, in which case the Court will serve notice of the hearing as provided by law.
- (D)** The emergency guardianship shall terminate by operation of law upon the earlier of (i) the expiration of the definite time period specified in any letters of guardianship issued in the emergency guardianship case (if granted) or (ii) upon the granting or denial, after a full hearing, of the Application for Appointment of Guardian (Mont. Co. P.C.F. 17.0) filed in the related regular guardianship case and the issuance of any letters of guardianship in that related regular guardianship case.
- (E)** Whether the Application for Appointment of Emergency Guardian (Mont. Co. P.C.F. 17.03) is denied or not, the underlying Application for Appointment of Guardian (Mont. Co. P.C.F. 17.0) in the related regular guardianship case shall still proceed before the Court.
- (F)** If any of the ward's assets are released or expended during the emergency guardianship, (i) an inventory and an account are required and (ii) the guardian shall follow the procedures for expenditure of funds outlined in Mont. Co. P.C.R. 66.3(A)(3)-(4).

LOCAL RULE 66.3
RESPONSIBILITIES OF GUARDIAN AND CASE MANAGEMENT

This Rule applies to all guardianships, once established.

(A) All Guardianships

(1) Inventory.

- (a)** Pursuant to R.C. 2111.14(A)(1), within three (3) months after appointment, a guardian of the estate shall file a full inventory of the real and personal property of the ward, its value, the value of the yearly rent of the real property, and the value of any other annual income. If the guardian of the estate fails to file the inventory for thirty (30) days after being notified of the expiration of the deadline to file such inventory, the Court may remove the guardian of the estate and appoint a successor or take other appropriate action as permitted by Ohio law and these Rules. See also Mont. Co. P.C.R. 78.1(H).
- (b)** Certain of the ward's assets may be valued without the appointment of an appraiser. See Mont. Co. P.C.R. 78.2(A)(4).
- (c)** Pursuant to R.C. 2111.141, the Court may require that any inventory filed by a guardian of the estate be supported by evidence that the inventory is a true and accurate inventory of the estate of the ward.

(2) Application to Release Funds. An Application to Release Funds to Guardian (Mont. Co. P.C.F. 15.6) shall be used to transfer assets held in the name of the ward to the guardian and shall state the value of the funds or assets sought to be released, if known. An Application to Release Funds to Guardian shall not be approved until a Guardian's Inventory (Mont. Co. P.C.F. 15.5) has been filed.

(3) Application for Authority to Expend Funds.

- (a)** An Application for Authority to Expend Funds (Mont. Co. P.C.F. 15.7) shall not be approved until a Guardian's Inventory (Mont. Co. P.C.F. 15.5) has been filed.
- (b)** An Application for Authority to Expend Funds (Mont. Co. P.C.F. 15.7) shall state the amount requested; name of the payee; nature of the expenditure; and for recurring expenditures, the frequency and duration of authority requested. Supporting documentation (e.g. estimates, quotes, proof of the expense to be reimbursed, etc.), if applicable, shall be filed with the Application for Authority to Expend Funds
- (i) Expenses for Minor Ward's Support.** The Court will not approve expenditures from a minor's guardianship estate for items that can reasonably be considered relating to the minor ward's health, education, maintenance, or

support, unless the guardian establishes, to the Court's satisfaction, that the expenditure is necessary and that the person(s) with legal authority to support the minor, if any, do not have the financial resources to pay the expense.

(ii) Prepaid Funeral/Burial Expenses and Reimbursements. Supporting documentation, such as an estimate or quote for the prepaid funeral, burial, and/or cremation arrangement(s) or proof of the expense to be reimbursed shall be filed with the Application for Authority to Expend Funds.

(iii) Prohibited Cash Expenditures. A guardian shall not make any payment, expenditure, or other form of disbursement by means of a cash transaction. Be aware that check substitutes or credit card statements may not be sufficient supporting evidence of payment.

(c) If payment by a guardian is unsupported by evidence or is unlawful, then the Court may deny the guardian's request for authority to expend or reimburse, in which case the guardian may be personally liable for the unsupported and/or unlawful disbursement(s) in the full.

(4) Accounts. For account requirements, see Mont. Co. P.C.R. 64.1(E).

(5) Delinquent Filings. The failure of a guardian to file a timely inventory, account, plan, report, statement of expert evaluation, certificate of completion of educational requirements, or other required filings may subject the guardian to the citation process set forth in Mont. Co. P.C.R. 78.1(H), Sup.R. 78(A), and R.C. 2109.31.

(6) Change of Residence.

(a) A guardian shall notify the Court, by filing a Notice of/Application for Change of Residence (Mont. Co. P.C.F. 27.3M), of a ward's change of residence and the reason for the change, no later than ten (10) days prior to the proposed change, except if impracticable, pursuant to Sup.R. 66.08(E)(1).

(b) A ward's change of residence to a more restrictive setting shall be subject to the Court's approval (Mont. Co. P.C.F. 27.3M), unless a delay in authorizing the change of residence would affect the health and safety of the ward, pursuant to Sup.R. 66.08(E)(2).

(c) If by reason of the ward's change of residence, jurisdiction of the guardianship should be transferred to another court in or outside of the state of Ohio, pursuant to R.C. 2111.471 or R.C. 2112.31, see Mont. Co. P.C.R. 66.7.

(7) Limitation or Termination of Legal Representation. An attorney who has entered an appearance in a case shall remain counsel of record, even after the establishment of a guardianship, unless affirmative action is taken by counsel on the record to terminate representation. For withdrawals from representation, see Mont. Co. P.C.R. 78.1(G).

(8) Limitation or Termination of Guardianship.

(a) All wards. A guardian shall seek to limit or terminate the guardianship and promptly notify the Court, within thirty (30) days, by filing an Application to Terminate Guardianship (Mont. Co. P.C.F. 27.9M), or other applicable notice, if any of the following occur:

(i) plenary guardianship is no longer in the best interest of the ward;

(ii) a less restrictive alternative to guardianship is available;

(iii) a ward has died, as evidenced by a death certificate; obituary; and/or funeral, burial, or cremation bill;

(b) Adult wards. An adult guardianship may be terminated, if any of the following occur:

(i) Competency. An adult ward has regained mental competency, as evidenced by a Statement of Expert Evaluation (Mont. Co. P.C.F. 17.1), completed by a physician or clinical psychologist, who has evaluated or examined the ward within three months prior to the date of the Application to Terminate Guardianship;

(ii) Principal Income from Government. An adult ward's principal income is solely from governmental entities, a representative payee for that income is appointed, and no other significant assets or income exist, pursuant to Sup.R. 66.08(I);

(c) Minor wards. A minor guardianship may be terminated, if any of the following occur:

(i) Age of majority. The ward of a minor guardianship is now over 18 years of age; or

(ii) Estate is \$25,000 or less. The estate of the minor ward is not more than \$25,000, pursuant to R.C. 2111.05 and Sup.R. 67, with supporting documentation evidencing the assets of the minor are \$25,000 or less.

1. The guardian shall follow the notice requirements in R.C. 2111.04.

2. Unless otherwise ordered by the Court, the Court will order the deposit of the remaining funds in a financial institution in the name of the minor; impounding the principal and interest; and releasing the funds only upon an order of the Court or to the minor at the age of majority.

3. Upon Court approval, the guardian shall deposit said funds in the restricted account and file a completed Verification of Receipt of Deposit (Mont. Co. P.C.F. 22.3M) within 30 days of the date of the Court's order.

(9) Reporting abuse, neglect, or exploitation. A guardian shall immediately report to this Court and, when applicable, to adult protective services, children services, the long-term care ombudsman, or appropriate law enforcement agency, any allegations of abuse, neglect, or exploitation of a ward, pursuant to Sup.R. 66.08(C).

(a) Mandatory reporters, of abuse, neglect, or exploitation of minors and those with developmental disabilities under twenty-one (21) years of age, are defined in R.C. 2151.421(A).

(b) All persons subject to reporting requirements for minors and those with developmental disabilities under twenty-one (21) years of age, shall do so pursuant to R.C. 2151.421. A guardian shall immediately report to this Court, notice of any reports of abuse, neglect, or exploitation.

(B) Adult Guardianships

(1) Legal Documents. Within three (3) months after appointment, the guardian shall:

(a) File a Report of Ward's Legal Documents (Mont. Co. P.C.F. 27.11M), if applicable, with the Court, pursuant to R.C. 2111.14(A)(1) and Sup.R. 66.08(L), listing all of the ward's important legal papers including, but not limited to estate planning documents, advance directives and powers of attorney, and the location of such legal papers, if known; and

(b) Deposit the ward's last will and testament with the Court pursuant to R.C. 2107.07.

(2) Veteran's Benefits. If a proposed ward/ward receives veterans' benefits, the applicant or guardian of the ward's estate shall comply with R.C. 5905.01 et seq.

(3) Legal Proceedings and Settlements.

(a) Legal Proceedings. A guardian shall seek and obtain approval from the Court before filing a legal proceeding and/or suit for a ward, pursuant to Sup.R. 66.08(F), by filing an Application to Commence Legal Proceedings for Ward (Mont. Co. P.C.F. 17.0E). The Application to Commence Legal Proceedings for Ward shall state the basis for the legal proceeding, how the legal proceeding benefits the ward, the name of the attorney that will handle the legal proceeding, and that attorney's hourly rate and requested retainer, and be accompanied by a copy of the fee agreement.

(b) Settlements of Claims. An Application to Settle a Claim of an Adult Ward (Mont. Co. P.C.F. 22.5) shall be brought by the guardian of an estate, pursuant to Sup.R. 69.

(i) The Court may authorize or direct the guardian of the ward's estate to compromise and settle claims as the Court considers to be in the ward's best interest.

- (ii) Any Application to Settle a Claim of an Adult Ward for an injury claim shall be accompanied by a current statement of an examining physician describing the injuries sustained, the extent of recovery from those injuries, and permanency of any injuries.

(4) Communication/Visitation with the Ward.

- (a) **Ward's Preferences.** Pursuant to Sup.R. 66.09(F), a guardian shall strive to know a ward's preferences and belief system by seeking information from the ward and the ward's family and friends. The guardian is encouraged to identify those persons with whom the ward desires to communicate and facilitate the communication the guardian believes is in the ward's best interest.
- (b) **Restriction of Visitation/Communication.** A guardian shall promptly submit, through the filing of a notice, a list of names and addresses to the Court of any persons or entities whom the guardian has excluded or seeks to exclude from visiting or communicating with the ward, pursuant to Sup.R. 66.09(F)(2)(i).
 - (i) The Clerk shall serve notice of any such notice filed by the guardian to the ward and to the persons and/or entities listed on the notice filed by the guardian.
 - (ii) Any objection(s) to the notice filed by the guardian or to the exclusion of the persons and/or entities listed on the notice filed by the guardian shall be made, considered, and addressed in accordance with the complaint process set forth in Mont. Co. P.C.R. 66.5.

(5) Annual Plan and Guardian's Report for Adult Wards. Within one year after appointment and then annually thereafter, the guardian shall file an Annual Guardianship Plan (Mont. Co. P.C.F. 27.7M) and Guardian's Report (Mont. Co. P.C.F. 17.7), pursuant to Sup.R. 66.08(G) and R.C. 2111.49.

- (a) The guardian of a person shall be primarily responsible for filing the Annual Guardianship Plan, Guardian's Report, and Statement of Expert Evaluation, if applicable. If there is no guardian of the person or if it is impractical for the guardian of the person to make these filings, then the guardian of the estate shall file the Annual Guardianship Plan, Guardian's Report, and Statement of Expert Evaluation, if applicable.
- (b) The Annual Guardianship Plan (Mont. Co. P.C.F. 27.7M) shall state the guardian's goals for meeting the ward's personal and financial needs.
- (c) The Guardian's Report (Mont. Co. P.C.F. 17.7) shall include all of the information listed in R.C. 2111.49(A)(1) and information regarding the guardian's completion of guardian education pursuant to Sup.R. 66.06 and Sup.R. 66.07, if applicable.

(6) Statement of Expert Evaluation.

(a) Biennial Requirement. Within two years of appointment and every two years thereafter, the guardian shall file a Statement of Expert Evaluation (Mont. Co. P.C.F. 17.1), completed by a licensed physician, licensed clinical psychologist, licensed independent social worker, licensed professional clinical counselor, or developmental disability team that has evaluated or examined the ward within three months prior to the date of the Guardian's Report (Mont. Co. P.C.F. 17.7), as to the need for continuing the guardianship, pursuant to R.C. 2111.49(A)(1)(i).

(b) Waiver of Statement of Expert Evaluation. If a physician or licensed clinical psychologist certifies, on the Guardian's Report Addendum on the Statement of Expert Evaluation (Mont. Co. P.C.F. 17.1, at p. 3), that based upon a reasonable degree of medical or psychological certainty the mental capacity of the ward will not improve, the guardian may request that the Court waive the requirement to file subsequent Statements of Expert Evaluation by filing an Application to Waive Statements of Expert Evaluation (Mont. Co. P.C.F. 17.D).

(C) Minor Guardianships.

(1) Guardian's Report Minor Guardianship. Within one year after appointment and then annually thereafter, pursuant to R.C. 2111.49, a guardian of the person of a minor shall file a Guardian's Report Minor Guardianship (Mont. Co. P.C.F. ____). The Guardian's Report Minor Guardianship shall report all of the information listed in R.C. 2111.49(A)(1).

(2) Power of Attorney. No guardian of the person of a minor may create a power of attorney pursuant to R.C. 3109.52, transferring the guardian's rights and responsibilities, without prior authority of the Court.

(3) Legal Proceedings and Settlements. For advice, approval, and consent of the Court to adjust and settle a claim of a minor, see Mont. Co. P.C.R. 68.1.

LOCAL RULE 66.4
GUARDIAN EDUCATION

(A) Applicability. These guardian education requirements shall apply in all adult guardianship matters.

(B) Pre-Appointment Education.

- (1)** Prior to or within six (6) months of appointment, the applicant or guardian, as the case may be, shall successfully complete, at a minimum, a six-hour guardian fundamentals course provided by the Ohio Supreme Court, or similar entity with the prior approval of the Court, pursuant to Sup.R. 66.06(A).
- (2)** Prior to or within six (6) months of appointment, the applicant or guardian, as the case may be, shall report to the Court compliance with the fundamentals education requirement by filing a Notice of Completion of Guardian Education (Mont. Co. P.C.F. 27.2M), accompanied by a certificate of completion issued by the education provider.

(C) Post-Appointment Education.

- (1) Continuing Education.** In each succeeding year following the completion of the pre-appointment education (Sup.R. 66.06), the guardian shall successfully complete, at a minimum, a three-hour course provided by the Ohio Supreme Court, or similar entity with the prior approval of the court, pursuant to Sup.R. 66.07(A).
- (2) Annual Compliance.** On or before January 1st of each calendar year, the guardian shall report to the Court compliance with the continuing education requirement by filing a Notice of Completion of Guardian Education (Mont. Co. P.C.F. 27.2M), accompanied by a certificate of completion issued by the education provider, contemporaneously with the guardian's Annual Guardian's Report. If the individual is a guardian with ten (10) or more wards, see Mont. Co. P.C.R. 66.13(C).

(D) Education Exemptions and Exceptions

- (1)** Guardians of adult ward, who are related to the ward by consanguinity or affinity, may apply to the Court, after the successful completion of the six-hour guardian fundamentals course and at least one three-hour continuing education course, to be exempt under Sup.R. 66.02 from completing additional continuing education courses by filing an Application to Waive Guardian Education (Mont. Co. P.C.F. 17.0N).
- (2)** Guardians of adult wards, who are licensed Ohio attorneys in good standing, may apply to the Court, after the successful completion of the six-hour guardian fundamentals course, for an exception under Sup.R. 76 to be exempt from completing continuing education courses by filing an Application to Waive Guardian Education (Mont. Co. P.C.F. 17.0N). If the attorney is a guardian with ten (10) or more wards, see Mont. Co. P.C.R. 66.13(C).

(E) Failure to Comply. If a guardian fails to comply with the continuing education requirements of this rule, the guardian shall not be eligible for new appointments to serve as guardian until the requirement is satisfied, pursuant to Sup.R. 66.07(C). Furthermore, if the guardian has

failed to comply with the continuing education requirement for more than three calendar years, the guardian shall complete, at a minimum, a six-hour fundamentals course, pursuant to Sup.R. 66.06(A), to qualify again to serve as guardian. In addition, pursuant to Sup.R. 77, the failure to comply with these rules may result in sanctions as the Court may direct.

LOCAL RULE 66.5
GUARDIANSHIP COMPLAINTS

(A) Pursuant to Sup.R. 66.03(B), the following process shall be adopted for submitting comments and complaints regarding the performance of guardians appointed by the Court, including actions of the guardian in denying a request of a person to visit with the ward.

(B) Initiating Complaints.

- (1) All complaints and comments shall be filed in writing using the Guardianship Complaint form (Mont. Co. P.C.F. 17.0F), to which any supporting documentation may be attached. A complainant shall file a Guardianship Complaint under the guardianship case number.
- (2) The Clerk shall accept for filing a submission of a Guardianship Complaint in either electronic format or hard copy.
- (3) Upon filing, the Clerk shall timestamp and docket the Guardianship Complaint. The Guardianship Complaint shall be considered a public record, unless otherwise ordered by the Court.

(C) Complaint Process.

- (1) Within three (3) days of the filing of a Guardianship Complaint, a judicial officer shall review the Guardianship Complaint and take immediate action, if warranted. For possible plans of action, see subparagraph (4) below.
- (2) The Court shall serve, by United States ordinary mail, a copy of the Guardianship Complaint upon the guardian, who is the subject of the Guardianship Complaint, accompanied by a Notice of Guardianship Complaint (Mont. Co. P.C.F. 27.0M).
- (3) The guardian may file a written response to the Guardianship Complaint within twenty-one (21) days of the date of the Court's service upon the guardian of the Notice of Guardianship Complaint. The guardian shall serve a copy of any such response to the Guardianship Complaint by the guardian upon the complainant, pursuant to Civ.R. 5.
- (4) Within forty-five (45) days of the filing of a Guardianship Complaint, the Court will review the Guardianship Complaint and develop a plan of action. A plan of action may include any of the following:
 - (a) The matter may be set for hearing, in which case the Court will serve, by United States ordinary mail, notice of the hearing upon the complainant and the guardian. The complainant and guardian shall appear at the hearing. If the complainant fails to appear at the hearing, the Court may dismiss the Guardianship Complaint.
 - (b) The Court may order further investigation of the Guardianship Complaint.
 - (c) The Court may determine that the Guardianship Complaint, on its face, fails to warrant further action and may dismiss the Guardianship Complaint without further action or hearing.

- (D) Pursuant to Sup.R. 77, the failure to comply with these rules may result in sanctions as the Court may direct.
- (E) The Court will dispose of each and every Guardianship Complaint by issuing a written order, decision, or entry, which the Court will docket and serve, by United States ordinary mail, upon the complainant and the guardian.

LOCAL RULE 66.6

CORPORATE GUARDIANS AND GUARDIANS WITH TEN (10) OR MORE WARDS

(A) Corporation as a Guardian.

- (1) Pursuant to R.C. 2111.10 and Sup.R. 66.02(B), this Court may appoint a corporation as guardian. Any corporation seeking appointment as guardian shall file a Corporate Guardian Registration (Mont. Co. P.C.F. ___) in case number 2015 MSC 00406.
- (2) Employees of a corporate guardian, who provide guardianship services, shall comply with all rules, duties and requirements of guardians under the Ohio Revised Code, the Rules of Superintendence for the Courts of Ohio, and these Rules.
- (3) A corporate guardian shall ensure that any employees of the corporate guardian, who provide guardianship services, are in compliance with all applicable guardian education and criminal background check and affidavit requirements. Corporate guardians may file a proposed standing order regarding compliance with the same for the Court's consideration.

(B) Responsibilities of Guardians with Ten (10) or More Wards. Guardians with ten (10) or more wards, regardless of case type, shall comply with Sup.R. 66.05(B).

- (1) **Annual Registration.** On or before January 31st of each calendar year, a guardian with ten or more wards shall file the following registration in case number 2015 MSC 00406.
 - (a) **Individual as Guardian.** A guardian, who is an individual, with ten or more wards shall annually file a Guardian with Ten or More Wards Registration (Mont. Co. P.C.F. 27.5M).
 - (b) **Corporation as Guardian.** A guardian, who is a corporation, with ten or more wards shall annually file a Corporate Guardian Registration (Mont. Co. P.C.F. ___).

(2) Background Checks.

(a) Individual as Guardian.

- (i) A guardian, who is an individual, with ten or more wards shall comply with Sup.R. 66.05(A)(1) and Mont. Co. P.C.R. 66.10(A)(1)(c) by completing, on or before January 31st of each calendar year, a criminal background check, processed through the Ohio Attorney General's Bureau of Criminal Investigation (BCI), which shall be filed in case number 2015 MSC 00406. If a criminal background check for a guardian, who is an individual, with ten or more wards is filed in case number 2015 MSC 00406, then for a period of one year from the date of that filing, that guardian will be excused from filing a criminal background check in each and every guardianship case, in which the guardian is seeking appointment in this Court. Criminal background checks must be received by the Court directly from the criminal background check processor (i.e. the Ohio Attorney General's BCI).

(ii) A guardian, who is a licensed Ohio attorney, with ten or more wards may annually file a certificate of good standing with disciplinary information issued by the Supreme Court of Ohio in case number 2015 MSC 00406 in place of a criminal background check.

(iii) A guardian, who is an individual, with ten or more wards shall comply with Sup.R. 66.05(A)(2) by filing in case number 2015 MSC 00406, on or before January 31st of each calendar year, an Affidavit of Guardian Applicant, as part of the Guardian with Ten or More Wards Registration (Mont. Co. P.C.F. 27.5M). If a guardian, who is an individual, with ten or more wards files an Affidavit of Guardian Applicant in case number 2015 MSC 00406, as part of the Guardian with Ten or More Wards Registration, then for a period of one year from the date of that filing, that guardian will be excused from filing an Affidavit of Guardian Applicant in each and every guardianship case in which the guardian is seeking appointment in this Court.

(b) **Corporation as Guardian.** A corporate guardian shall annually certify in the Corporate Guardian Registration (Mont. Co. P.C.F. ___) that the employees of the corporate guardian, who provide guardianship services, are in compliance with the criminal background check and affidavit requirements of Sup.R. 66.05(A) and Mont. Co. P.C.R. 66.10(A)(1), in which case for a period of one year from that certification, the corporate guardian will be excused from filing a criminal background check and Affidavit of Guardian Applicant (Mont. Co. P.C.F. 66.05) in each and every guardianship case in which the corporate guardian is seeking appointment.

(3) **Guardian Education.**

(a) **Individual as Guardian.**

(i) **Education Requirement.** A guardian, who is an individual, with ten or more wards shall annually certify, with a certificate of completion attached, in the Guardian with Ten or More Wards Registration (Mont. Co. P.C.F. 27.5M) that the guardian is in compliance with the education requirements of Sup.R. 66.06 or 66.07, as applicable, in which case for a period of one year from the filing of that certification, the guardian will be excused from filing a Notice of Completion of Guardian Education (Mont. Co. P.C.F. 27.2M) in each and every guardianship case in which the guardian is appointed in this Court.

(ii) **Exception for Guardians Who Are Attorneys.** If a guardian, is an individual, who is a licensed Ohio attorney in good standing, the guardian, after the successful completion of one six-hour guardian fundamentals course, may apply to the Court for an exception under Sup.R. 76 to be exempt from completing further fundamentals and continuing education courses in guardianship cases in this Court by filing a Guardian with Ten or More Wards Application to Waive Guardian Education (Mont. Co. P.C.F. ___) in case number 2015 MSC 00406.

- (b) Corporation as Guardian.** A corporate guardian shall annually certify in the Corporate Guardian Registration (Mont. Co. P.C.F. ___) that the employees of the corporate guardian, who provide guardianship services, are in compliance with the education requirements of Sup.R. 66.06 or 66.07, as applicable, in which case for a period of one year from the filing of that certification, the corporate guardian will be excused from filing a Notice of Completion of Guardian Education (Mont. Co. P.C.F. 27.2M) in each and every guardianship case in which the corporate guardian is appointed in this Court.
- (4) Guardianship Succession Plan.** A guardian, who is an individual, with ten or more wards shall file a succession plan with the Court on or before January 31st of each calendar year. The succession plan must:
- (a)** Nominate an interim guardian, in the event that the guardian is unable to fulfill the duties of a guardian. The nominee must consent to the nomination in writing, and the consent must be filed with the Court, along with the name, address, electronic mail address, and telephone number of the nominee.
 - (b)** Disclose the physical location of all guardianship records and the name, address, electronic mail address, and telephone number of a person who may allow access to the records.
 - (c)** Disclose the location of a list of all user identifications and passwords required to access electronic guardianship records, including, but not limited to banking records and other financial records.
 - (d)** Be updated immediately, if any aspect of the succession plan changes.
- (5) Failure to Comply.** Pursuant to Sup.R. 77, the failure to comply with these rules may result in sanctions as the Court may direct.

LOCAL RULE 66.7

INTRASTATE AND INTERSTATE GUARDIANSHIP TRANSFERS.

(A) Intrastate Guardianship Transfer from Montgomery County to Another County in Ohio (R.C. 2111.471).

- (1) If a ward, of this Court, (i) moves to another county within Ohio and (ii) acquires a new residence or legal settlement in that other county, then the guardian shall file in this Court, a Motion to Transfer Guardianship to Another County in Ohio (Mont. Co. P.C.F. 17.0P), pursuant to R.C. 2111.471, provided such transfer would be in the best interest of the ward. This Court may, on its own motion, file a Motion to Transfer Guardianship Sua Sponte to Another County in Ohio (Mont. Co. P.C.F. 113).
 - (a) The guardian shall indicate, on the Motion to Transfer Guardianship to Another County in Ohio (Mont. Co. P.C.F. 17.0P), whether the transferee court, to which transfer is sought, has consented (conditionally or otherwise) to accept the transfer of jurisdiction over the guardianship. If the transferee court has consented, then the guardian shall attach, to the Motion to Transfer Guardianship to Another County in Ohio (Mont. Co. P.C.F. 17.0P), a certified copy of the consent issued by the transferee court.
 - (b) If a Motion to Transfer Guardianship to Another County in Ohio (Mont. Co. P.C.F. 17.0P) is filed without a certified copy of consent issued by the transferee court, or if this Court files a Motion to Transfer Guardianship Sua Sponte to Another County in Ohio (Mont. Co. P.C.F. 113), then this Court will issue a Provisional Order to Transfer Guardianship to Another County in Ohio (Mont. Co. P.C.F. 111) and mail a certified copy of this Court's Provisional Order to Transfer Guardianship to Another County in Ohio (Mont. Co. P.C.F. 111) to the transferee court.
- (2) Upon receipt of a certified copy of the consent to accept transfer issued by the transferee court, this Court will issue a Final Order to Transfer Guardianship to Another County in Ohio (Mont. Co. P.C.F. 114), terminating this Court's jurisdiction over the guardianship.
- (3) Upon the issuance by this Court of a Final Order to Transfer Guardianship to Another County in Ohio (Mont. Co. P.C.F. 114), this Court will prepare certified copies of the appointment, letters of guardianship, bond, inventory, last account, if any, a full and complete transcript of this Court's docket and journal entries, up to and including this Court's Final Order to Transfer Guardianship to Another County in Ohio (Mont. Co. P.C.F. 114), and mail the same to the transferee court for filing in the transferee court.
- (4) If a transfer of residence is contemplated but a change of jurisdiction is not, see Mont. Co. P.C.R. 66.3(A)(16).

(B) Intrastate Guardianship Transfer from Another County in Ohio to Montgomery County (R.C. 2111.471).

- (1) If a ward, of a probate court of another county within Ohio, (i) moves to Montgomery County, Ohio and (ii) acquires a new residence or legal settlement in Montgomery County, Ohio, then this Court may accept jurisdiction over the guardianship, pursuant to R.C. 2111.471, provided such transfer would be in the best interest of the ward.
- (2) Typically, this Court would receive a request, for this Court's consent to accept transfer of jurisdiction over a guardianship, from the transferor probate court in the other county that is seeking to make the transfer of jurisdiction. Depending upon the documents provided to this Court and prior to accepting jurisdiction, this Court may:
 - (a) Issue a Conditional Consent to Accept Transfer of Guardianship from Another County in Ohio (Mont. Co. P.C.F. 112) and mail a certified copy of this Court's Conditional Consent to Accept Transfer of Guardianship from Another County in Ohio (Mont. Co. P.C.F. 112) to the transferor court; or
 - (b) Decline to accept jurisdiction over the guardianship until further action is taken in the guardianship in the transferor court.
- (5) Once (i) this Court has issued a Conditional Consent to Accept Transfer of Guardianship from Another County in Ohio (Mont. Co. P.C.F. 112) and (ii) the transferor court has filed, in this Court, certified copies of its appointment, letters of guardianship, bond, inventory, last account, if any, a full and complete transcript of its docket and journal entries, up to and including a final order to transfer guardianship issued by the transferor court, if this Court accepts jurisdiction, then this Court would issue (iii) a Judgement Entry Accepting Jurisdiction from Another County (Mont. Co. P.C.F. 116) and mail a certified copy of this Court's Judgement Entry Accepting Jurisdiction from Another County (Mont. Co. P.C.F. 116) to the transferor court and (iv) Letters of Guardianship (Mont. Co. P.C.F. 15.4).

(C) Interstate Guardianship Transfer to Another State from Montgomery County (R.C. 2112.31).

- (1) The following rules apply to transfers of guardianships from this Court to states that have enacted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act or have similar statutes to the Act.
- (2) To initiate the transfer of jurisdiction over a guardianship from this Court to another state that has enacted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the guardian shall file the following documents:
 - (a) Petition to Transfer Guardianship to Another State (Mont. Co. P.C.F. 117)

- (b) Next of Kin of Ward for Notice of Petition to Transfer (Mont. Co. P.C.F. 123);
 - (c) Waiver of Notice and Consent to Transfer of Guardianship (Mont. Co. P.C.F. 124), if applicable; and
 - (d) Proposed Provisional Order to Transfer Guardianship to Another State (Mont. Co. P.C.F. 118).
- (3) This Court will set the petition to transfer for a paper hearing/decision date, at which in-person appearance is not required, and the Clerk will serve, pursuant to Civ. R. 73(E)(3), a Notice of Petition to Transfer Guardianship to Another State (Mont. Co. P.C.F. 128) upon the ward and the ward's next of kin, for whom a Waiver of Notice and Consent to Transfer of Guardianship (Mont. Co. P.C.F. 124) has not been filed.
- (a) If any person, entitled to notice, objects to the transfer, then the Court may set the petition and any objection for in-person hearing and serve notice of that in-person hearing to all persons entitled to such notice.
 - (b) Upon (a) service of notice of the petition being perfected and (b) the decision date passing without objection or after a hearing on the petition and any objection, if this Court provisionally grants the petition, then this Court will issue a Provisional Order to Transfer Guardianship to Another State (Mont. Co. P.C.F. 118) and mail a certified copy of this Court's Provisional Order to Transfer Guardianship to Another State (Mont. Co. P.C.F. 118) to the transferee court.
- (4) Upon this Court's receipt from the transferee court of a certified copy of a provisional order accepting the jurisdiction issued by the transferee court under provisions similar to R.C. 2112.32(F), this Court will issue a Final Order to Transfer Guardianship to Another State (Mont. Co. P.C.F. 119), terminating this Court's jurisdiction over the guardianship, and mail a certified copy of this Court's authenticated record, including this Court's Final Order to Transfer Guardianship to Another State (Mont. Co. P.C.F. 119), to the transferee court.

(D) Interstate Guardianship Transfer from Another State to Montgomery County (R.C. 2112.32).

- (1) To initiate the transfer of jurisdiction of a guardianship from another state to this Court, the guardian shall file the following documents:
 - (a) Petition to Accept Transfer of Guardianship from Another State (Mont. Co. P.C.F. 120);
 - (b) Next of Kin of Ward for Notice of Petition to Transfer (Mont. Co. P.C.F. 123);
 - (c) Waiver of Notice and Consent to Transfer of Guardianship (Mont. Co. P.C.F. 124), if applicable;
 - (d) Certified copy of transferor court's order appointing the guardian; and

- (e) Certified copy of transferor court's provisional order of transfer.
- (2) This Court will set the petition to accept transfer for paper hearing/decision date, at which in-person appearance is not required, and the Clerk will serve, pursuant to Civ. R. 73(E)(3), Notice of Petition to Accept Transfer of Guardianship from Another State (Mont. Co. P.C.F. 129) upon the ward and the ward's next of kin, for whom a Waiver of Notice and Consent to Transfer of Guardianship (Mont. Co. P.C.F. 124) has not been filed.
- (a) If any person, entitled to notice, objects to the transfer, then the Court would set the petition and any objection for in-person hearing and serve notice of that in-person hearing to all persons, entitled to such notice.
- (b) Upon (a) service of notice of the petition being perfected and (b) the paper hearing date passing without objection or after a hearing on the petition and any objection, if this Court provisionally grants the petition, then this Court will issue a Provisional Order to Accept Transfer of Guardianship from Another State (Mont. Co. P.C.F. 121) and mail a certified copy of this Court's Provisional Order to Accept Transfer of Guardianship from Another State (Mont. Co. P.C.F. 121) to the transferor court.
- (3) Once this Court has (i) issued a Provisional Order to Accept Transfer of Guardianship from Another State (Mont. Co. P.C.F. 121) and (ii) received certified copies of the authenticated record of the transferor court, including a final order transferring the jurisdiction of the guardianship to this Court issued by the transferor court under provisions similar to R.C. 2112.31, then this Court may set the matter for an in-person hearing to address the requirements of Sup. R. 66, at which the guardian's appearance would be required.
- (4) If this Court accepts jurisdiction over the guardianship, after an in-person hearing to address the requirements of Sup. R. 66, then this Court shall issue (i) a Final Order to Accept Transfer of Guardianship from Another State (Mont. Co. P.C.F. 122) and mail a certified copy of this Court's Final Order to Accept Transfer of Guardianship from Another State (Mont. Co. P.C.F. 122) to the transferor Court and (ii) Letters of Guardianship (Mont. Co. P.C.F. 15.4).

LOCAL RULE 66.8
RESTRICTIONS ON DIRECT SERVICE PROVIDERS

- (A) “Direct services” means services typically provided by home and community-based care and institutionally-based care providers, including medical and nursing care, care or case management services, care coordination, speech therapy, occupational therapy, physical therapy, psychological services, counseling, residential, legal representation, job training, and any other similar services. The term “direct services does not include services of a guardian.” Sup. R. 66.01(B).
- (B) The Court shall not issue letters of guardianship to any direct service provider to serve as a guardian for a ward for whom the provider provides direct services, unless authorized by law, pursuant to Sup. R. 66.04(D). Except as provided in Sup. R. 66.04(D), a guardian shall not provide any direct services to a ward, unless otherwise approved by the court.
- (C) A guardian shall not receive incentives or compensation from any direct service provider providing services to a ward, pursuant to Sup. R. 66.08(J)(3).
- (D) The Court may approve an Application to Provide Direct Services (Mont. Co. P.C.F. 27.40) if:
- (1) The Guardian is related (by blood, marriage or adoption) to the Ward;
 - (2) The Guardian is certified to provide services by Medicaid or another similar third-party payor; and
 - (3) The Guardian shall be paid for said direct services by Medicaid, or some other third party, and not from the Ward’s funds.

LOCAL RULE 67.1
ESTATES OF MINORS OF NOT MORE THAN TWENTY-FIVE THOUSAND
DOLLARS

- (A) **Generally.** When the net estate to a ward does not exceed twenty-five thousand dollars (\$25,000.00) for an inheritance or minor settlement pursuant to R.C. 2111.05 and R.C. 2111.18, the Court will generally dispense with the need to establish a full guardianship. If approved, 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 lieu of a minor guardianship account. The structuring of the funds is also acceptable even though the structured amount may be in excess of twenty-five thousand dollars (\$25,000.00).
- (B) **Application.**
- (1) **Estates.** An Application to Dispense with the Appointment of Guardian (Mont. Co. P.C.F. 16.0A) shall be submitted by the parent(s) with whom the minor resides or the person who has legal custody of the minor pursuant to Sup.R. 67(A).
- (2) **Minor Settlements.** An Application to Dispense with the Appointment of Guardian (Mont. Co. P.C.F. 16.0A) shall be submitted by the guardian of the estate. If there is no guardian of the estate, the parent(s) with whom the minor resides or the person who has legal custody of the minor pursuant to Sup.R. 68(A).
- (C) **Value.** The net value of the whole estate or settlement shall be less than or equal to twenty-five thousand dollars (\$25,000.00), or a full guardianship must be established or otherwise maintained.
- (D) **Attorney deposits property.** The Applicant's attorney, or if the applicant is not represented, the payor or payor's attorney, shall immediately deposit said funds with the depository or deliver property to the person designated by the Court.
- (E) **Verification.** Upon deposit of the minor's property, the attorney, applicant or person designated by the Court to hold the property, shall obtain a completed Verification of Receipt and Deposit (Mont. Co. P.C.F. 22.3M).
- (1) The Verification of Receipt and Deposit (Mont. Co. P.C.F. 22.3M) shall be filed with the Court within seven (7) days, pursuant to Sup.R.67(C), from the issuance of the judgment entry dispensing with the appointment of a guardian, or as soon as practicable.
- (2) Failure to file the completed Verification of Receipt and Deposit (Mont. Co. P.C.F. 22.3M) may result in a citation or other sanction.
- (G) **Effect of Dispensing with the Guardianship.**
- (1) If the guardianship is dispensed with, bond requirements will be waived.
- (2) If the guardianship is dispensed with, no inventory or accountings will be required.

(H) Procedure if Guardian already appointed. If the guardianship is being administered and assets of the guardianship are less than or equal to twenty-five thousand dollars (\$25,000.00), the Guardian may file an Application to Terminate Guardianship (Mont. Co. P.C.F. 27.9M).

LOCAL RULE 68.1
SETTLEMENT OF MINOR'S CLAIMS

- (A) **Net Proceeds greater than twenty-five thousand dollars (\$25,000.00).** The Court requires the appointment of a guardian of the minor's estate if the net proceeds of any settlement exceed twenty-five thousand dollars (\$25,000.00) under R.C. 2111.18. The guardianship shall be administered until the assets fall below twenty-five thousand dollars (\$25,000.00) and the Court approves a request to terminate the guardianship or the minor reaches eighteen (18) years of age, in which case the guardianship terminates by operation of law. If the applicant's intent is to structure the settlement, or a portion of the settlement, a full guardianship shall still be established so that the guardian may execute the settlement agreement, release and other relevant documents. The guardianship may be terminated as set forth below.
- (B) **Net Proceeds less than twenty-five thousand dollars (\$25,000.00), but greater than one thousand dollars (\$1,000).** If the settlement proceeds are in excess of \$1,000 and do not exceed \$25,000.00, the Court will generally dispense with the need to establish a full guardianship pursuant to R.C. 2111.05. 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 lieu of a minor guardianship.
- (C) **Application Thresholds.**
- (1) **Net Settlement is less than twenty-five thousand dollars (\$25,000).**
- (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 (Mont. Co. P.C.F. 16.0A) and Application to Settle a Minor's Claim (Mont. Co. P.C.F. 22.0) shall be filed.
 - (b) 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.
 - (c) The applicant shall file a true and accurate copy of the minor's certified birth certificate with any application.
 - (d) If the application is 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 pursuant to Sup.R. 68(B), medical records shall be sealed by the Court pursuant to Mont. Co. P.C.R. 45.1(B)(2)(b) ("No Remote or Direct Access by Public; Access by Judge, Court Staff, Clerk Staff, and Attorneys of Record").
 - (e) The application shall include the attorney fee agreement, any release(s), and statement of facts.
 - (f) 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.
 - (g) If the guardianship is dispensed with, bond requirements will be waived.

- (h) If the guardianship is dispensed with, no inventory or accountings will be required.
- (i) The Court generally will not approve distribution of settlement proceeds exceeding \$1,000.00 directly to the parent(s) or legal custodian, absent a showing of exceptional circumstances.
- (j) 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) Net Settlement is in excess of \$25,000.

- (a) If the net settlement proceeds to the minor exceed twenty-five thousand dollars (\$25,000.00), the applicant shall file an Application for Appointment of Guardian of a Minor (Mont. Co. P.C.F. 16.0) and Application to Settle a Minors Claim (Mont. Co. P.C.F. 22.0).
- (b) The applicant shall file a true and accurate copy of the minor's certified birth certificate with any application.
- (c) If the application is 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 pursuant to Sup.R. 68(B), medical records shall be sealed by the Court pursuant to Mont. Co. P.C.R. 45.1(B)(2)(b) ("No Remote or Direct Access by Public; Access by Judge, Court Staff, Clerk Staff, and Attorneys of Record").
- (d) The application shall include the attorney fee agreement, any release(s), and statement of facts.
- (e) 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.

(D) Notice of Hearing in all Minor Settlements.

- (1) The noncustodial parent(s) shall be entitled to at least seven (7) days' notice of the application to settle the minor's claim, which notice may be waived. The applicant or applicant's attorney 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 if all of the following apply:
 - (a) The gross amount of the proposed settlement must not exceed \$1,000.00; and
 - (b) There must not be any disputed claims on any portion of the settlement proceeds.
- (4) If the guardianship is dispensed because assets do not exceed twenty-five thousand dollars (\$25,000.00), a Verification of Receipt and Deposit (Mont. Co. P.C.F. 22.3) shall be

executed by the financial institution and filed with the Court within seven (7) days or as soon as practical, pursuant to Sup. R. 67(C), from the issuance of the entry approving.

- (5) A Report of Distribution of Minor's Claim (Mont. Co. P.C.F. 22.4) shall be filed with the Court in all cases no later than sixty (60) days after the entry approving the minor settlement.

(E) 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 one hundred million dollars (\$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.
- (4) Upon approval of the settlement and if the structured settlement results in the guardianship of the estate having less than twenty-five thousand dollars (\$25,000.00) (e.g. \$100,000 structured in an annuity and \$0.00 in the guardianship account), an Application to Terminate Guardianship (Mont. Co. P.C.F. 27.9M) may be filed by the guardian to terminate the guardianship.

- (F) 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 the form titled “Wrongful Death ‘Other Next of Kin’ Tier Two Beneficiaries” (Mont. Co. P.C.F. 14.4), identifying all individuals entitled to notice of the application under R.C. 2125.02(A)(1).
- (4) Interested parties include the decedent’s surviving spouse, children, parents, and all “other next of kin.” See *In re Estate of Payne*, 10th Dist. Franklin No. 04AP-1176, 2005-Ohio-2391.
- (5) If the application involves minor(s), see Mont. Co. P.C.R. 68.1.

(B) Notice. The fiduciary or fiduciary’s attorney 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) All interested parties shall be served notice. See Mont. Co. P.C.R. 70.1(A)(3) and (4).
- (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 if all of the following apply:
 - (a) The gross amount of the proposed settlement must not exceed ten thousand dollars (\$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 (e.g. mass tort litigation settlements).
 - (3) A Report of Distribution of Wrongful Death and Survival Claim (Mont. Co. P.C.F. 14.3) must be filed with the Court no later than sixty (60) days after the entry approving the wrongful death and survival claim settlement.
- (D) **Guardian Ad Litem.** The Court may appoint a guardian ad litem sua sponte or upon motion of an interested party.

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.

Time expended by Counsel to prepare a representation agreement, to prepare and file an Application for Attorney Fees or to prepare and file an Appendix B have been determined by this Court to be the costs of counsels doing business and shall not be approved for compensation from the assets of the underlying case. The Court may strike any request to be compensated for the preparation or filing of a representation agreement, an Application for Attorney Fees or an Appendix B form or any request for compensation.

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

- (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 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
Amended: 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 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 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 a 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

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

(A) Multiple Fiduciaries.

- (1) 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.
- (2) Unless specifically nominated in a last will, power of attorney or other controlling document, the Court will typically not appoint co-fiduciaries or multiple fiduciaries absent extraordinary circumstances.

(B) Preparation for Court Hearings. In all matters, the applicant, fiduciary, movant, plaintiff or other party or their attorney, 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 attorney 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 attorney responsible for service shall contact all interested parties and notify the Court so that prompt action may be taken to remedy or address the service failure.

(C) Fiduciary Bonds.

- (1) Fiduciaries of decedent's estates shall be required to post a minimum bond, of no less than twenty thousand dollars (\$20,000.00), pursuant to R.C. 2109.04, unless bond is waived by the last will 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 and annual real property rentals, or if the estate has no personal property nor annual real property rentals, 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, a land sale, consent(s) power to sell real estate, partial accounts, disputes, and other matters that may involve a fiduciary's access to assets.
- (2) Guardians of the estate shall be required to post a minimum bond, of 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. The amount of the bond is subject to being adjusted upward or downward upon the filing of the inventory, 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 last 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. The amount of the bond is subject to

being adjusted upward or downward upon the filing of the inventory, a land sale, consents to sell real estate, partial accounts, disputes, and other matters that may involve a fiduciary's access to assets.

- (4) Fiduciary bond premiums must be paid when due. If the Court is notified that a fiduciary bond premium is delinquent, revoked or otherwise unsecured, the Court may take appropriate action, including removal.

(D) Original Documents.

- (1) **Filing Original Last Will and Testament.** See Mont. Co. P.C.R. 57.2(H)(6)(a). Note the original is required to be filed.
- (2) **Filing Original Bond.** See Mont. Co. P.C.R. 57.2(H)(6)(b). Note an original is preferred, but not required. Also, subsequent additional bonds or riders may be eFiled rather than submitted in hard copy.

(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 case in this Court (e.g. ward expires and a decedent's estate is opened for administration).
- (2) A related case shall also include, but not be limited to, any and all matters in which one matter may impact parties, assets, or other related proceedings (e.g. 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 the Local Rules of Practice and Procedure for the General Division of the Montgomery County Common Pleas Court.

(G) Withdrawal of Attorney.

- (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) within a reasonable time frame as not to cause hardship to the client in the underlying matter.
 - (b) The attorney lists in the motion all known filing deadlines and Court appearance dates; and
 - (c) The attorney serves notice to all client(s) pursuant to Civ.R. 73(E) and issues a certificate of service to all attorneys, unrepresented parties, and interested persons. Interested persons include, but are not limited to, next of kin, legatees, devisees, 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 attorney shall be in writing, signed by the withdrawing attorney or the fiduciary, and signed by 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 attorney 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 the fiduciary’s attorney of record to the citation process as set forth below.

- (2) **Process.**

- (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; and
 - (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.

- (c) **Service.** Citations shall be served as follows:

- (i) Electronically on Registered Users, including all attorneys, and fiduciaries who are Registered Users, through the Court’s eFile System.
 - (ii) Fiduciaries who are not Registered Users shall be served via Civ.R. 4.1 to 4.6 as the Court may direct.

- (d) **Compliance with Citation.** The fiduciary and counsel, if represented, shall remedy any and all delinquencies noted in the citation at least ten (10) days prior to the hearing date specified in the citation (“Grace Period”). If the delinquent filing(s) are journalized by the Court by filing the delinquency on the record before or within the Grace Period, the Court will issue an order to that effect in writing—otherwise, the citation shall progress to hearing with mandatory in-person attendance.

The Grace Period, as described above, is defined as the period of time between the issuance of the citation to ten (10) days prior to the hearing date specified in the citation.

(3) Citation Hearing.

- (a) The fiduciary and the fiduciary's attorney (if represented) shall appear in-person at all citation hearings, unless expressly excused by the Court.
 - (b) The fiduciary's attorney has no authority to excuse the attendance of any fiduciary.
 - (c) This in-person appearance requirement applies to all fiduciaries and attorneys of fiduciaries, regardless of where they reside.
 - (d) The fiduciary's attorney 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 the fiduciary's attorney constitutes contempt of the 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 prior to the scheduled citation hearing; and
 - (ii) Any request for a continuance of the citation hearing shall be in writing, and a proposed order granting the continuance shall accompany the written request. The Court must approve the request for a continuance in writing, otherwise, the citation will progress to hearing.
 - (g) At the conclusion of the citation hearing, the Court will issue an order imposing sanctions as set forth below in Mont. Co. P.C.R. 78.1(H)(4). 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 fiduciary's attorney, and if the fiduciary fails to file the account, inventory, certificate of notice of probate of will, report, or other delinquent filing prior to the 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, report, or other delinquent filing;
 - (d) A continuance or continuance in progress of the hearing;

- (e) An assessment against the fiduciary of a penalty of one hundred dollars (\$100.00) and costs of twenty-five dollars (\$25.00) 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 such time as the account, inventory, certificate of notice of probate of will, report, or other delinquent filing is filed with the Court;
- (g) If the fiduciary does not appear before 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. 78.1(H)(4) set forth above, the fiduciary's attorney may face reduced or denied attorney fees and/or additional penalties. The fiduciary's attorney 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 case, until all of the delinquent pleadings are filed.

(I) Unknown Addresses. In all matters, whenever a fiduciary, applicant, or other party, who 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. 110) shall be filed with the Court.

(J) Trusts. A memorandum or certification of trust shall be filed in all matters in which a trustee is receiving a distribution or disbursement from an estate (e.g. pour-over last will). The Court may require the filing of a memorandum or certification of trust in any other type of matter involving a trust.

LOCAL RULE 78.2
DECEDENT'S ESTATES

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

(A) All Types.

- (1) Investigation into Last Will and Testament.** Before any filings are made, the applicant or the applicant's attorney shall investigate the matter to determine whether the decedent left a last will, including without limitation, requesting the Court to examine the Court's index of wills deposited with the Court under R.C. 2107.07.

 - (a)** For probating lost, spoliated, or destroyed wills under R.C. 2107.26 et seq., see Mont. Co. P.C.R. 78.2.1(A).
 - (b)** For probating noncomplying wills under R.C. 2107.24, see Mont. Co. P.C.R. 78.2.1(B).
- (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 the decedent's death.
- (3) Deceased Heir or Beneficiary.** If a person, who is the decedent's next of kin or a vested beneficiary under the decedent's last will, is deceased, the name and date of death of that individual shall be provided on the form titled Surviving Spouse, Children, Next of Kin, Legatees and Devisees (Mont. Co. P.C.F. 1.0). The applicant should consult R.C. 2105.06 to determine the level of consanguinity to include on Mont. Co. P.C.F. 1.0. For example, deceased parents should be shown on Mont. Co. P.C.F. 1.0, anytime siblings or more distant relationships of consanguinity are the next of kin.
- (4) 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 or appraisal 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 entity are readily ascertainable, the entity may be appraised at the readily ascertainable amount (e.g. decedent died as sole member and manager of a limited liability company that 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 certified public accountant, to value the business pursuant to Mont. Co. P.C.R. 61.1(B)(2) above.
- (d) Tangible personal property worth less than or equal to a total aggregate value of \$5,000.** The fiduciary may provide an estimate of the fair market value of household goods, trade tools, and similar items if the total value of all tangible personal property does not exceed \$5,000. Collectibles such as jewelry, stamp collections, artwork, antiques, and similar items shall be appraised.
- (e) All inventory valuations shall reflect the value of the asset as of the date of death.**
- (5) 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 last will may, but is not required to, file automobile transfer forms to transfer automobiles that are subject to probate administration. See Application and Entry for Sale/Transfer (Mont. Co. P.C.F. 9.0A).
- (6) 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)** It is recommended, but not required, to serve a copy of the inventory on all of the heirs at law in an intestate estate or vested beneficiaries in a testate estate.
- (d)** Transfers of real property (e.g. certificates of transfer) and automobile transfers shall not receive court approval until an inventory is filed with the Court.
- (7) 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 interested 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.
- (8) Certificates of Transfer.** All proposed Certificates of Transfer (Mont. Co. P.C.F. 12.1) submitted to the Court for approval shall be typed. Before filing a Certificate of Transfer with the Court, the person filing the Certificate of Transfer must verify that the filing is in compliance with all appropriate county offices and rules.
- (9) 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.
- (10) Consent of Parties to Alternate Distribution of Personal Property.** Heirs or vested beneficiaries may consent to an alternate distribution of personal property in an estate proceeding.
 - (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 last 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 personal property that is not otherwise bequeathed, the fiduciary may file an Application to Distribute in Kind (Mont. Co. P.C.F. 10.0) 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.
- (11) 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 as an assignment.
 - (a) Prior to filing a disclaimer, a notice of intent to file the disclaimer shall be filed with the Court, served on the fiduciary, and served, pursuant to Civ.R. 73(E), on all next of kin of the disclaimant or vested beneficiaries under the decedent's last will, 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 the intended result of the execution of the disclaimer and specify the names of the heir(s) or vested beneficiaries, 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 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 objection by an interested party nor finding by the Court, then after the paper hearing, the disclaimant may file the executed disclaimer.
- (d) Upon the filing of any disclaimer, the fiduciary or fiduciary's attorney 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 necessary, the fiduciary shall amend the form titled Surviving Spouse, Children, Next of Kin, Legatees and Devisees (Mont. Co. P.C.F. 1.0) to properly reflect the lawful beneficiaries of the decedent's estate.

(12) Contingent Trust as a Beneficiary. If the decedent's last 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 the person responsible for payment, must be filed with the application for summary release.
- (2) **Last Will and Testament.** The original last will, if any, 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 upon 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 last 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 last 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 with the Supreme Court of Ohio; or
- (iv) All of the next of kin, legatees and devisees of the estate waive said bond.

(2) Last Will and Testament.

- (a) The original last will, if any, shall be filed with the Court.
- (b) If there is a last will, within two weeks of the admission of the last will to probate, the applicant shall serve notice as described in R.C. 2107.19(A)(1) and Civ.R. 73(E).
- (c) Additionally, if there is a last will, the commissioner shall file a Certificate of Service of Notice of Probate of Will (Mont Co. P.C.F. 2.4) and all supporting documents within two (2) months after the appointment of said commissioner.

(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 the Certificate of Service of Notice of Probate of Will (Mont Co. P.C.F. 2.4), if required, has been filed with the Court.

(6) Report of Distribution. The commissioner shall file a Report of Distribution (Mont. Co. P.C.F. 5.7A), reporting the sale, if any, and distribution of any and all asset(s), in all release from administration cases

(a) The Report of Distribution shall be filed within sixty (60) days of the date of the entry relieving the estate from administration, unless the Court directs otherwise.

(b) All disbursements contained in the Report of Distribution shall be supported by corresponding receipts, vouchers, cancelled checks, written acknowledgments or other appropriate evidence of payment.

(7) Insolvent Estate. An Application to Relieve Estate from Administration (Mont. Co. P.C.F. 5.0) 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 for which the applicant is seeking to be appointed special administrator (e.g. service of creditor claim, last will 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 an Application for Authority to Administer Estate (Mont. Co. P.C.F. 4.0) modified to indicate that the applicant is seeking appointment as a special administrator and expressly stating the purpose for seeking the appointment;
 - (b) Filing a completed Surviving Spouse, Children, Next of Kin, Legatees and Devises (Mont. Co. P.C.F. 1.0); and
 - (c) Filing a copy of the decedent's death certificate with the decedent's social security number redacted.
 - (5) All special administrators shall comply with the fiduciary bond requirements in Mont. Co. P.C.R. 78.1(C).
 - (6) **Notice/Hearing.**
 - (a) Notice of an application for appointment of special administrator shall be consistent with Mont. Co. P.C.R. 60.1.
 - (b) The Court may dispense with a hearing on the application upon the applicant's request and for good cause shown.
 - (7) **Inventory and Account.** A special administrator shall file a complete inventory and complete fiduciary's account, and serve all parties at those stages, in a similar manner to full administration estates.
- (E) Certificate of Transfer of Real Property Only.** An Application for Certificate of Transfer (Mont. Co. P.C.F. 12.0) may be approved pursuant to R.C. 2113.61 subject to the following:
- (1) **Decedent Died with a Last Will.** If a decedent died with a valid last will, a certificate of transfer only action under R.C. 2113.61(D) is not permissible, unless the last will has been admitted to probate in this Court or another jurisdiction.
 - (a) **Last Will Admitted in another Jurisdiction.** If the last will is admitted to probate in another jurisdiction, certified copies of the last will and court documents proving the admission of said last will to probate in that jurisdiction shall accompany the Application for Certificate of Transfer (Mont. Co. P.C.F. 12.0) filed in this Court.
 - (b) **Certificate of Notice of Probate of Will.** Additionally, if there is a last will, a Certificate of Service of Notice of Probate of Will (Mont. Co. P.C.R. 2.4) and all supporting documents shall be filed within two (2) months after the Application to Probate Will (Mont. Co. P.C.F. 2.0) is filed with the Court.
 - (2) **Required Documentation.** The following shall be included when filing a Certificate of Transfer of Real Property Only:

- (a)** A copy of the Auditor's property record summary pursuant to Mont. Co. P.C.R. 78.2(A)(4)(a) or other appraisal by a suitable disinterested appraiser appointed by the Court pursuant to R.C. 2115.06;
- (b)** The form titled Surviving Spouse, Children, Next of Kin, Legatees and Devisees Mont. Co. P.C.R. 1.0); and
- (c)** Copy of the decedent's death certificate pursuant to Mont. Co. P.C.R. 78.2(A)(2).

LOCAL RULE 78.2.1
LOST, SPOLIATED, DESTROYED, OR NONCOMPLYING LAST WILL

This Rule addresses lost, spoliated, destroyed, or noncomplying last wills under R.C. 2107.26 et seq. and the probate of a lost, spoliated, destroyed, or noncomplying last will, despite noncompliance with statutory formalities under R.C. 2107.24.

(A) Lost, Spoliated, or Destroyed Last Will.

- (1) Procedure.** To offer a lost, spoliated or destroyed last will for probate, an applicant shall complete and file Mont. Co. P.C.F. 78.2.1-A through 78.2.1-F. If an applicant seeks to admit a will under this procedure at the initial filing when opening an estate, applicant may omit the Application to Probate Will (Mont. Co. P.C.F. 2.0) to begin the administration of a testate estate and use the forms under this Local Rule.
- (2) Notice and Hearing.** The applicant offering the lost, spoliated, or destroyed last will for probate is responsible for serving the notice required by R.C. 2107.27(A), using Notice of Application to Admit Lost, Spoliated, or Destroyed Will to Probate (Mont. Co. P.C.F. 78.2.1-C). The applicant shall file an Affidavit Evidencing Service of Notice of Application to Admit Lost, Spoliated, or Destroyed Will (Mont. Co. P.C.F. 78.2.1-G) with the Court, evidencing such service, no later than five (5) calendar days prior to the hearing.
- (3) Dispensation of Hearing.** The Court may, in its discretion, admit a copy of a signed lost, spoliated, or destroyed last will to probate without an in-person hearing, if the following requirements are satisfied:
 - (a) Acknowledgement(s) and Waiver(s).** An Acknowledgement of Application to Admit Lost, Spoliated, or Destroyed Will and Waiver of Notice of Application (Mont. Co. P.C.F. 78.2.1-B), signed by each and every person entitled to notice under R.C. 2107.27(A), is filed with the Court; and
 - (b) Witness Affidavit(s).** An Affidavit(s) of Witness to Execution of Will (Mont. Co. P.C.F. 78.2.1-D), executed by each witness to the copy of the signed lost, spoliated or destroyed last will, is filed with the Court. The execution of an Affidavit(s) of Witness to Execution of Will by one credible witness may, in the Court's discretion, be sufficient to establish that the last will was lawfully executed with the required formalities.

(B) Probate of Noncomplying Last Wills. To offer a noncomplying will for probate, see R.C. 2107.24.

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. 2109.50 (concealment of assets);
- (2) R.C. 2121 (presumption of death);
- (3) R.C. 2123 (determination of heirship);
- (4) R.C. 517.24 (application for disinterment); and
- (5) R.C. 2127 (land sales).

(C) Dismissal. Failure to file separate civil actions for each special statutory proceeding may result in a dismissal of the special statutory proceeding.

(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 4.7 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 the method of service to 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 hard 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:

- (1) Specify the case number and any and all open related case number(s);
- (2) Specify the name of the assigned judge or the name of the judge who heard the case, and the magistrate (if applicable);
- (3) Exhibit the signature of the attorney who is making the filing; and
- (4) All pleadings must 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 (e.g. 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 in opposition shall be:

- (a) Accompanied by copies of all photographs or documentary evidence that will be used in opposition to the motion, if the opposition requires the consideration of facts that do not appear in the record; and
 - (b) Filed and served within fourteen (14) days from the date on which the initial motion was served, for all motions other than motions for summary judgment, or as 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, pursuant to Civ.R. 6(C)(1). 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.
- (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 attorneys 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 pretrial 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, attorney, and/or sua sponte, with reasonable notice to all parties and/or attorneys.

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

- (1)** All attorneys and parties shall be present or available and shall be prepared to make decisions with full lawful authority.
- (2)** The following matters may be addressed at the final 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, BIRTH CERTIFICATE
REGISTRATION/ CORRECTION AND GENDER MARKER 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 upon proof that the facts set forth in the application show reasonable and proper cause, pursuant to R.C. 2717.09.
- (2) A name conformity proceeding (R.C. 2717.04) 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 the person's official identity documents are consistent and conformed to prove the applicant's chain of identity and reflect the person's already-correct, existing legal name.
- (3) Birth Registration or Correction Proceeding. Birth Registration or Correction Proceedings are conducted pursuant to R.C. 3705.15.
 - (a) A birth registration proceeding (R.C. 3705.15) allows for registration of a birth when a birth is not recorded. It may also be used to create a birth certificate when it has been lost or destroyed.
 - (b) A birth correction proceeding (R.C. 3705.15(A)) 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.
 - (c) A gender marker or sex marker proceeding seeks to change a birth record's designation of sex from male to female, or female to male. In Ohio, there are no other designations other than male or female. See *In re Corr. of Birth Rec. of Adelaide*, 2nd Dist. Clark No. 2022-CA-1, 2022-Ohio-2053.

(B) Actions that may Jeopardize Applicant's Personal Safety.

- (1) If an applicant submits to the Court, along with the application, satisfactory proof that open records of the name change or conformity, or publication of the hearing notice would jeopardize the applicant's personal safety, the Court shall seal the records and waive the hearing notice requirement, pursuant to R.C. 2717.11. The process is set forth in subsections below.
- (2) **Process in Asking the Court to Seal Records.**
 - (a) The applicant must initially file an Application to Waive Publication Requirement and Seal (Mont. Co. P.C.F. 21.6) and the Court will set an evidentiary hearing as soon as

practicable to grant or deny the request to waive notice and seal the matter. Notice on the Application shall not be served by the Court's eFile System due to the nature of the matter. See also Mont. Co. P.C.R. 45.1 regarding Public Access to Court Records.

- (b)** The applicant, and counsel, if any, are required to attend the in-person evidentiary hearing described herein and should be prepared to provide testimony and/or other evidence which supports the request to seal the matter. The Court will thereafter issue a written decision granting or denying the request.
- (c)** If the request to waive publication and seal is granted, the applicant shall then file the standard documents related to the underlying matter with the Clerk. The Clerk shall designate these as "Confidential."
- (d)** The applicant must either file in-person with the Clerk or state in all filings that the record is "Confidential."
- (e)** Those documents, and all future filings, would be under seal and the case information not available for public viewing.

LOCAL RULE 78.4.1
ADULT NAME CHANGE PROCEEDINGS

This Rule governs adult name change proceedings under R.C. Chapter 2717.

(A) Eligibility. Pursuant to R.C. 2717.03 and R.C. 2717.06, an applicant for name change must affirm before a Notary Public or Deputy Clerk on an Application for Change of Name (Mont. Co. P.C.F. 21) that:

- (1) The applicant has been a bona fide resident of the county for at least sixty (60) days prior to the filing of the application;
- (2) The application is not made for the purpose of evading any creditors or other obligations;
- (3) The applicant has not been convicted of, pleaded guilty to, or, as a minor, been adjudicated a delinquent child for identity fraud;
- (4) The applicant does not have a duty to comply with R.C. 2950.04 or R.C. 2950.041 because the applicant was convicted of, pleaded guilty to, or, as a minor, was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense;
- (5) The reason for which the change of name is sought; and
- (6) The requested name is provided.

(B) Criminal Records Check.

- (1) Pursuant to R.C. 2717.19, Applicants shall have their criminal background checks processed through the Ohio Attorney General's Bureau of Criminal Investigation (BCI), or like-kind agency if the applicant resides outside of the state of Ohio. A list of local providers of BCI background checks can be found on the Ohio Attorney General's website at www.ohioattorneygeneral.gov/backgroundcheck.
- (2) Criminal background checks must be received by the Court directly from the criminal background check processor (i.e. the Ohio Attorney General's BCI). An applicant shall instruct the criminal background check processor to send the criminal background check directly to the Court at Montgomery County Probate Court, 41 North Perry Street, Second Floor, Dayton, Ohio 45422.

(C) Documentation Requirements on Adult Name Change Proceedings. An applicant seeking a name change must provide photocopies of the following documents relating to the adult applicant:

- (1) Certified copy of the birth certificate (most recent and/or updated certified copy);
- (2) Valid driver's license or government issued photo identification card, if any; and
- (3) Upon submission, any other documentary evidence of the applicant's identity as the Court may request, pursuant to R.C. 2717.07.

(D) Notice and Hearing Requirements.

- (1)** Generally, for adult name changes, the Court dispenses with notice requirements pursuant to R.C. 2717.08 and will not require notice of an adult name change 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.
- (2)** If the Court requires a hearing notice, the Court will determine the manner, scope, and content of the hearing notice. The applicant is responsible for serving the hearing notice.

LOCAL RULE 78.4.2
MINOR NAME CHANGE PROCEEDINGS

This Rule governs minor name change proceedings under R.C. Chapter 2717.

(A) Eligibility. An Application for Change of Name of Minor (Mont. Co. P.C.F. 21.2) may be made on behalf of a minor by either of the minor's parents, a legal guardian, a legal custodian, or a guardian ad litem pursuant to R.C. 2717.13. Under R.C. 2717.03 and R.C. 2717.06, an applicant for name change of a minor must affirm before a Notary Public or Deputy Clerk on an Application for Change of Name of Minor (Mont. Co. P.C.F. 21.2) that:

- (1) The minor has been a bona fide resident of the county for at least sixty (60) days prior to the filing of the application;
- (2) The application is not made for the purpose of evading any creditors or other obligations;
- (3) The minor has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for identity fraud;
- (4) The minor does not have a duty to comply with R.C. 2950.04 or R.C. 2950.041 because the minor 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;
- (5) The reason for which the change of name is sought; and
- (6) The requested name is provided.

(B) Documentation Requirements on Name Change Proceedings. An applicant seeking a name change for a minor must provide photocopies of the following documents relating to the adult applicant and minor:

- (1) Certified copy of the minor's birth certificate (most recent and/or updated certified copy);
- (2) Applicant's valid driver's license or state issued photo identification card, if any;
- (3) Certified copy of the death certificate of a parent or parent(s), if applicable;
- (4) Supporting documentation showing the applicant has legal authority to apply on the minor's behalf, if applicable; and
- (5) And upon submission, any other documentary evidence of the applicant's identity as the Court may request, pursuant to R.C. 2717.07.

(C) Notice and Hearing Requirements.

- (1) In uncontested name change proceedings for a minor, in which Consent to Change of Name (Mont. Co. P.C.F. 21.4) for all natural or adoptive parents, guardians, and

custodians of the minor is filed, the Court generally will not require a hearing and will dispense with notice pursuant to R.C. 2717.14(A).

- (2) When an application is made on behalf of a minor and all consents are not filed, notice of the hearing shall be given by the Court to the parties not consenting by certified mail/ commercial carrier, return receipt requested, pursuant to R.C. 2717.14(A), or as the Court may otherwise direct, pursuant to Civ.R. 73(E).
 - (3) If there is no known father of the minor, the notice shall be given to the person who the mother of the minor alleges to be the father by certified mail/ commercial carrier, return receipt requested, pursuant to R.C. 2717.14(B), or as the Court may otherwise direct, pursuant to Civ.R. 73(E).
 - (4) If the address of any party is unknown, the applicant must file Affidavit -Search for Address (Mont. Co. P.C.F. 110) for each party whose address is unknown. Upon receipt of the Affidavit, the Court shall give notice by publication pursuant to R.C. 2717.14(C).
 - (5) If no father is alleged on the Application for Change of Name of Minor, the Court shall give notice by publication pursuant to R.C. 2717.14(C).
 - (6) If the Court requires a hearing, the Court will determine the manner, scope, and content of the hearing.
- (D) Contested Name Change of Minor Evidentiary Hearing.** When a hearing is required because all consents are not received, any party whose consent is necessary may contest the change of name of minor prior to or at the hearing. If the party contests the change of name of minor at the hearing, then an evidentiary hearing shall be scheduled.

LOCAL RULE 78.4.3
ADULT NAME CONFORMITY PROCEEDINGS

This Rule governs adult name change proceedings under R.C. Chapter 2717.

(A) Eligibility. Pursuant to R.C. 2717.04 and R.C. 2717.05, an applicant for name conformity must file an Application and Affidavit to Conform Legal Name of Adult (Mont Co. P.C.F. 21.7) affirming that:

- (1) The applicant has been a bona fide resident of the county for at least sixty (60) days prior to the filing of the application;
- (2) The application explains the misspelling, inconsistency, or other error in the name and provides a description of the correction sought to conform the name on all official identity documents;
- (3) The application is not made for the purpose of evading any creditors or other obligations;
- (4) If applicant has a duty to comply with section 2950.04 or 2950.041 of the Revised Code because the applicant has been convicted of, pleaded guilty to, or, as a minor, been adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense, then the conforming name requested is the registered name; and
- (5) All documentary evidence submitted with the application is true and complete.

(B) Documentation Requirements on Adult Name Conformity Proceedings. An applicant seeking to conform a legal name must provide photocopies of all official identity documents relating to the applicant including:

- (1) Certified copy of the birth certificate (most recent and/or updated certified copy);
- (2) Valid driver's license or state issued identification card, if any;
- (3) Marriage record, if any;
- (4) Divorce decree, if any;
- (5) Passport, if any;
- (6) The document(s) containing the misspelling, inconsistency, or other error in the name; and
- (7) Any other documents the Court deems relevant to the application.

(C) Hearings on Adult Name Conformity Proceedings. Generally, the Court will not require a hearing on an adult name conformity proceeding. If no hearing is required, the Court will also dispense with notice requirements pursuant to R.C. 2717.08. The Court may require a hearing and 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 hearing, the Court will determine the manner, scope, and content of the hearing.

LOCAL RULE 78.4.4
MINOR NAME CONFORMITY PROCEEDINGS

This Rule governs minor name conformity proceedings under R.C. Chapter 2717.

(A) Eligibility. Pursuant to R.C. 2717.04, R.C. 2717.05 and R.C. 2717.13, an applicant for minor name conformity must file an Application to Conform Legal Name of Minor (Mont Co. P.C.F. 21.9) affirming that:

- (1) The minor has been a bona fide resident of the county for at least sixty (60) days prior to the filing of the application;
- (2) The application explains the misspelling, inconsistency, or other error in the name and provides a description of the correction sought to conform the name on all official identity documents;
- (3) The application is not made for the purpose of evading any creditors or other obligations;
- (4) If the minor has a duty to comply with section 2950.04 or 2950.041 of the Revised Code because the minor has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense, then the conforming name requested is the registered name; and
- (5) All documentary evidence submitted with the application is true and complete.

(B) Documentation Requirements on Minor Name Conformity Proceedings. An applicant seeking to conform a legal name for a minor must provide photocopies of all official identity documents relating to the adult applicant and minor including:

- (1) Certified copy of the minor's birth certificate (most recent and/or updated certified copy);
- (2) Minor's driver's license or state issued identification card, if any;
- (3) Applicant's driver's license or state issued identification card, if any;
- (4) Certified copy of the death certificate of a parent or parent(s), if applicable;
- (5) Passport, if any;
- (6) The document(s) containing the misspelling, inconsistency, or other error in the name; and
- (7) Any other documents the Court deems relevant to the application.

(C) Hearings on Minor Name Conformity Proceedings.

- (1) In uncontested name change proceedings for a minor, in which Consent to Conformity of Name (Minor) (Mont. Co. P.C.F. 21.9) for all natural or adoptive parents, guardians,

and custodians of the minor is filed,) the Court generally will not require a hearing and will dispense with notice pursuant to R.C. 2717.14(A).

- (2) When an application is made on behalf of a minor and all consents are not filed, notice of the hearing shall be given by the Court to the parties not consenting by certified mail/ commercial carrier, return receipt requested, pursuant to R.C. 2717.14(A), or as the Court may otherwise direct, pursuant to Civ. R. 73(E).
 - (3) If there is no known father of the minor, the notice shall be given to the person who the mother of the minor alleges to be the father by certified mail/ commercial carrier, return receipt requested, pursuant to R.C. 2717.14(B), or as the Court may otherwise direct, pursuant to Civ. R. 73(E).
 - (4) If the address of any party is unknown, the applicant must file Affidavit -Search for Address (Mont. Co. P.C.F. 110) for each party whose address is unknown. Upon receipt of the Affidavit, the Court shall give notice by publication pursuant to R.C. 2717.14(C).
 - (5) If no father is alleged on the Application to Conform Legal Name of Minor, the Court shall give notice by publication pursuant to R.C. 2717.14(C).
 - (6) If the Court requires a hearing, the Court will determine the manner, scope, and content of the hearing.
- (D) Contested Name Conformity of Minor Evidentiary Hearing.** When a hearing is held because all consents are not received, any party whose consent is necessary may contest the name conformity of minor prior to or at the hearing. If the party shall contest the name conformity of minor at the hearing, then an evidentiary hearing shall be scheduled.

LOCAL RULE 78.4.5
DELAYED REGISTRATION OF ADULT BIRTH

This Rule governs delayed registration of adult birth proceedings under R.C. Chapter 3705.

- (A) **Eligibility.** Pursuant to R.C. 3705.15, a person born in the state of Ohio may file an Application for Registration of Birth (Form HEA 2782) with the probate court for the county in which the person was born, or in which the person's mother resided at the time of the person's birth, or in the county where the person currently resides. A registration proceeding is for a person whose registration of birth is not recorded or has been lost or destroyed.
- (B) **Documentation Requirements for Delayed Registration of Adult Birth Proceedings.** An applicant seeking to register an unrecorded birth must provide photocopies of all official identity documents relating to the adult applicant including:
- (1) Applicant's driver's license or state issued identification card, if any;
 - (2) A "No Record" letter from the Ohio Department of Health regarding birth certificate; and
 - (3) An affidavit signed by the attending physician or certified midwife, or at least two adults at least seven (7) years older than applicant who have personal knowledge of applicant's birth.
 - (4) In addition, an applicant seeking to register an unrecorded birth must provide photocopies of all available supporting documents with the application but no less than four (4) valid documents for each of the following pieces of information needed on a birth certificate: date of birth, location of birth, and parent's names. Social security numbers and account numbers should be redacted on all documents submitted to protect the personally identifiable information of the applicant. The following are examples of documentary evidence:
 - (a) Baptismal Record or Hospital Record;
 - (b) DD214 (military discharge);
 - (c) Insurance Policies which show the date of birth;
 - (d) Certified copy of Marriage Application;
 - (e) Certified copy of School Records (this can be obtained from the Board of Education);
 - (f) Family Bible or Church Records;
 - (g) Voter Registration;
 - (h) Medicare/Medicaid Application;
 - (i) Social Security Application;
 - (j) Income Tax Records (IRS);
 - (k) Bank Account Records;
 - (l) Obituaries of Family Members;
 - (m) Children's Birth Records;
 - (n) Federal Census Records; or
 - (o) Any other documents the Court deems relevant to the application.

(C) Notice and Hearing Requirements.

(1) Generally, for delayed registration of an adult birth, the Court dispenses with a hearing. The Court may require a hearing if there are irregularities or issues with the official identity documents or supporting documents. If hearing is required, it shall not be less than seven days after the filing date.

(2) If the Court determines a hearing is necessary, the Court may require publication of notice of hearing in a newspaper of general circulation in the county at least seven days prior to the date of the hearing.

(D) Vital Statistics. The Judge, if satisfied that the facts are as stated, shall make an order registering the birth. If supported by sufficient evidence, the Court will serve a certified copy of a Finding and Order Establishing Registration of Birth (HEA 2745) to the Ohio Department of Health's Bureau of Vital Statistics.

(E) Birth Certificate. To obtain the birth certificate, the applicant must send Application for Certified Copies (HEA 2709) to the Ohio Department of Health. Information regarding the form can be found at on the Ohio Department of Health's website at <https://odh.ohio.gov/know-our-programs/vital-statistics/resources/VS-ApplicationforCertifiedCopies>.

LOCAL RULE 78.4.6
DELAYED REGISTRATION OF MINOR BIRTH

This Rule governs delayed registration of minor birth proceedings under R.C. Chapter 3705.

(A) Eligibility. Pursuant to R.C. 3705.15, a parent or guardian for a minor born in the state of Ohio may file Application and Affidavit for Registration of Birth (Form HEA 2782) with the probate court for the county in which the minor was born, or in which the minor's mother resided at the time of the minor's birth, or in the county where the minor currently resides. A registration proceeding is for a person whose registration of birth is not recorded or has been lost or destroyed.

(B) Documentation Requirements for Delayed Registration of Minor Birth Proceedings. An applicant seeking to register an unrecorded birth of a minor must provide photocopies of all official identity documents relating to the adult applicant and minor including:

- (1) Applicant's driver's license or state issued identification card, if any;
- (2) A "No Record" letter from the Ohio Department of Health regarding minor's birth certificate;
- (3) An affidavit signed by the attending physician or certified midwife, or at least two adults at least seven (7) years older than minor who have personal knowledge of minor's birth.
- (4) In addition, an applicant seeking to register an unrecorded minor birth must provide photocopies of all available supporting documents with the application but no less than three (3) valid documents for each of the following pieces of information on the birth certificate: date of birth, place of birth, and parent's names. Social security numbers and account numbers should be redacted on all documents submitted to protect the personally identifiable information of the applicant and minor. The following are examples of documentary evidence:
 - (a) Baptismal Record or Hospital Record;
 - (b) Insurance Policies which show the date of birth;
 - (c) Certified copy of School Records (this can be obtained from the Board of Education);
 - (d) Family Bible or Church Records;
 - (e) Medicare/Medicaid Application;
 - (f) Social Security Application;
 - (g) Income Tax Records (IRS);
 - (h) Bank Account Records
 - (i) Obituaries of Family Members;
 - (j) Federal Census Records; or
 - (k) Any other documents the Court deems relevant to the application.

(C) Notice and Hearing Requirements.

- (1) Generally, for registration of a delayed registration of a minor birth proceeding, the Court dispenses with a hearing. The Court may require a hearing if there are irregularities or issues with the official identity documents or supporting documents.

If hearing is required, it shall not be less than seven days after the filing date.

- (2) If the Court determines a hearing is necessary, the Court may require publication of notice of hearing in a newspaper of general circulation in the county at least seven days prior to the date of the hearing.
- (4) **Vital Statistics.** The Judge, if satisfied that the facts are as stated, shall make an order registering the birth. If supported by sufficient evidence, the Court will serve a certified copy of a Finding and Order Establishing Registration of Birth (HEA 2745) to the Ohio Department of Health's Bureau of Vital Statistics.
- (5) **Birth Certificate.** To obtain the birth certificate, the applicant must send Application for Certified Copies (HEA 2709) to the Ohio Department of Health. Information regarding the form can be found at on the Ohio Department of Health's website at <https://odh.ohio.gov/know-our-programs/vital-statistics/resources/VS-ApplicationforCertifiedCopies>.

LOCAL RULE 78.4.7
CORRECTION OF ADULT BIRTH RECORD

This Rule governs correction of adult birth record proceedings under R.C. Chapter 3705.

(A) Eligibility. Pursuant to R.C. 3705.15, a person born in the state of Ohio may file an Application for Correction of Birth Record (Form HEA 2783) with the probate court for the county in which the person was born, or in which the person's mother resided at the time of the person's birth, or in the county where the person currently resides. A birth record correction corrects the birth certificate. Corrections may include time, place, or date of birth, one or more misspellings on the birth certificate, parents' places of birth, etc.

(B) Documentation Requirements for Adult Birth Certificate Correction Proceedings. An applicant seeking to correct a birth certificate must provide the following documents relating to the adult applicant with the application:

- (1) Certified copy of the birth certificate (most recent and/or updated certified copy);
- (2) Applicant's driver's license or state issued identification card, if any;
- (3) An affidavit signed by the attending physician or certified midwife, or at least two adults at least seven (7) years older than applicant who have personal knowledge of applicant's birth.
- (4) In addition, an applicant seeking to correct a birth record must provide photocopies of all available supporting documents with the application but no less than three (3) valid documents for each requested correction. Social security numbers and account numbers should be redacted on all documents submitted to protect the personally identifiable information of the applicant. The following are examples of documentary evidence:
 - (a) Baptismal Record of Hospital Record;
 - (b) DD214 (military discharge);
 - (c) Insurance Policies which show the date of birth;
 - (d) Certified copy of Marriage Application;
 - (e) Certified copy of School Records (this can be obtained from the Board of Education);
 - (f) Family Bible or Church Records;
 - (g) Voter Registration;
 - (h) Medicare/Medicaid Application;
 - (i) Social Security Application;
 - (j) Income Tax Records (IRS);
 - (k) Bank Account Records
 - (l) Obituaries of Family Members;
 - (m) Children's Birth Records;

- (n) Federal Census Records; or
- (o) Any other documents the Court deems relevant to the application.

(C) Notice and Hearing Requirements.

- (1) Generally, for correction of adult birth record proceedings, the Court dispenses with a hearing. The Court may require a hearing if there are irregularities or issues with the official identity documents or supporting documents. If hearing is required, it shall not be less than seven days after the filing date.
- (2) If the Court determines a hearing is necessary, the Court may require publication of notice of hearing in a newspaper of general circulation in the county at least seven days prior to the date of the hearing.

(D) Vital Statistics.

- (1) The Judge, if satisfied that the facts are as stated, shall make an order correcting the birth record. The Court will serve a certified copy of Correction of Birth Record (HEA 2783) to the Ohio Department of Health's Bureau of Vital Statistics.
- (2) 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.

(E) Birth Certificate. To obtain the new birth certificate, the applicant must send Application for Certified Copies (HEA 2709) to the Ohio Department of Health along with a certified copy of the Court Order. Information regarding the form can be found at on the Ohio Department of Health's website at <https://odh.ohio.gov/know-our-programs/vital-statistics/resources/VS-ApplicationforCertifiedCopies>.

LOCAL RULE 78.4.8
CORRECTION OF MINOR BIRTH RECORD

This Rule governs correction of minor birth record proceedings under R.C. Chapter 3705.

- (A) Eligibility.** Pursuant to R.C. 3705.15, a parent or guardian for a minor born in the state of Ohio may file an Application for Correction of Birth Record (From HEA 2783) with the probate court for the county in which the person was born, or in which the person's mother resided at the time of the person's birth, or in the county where the person currently resides. A birth record correction corrects the birth certificate. Corrections may include time, place, or date of birth, one or more misspellings on the birth certificate, parents' places of birth, etc. A father's name cannot be added or deleted from a birth certificate through the Court.
- (B) Documentation Requirements for Minor Birth Certificate Correction Proceedings.** An applicant seeking to register an unrecorded birth of a minor must provide the following documents relating to the adult applicant and minor with the application:
- (1)** Applicant's driver's license or state issued identification card, if any;
 - (2)** Certified copy of the minor's birth certificate (most recent and/or updated certified copy);
 - (3)** An affidavit signed by the attending physician or certified midwife, or at least two adults at least seven (7) years older than minor who have personal knowledge of minor's birth.
 - (4)** In addition, an applicant seeking to correct a minor birth record must provide photocopies of all available supporting documents with the application but no less than three (3) valid documents for each requested correction. The following are examples of documentary evidence:
 - (a)** Baptismal Record or Hospital Record;
 - (b)** Insurance Policies which show the date of birth;
 - (c)** Certified copy of School Records (this can be obtained from the Board of Education);
 - (d)** Family Bible or Church Records;
 - (e)** Medicare/Medicaid Application;
 - (f)** Social Security Application;
 - (g)** Income Tax Records (IRS);
 - (h)** Bank Account Records;

- (i) Obituaries of Family Members;
- (j) Federal Census Records; or
- (k) Any other documents the Court deems relevant to the application.

(C) Notice and Hearing Requirements.

- (1) Generally, for correction of minor birth record proceedings, the Court dispenses with a hearing. The Court may require a hearing if there are irregularities or issues with the official identity documents or supporting documents. If hearing is required, it shall not be less than seven days after the filing date.
- (2) If the Court determines a hearing is necessary, the Court may require publication of notice of hearing in a newspaper of general circulation in the county at least seven days prior to the date of the hearing.

(D) Vital Statistics.

- (1) The Judge, if satisfied that the facts are as stated, shall make an order correcting the birth record. The Court will serve a certified copy of HEA 2783 to the Ohio Department of Health's Bureau of Vital Statistics.
- (2) 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. The Court will serve a certified copy of HEA 2783 to the Ohio Department of Health's Bureau of Vital Statistics.

(E) Birth Certificate. To obtain the new birth certificate, the applicant must send Application for Certified Copies (HEA 2709) to the Ohio Department of Health along with a certified copy of the Court Order. Information regarding the form can be found at on the Ohio Department of Health's website at <https://odh.ohio.gov/know-our-programs/vital-statistics/resources/VS-ApplicationforCertifiedCopies>.

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.

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: \$ _____

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: _____

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: \$ _____

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: \$ _____

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.**