# COURT OF COMMON PLEAS
# PROBATE DIVISION
# CLERMONT COUNTY, OHIO

JAMES A. SHRIVER, JUDGE

MELISSA A. MARCIN, MAGISTRATE
2379 Clermont Center Drive
Batavia, Ohio 45103

LOCAL RULES

**Effective November 1, 2021**

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**RULE 8.1 Appointed Counsel**

(A) The Court shall maintain a list of attorneys willing to accept appointments for Probate Court cases. The Court appointment list shall consist of the following individuals: (1) attorneys who will represent indigent wards in guardianship and adult protective cases; (2) attorneys who will serve as counsel for individuals alleged to be mentally ill; (3) attorneys who will represent indigent parents in adoption cases where parental consent is voluntary or alleged to be not required and (4) attorneys who are willing to represent indigent individuals where representation is required by the Ohio Constitution, Ohio Law, Rule of Court or otherwise deemed necessary by the inherent authority of the Court.

(B) Attorneys desiring to be placed on the appointment list shall submit a written request along with a certificate of good standing directed to the Administrative Assistant to the Judge. The letter shall set forth the skills, expertise, types of prior cases handled, educational training and experience of the attorney and the types of cases for which appointment is sought. Proof of education and training shall be provided by December 31st of each year thereafter. Failure to submit proof of continuing education and training will result in removal of the attorney from the appointment list. An attorney may request removal from the appointment list by submitting a written request directed to the Administrative Assistance to the Judge.

(C) The Court shall maintain an individual file for each appointed counsel. Attorneys will be assigned on a rotating basis from the graduated list that pairs the seriousness, complexity, and type of case with the qualifications and experience of the person to be appointed. Appointments shall take into account all of the following:

(1) The anticipated complexity of the case in which appointment will be made;

(2) Any educational, mental health, language, or other challenges facing the party for whom the appointment is made;

(3) The relevant experience of those persons available to accept the appointment, including proficiency in a foreign language, familiarity with mental health issues, and scientific or other evidence issues;

(4) The avoidance of conflicts of interest or other situations that may potentially delay timely completion of the case;

(5) Intangible factors, including the court or judicial officers view of a potential appointee's commitment to providing timely, cost-effective, quality representation to each prospective client.

The attorney who accepts an appointment may be required to provide a list of trial experience, including the county, court, case name and number, and whether the case was a jury trial or bench trial upon request of the court at any time.

(D) The Administrative Assistant to the Judge will review the number of appointments for each counsel twice per year. The equitable appointment of counsel shall be determined by type of case and shall not be aggregated from all types of cases.

(E) Rates of compensation for appointed counsel shall be as determined from time to time by the Court at the rates that are established by the Board of Clermont County Commissioners for representation of indigent defendants. In addition, necessary and reasonable expenses may be allowed for such items as expert witness fees, long distance telephone calls, photocopying, and certain travel expenses, so long as prior approval of the Judge is obtained. The Court will not allow for any fixed office overhead expenses, Court transcripts or depositions, except as provided by law. Expenses shall be submitted within 10 days of the final disposition in the case and shall be submitted on the attorney's letterhead. Failure to file the expense report within 30 days will result in no payment.

(F) Requests for extraordinary fees must be made by written motion and should be submitted with supporting information, including all regular billing documents. An award for extraordinary fees will be made only with the approval of the Court.

(G) This rule shall not apply to appointments made for guardian ad litems, guardians, conservators, mediators, investigators, special master commissioners, psychologists, interpreters, or other experts in a case following independent formal or informal recommendations to the court or judicial officer by the litigants.

**Rule 11.1 RECORD OF PROCEEDINGS**

The Court records all hearings electronically. Any party, at that party's own expense, may provide a court reporter. The audio-electronic recording shall be the official record.

A transcription of the record shall be made at the expense of the person requesting such transcription unless otherwise ordered by the Court. The transcription shall be made by an agent of the Court. The agent shall charge the customary fee charged by a private reporter for services in Clermont County for such transcription or as otherwise provided for by Clermont County Common Pleas Local Rule. Transcripts will be released upon payment of the transcription fee. Failure to timely pay the fee may result in sanctions being imposed by the Court.

The original recording shall be maintained by the Court for a period of 1 year from journalization of the final entry or judgment in the case. However, if a written request for transcription has been made, the original recording shall become part of the record of proceedings.

**Rule 51.1 STANDARD PROBATE FORMS**

The applicable Standard Probate Forms provided by this Court shall be used for all filings in this Court, except that computer-generated forms may be used subject to the limitations in Rule 52.1.

**Rule 52.1 SPECIFICATIONS FOR PRINTING PROBATE FORMS (Computer-Generated Forms)**

This Court may accept computer-generated forms created by third party providers, forms as adopted by this Court, or forms prepared by lawyers or others, provided the following conditions are met:

A. Such forms shall be in the same format as those provided by this Court.

B. The individual presenting forms to this Court shall be responsible to ensure that such forms are in full compliance with the Rules of Superintendence and the Local Rules of this Court.

C. All printed material shall be in the same words, sequence and location on the page as the standard probate form. In the case of multiple page forms or two-sided forms, the printed material shall be on the same side or same page as the Standard Probate Form. Any interlineated information shall be in typeface or written legibly in ink.

D. The Court may reject forms that deviate from the format of the Standard Probate Forms provided by this Court. Such forms may be rejected prior to filing or stricken from the record upon discovery.

**Rule 53.1 HOURS OF THE COURT**

This Court and its offices at 2379 Clermont Center Drive, Batavia, OH 45103, shall be open for the transaction of business from 8:00 am to 4:00 pm daily, except Saturday, Sunday and legal holidays.

**Rule 54.1 COURT SECURITY PLAN**

This Court has developed and implemented a court security plan to help maintain the safety of those using the Court's facilities.

**Rule 55.1 PROBATE FILES**

No Probate Court file shall be removed from the Court.

**Rule 56 CONTINUANCES**

Motions for continuance shall be submitted in writing with the proper caption and case number at least seven days in advance of the hearing. Except on motion of the Court, no continuance shall be granted in the absence of proof of reasonable notice to, or consent by, the adverse party or the party's counsel. Failure to object to the continuance within a reasonable time after receiving notice shall be considered consent to the continuance. A proposed entry shall be filed with a motion for continuance, leaving the time and date blank for the court to set a new date.

**Rule 57.1 MOTIONS AND ENTRIES**

All motions shall be accompanied by a supporting memorandum. The memorandum shall include a brief statement of the grounds for the motion, with citations to authorities relied upon, and proof of service in accordance with Civil Rule 5. Depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence and written stipulations of fact to support or oppose a motion for summary judgment shall be filed separately with the Clerk or attached to the motion or memorandum with appropriate reference in the caption.

Except for good cause, all motions shall be set for oral argument and shall be accompanied by an entry setting the motion for hearing. The moving party shall consult with opposing counsel to set a hearing date that is mutually agreeable. In the absence of an agreed hearing date, the Court shall set a date for the hearing.

All entries and orders presented to the Court for approval should include the date of the hearing, the names of those present, and the specific motion or application heard by the Court on that date. The caption of all entries and orders presented to the Court for approval shall state the subject matter of the Court's decision with reasonable specificity.

All filings, entries and orders which bear an endorsement of counsel per telephone or electronic authorization shall state the date of said authorization and shall also contain a certificate of service by the attorney who obtained authorization that a copy of the filing, entry or order has been delivered to the consenting counsel.

All pleadings, motions, applications and other filings presented to the Court shall be correctly captioned and shall either be in typeface or written legibly in ink. All pleadings filed by an attorney shall be typed. Applicants appearing pro se are encouraged to type all filings. Any information interlineated on pleadings, motions, applications and other filings shall be in typeface or written legibly in ink.

The Court reserves the right to reject or strike any pleadings in which the text or the signatures are illegible.

Application for leave to withdraw as counsel shall be made by written motion filed with the Court, with copies served upon the fiduciary and all other attorneys or parties of record in accordance with Civil Rule 73. If such Application is granted and the fiduciary does not appear at such hearing, the withdrawing attorney shall notify such fiduciary or other party in accordance with Civil Rule 73. Proof of compliance with Civil Rule 73 shall be filed with the Court.

**Rule 57.2 MOTIONS TO RESTRICT PUBLIC ACCESS TO INFORMATION CONTAINED WITHIN COURT RECORDS**

A request to restrict public access to information contained within a court record shall be made by written motion. If the motion is filed simultaneously with the information that is the subject of the motion, then the subject information shall be restricted from public access pending the Court's ruling on the motion. If the motion is filed after the filing of the information that is the subject of the motion, then the subject information shall remain open to the public pending the Court's ruling on the motion.

Any party to a judicial action or proceeding or other person who is the subject of

information in a case document may, by written motion to the court, request that the court restrict public access to the information or, if necessary, the entire document. Additionally, the court may restrict public access to the information in the case document or, if necessary, the entire document upon its own order. The court shall give notice of the motion or order to all parties in the case. The court may schedule a hearing on the motion. If a hearing is scheduled, the filing party shall complete a "Written Request for Service" (Form 200.47) that lists the names and addresses of all persons who are to receive service of the motion. Notice shall be served via certified mail.

A court shall restrict public access to information in a case document or, if necessary, the entire document, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering each of the following:

(a) Whether public policy is served by restricting public access;

(b) Whether any state, federal, or common law exempts the document or information from public access;

(c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interest, proprietary business information, public safety, and fairness of the adjudicatory process.

When restricting public access to a case document or information in a case document pursuant to this division, the court shall use the least restrictive means available, including but not limited to the following:

(a) Redacting the information rather than limiting public access to the entire document;

(b) Restricting remote access to either the document or the information while maintaining its direct access;

(c) Restricting public access to either the document or the information for a specific period of time;

(d) Using a generic title or description for the document or the information in a case management system or register of actions;

(e) Using initials or other identifier for the parties' proper names.

If a court orders the redaction of information in a case document pursuant to this division, a redacted version of the document shall be filed in the case file along with a copy of the court's order. If a court orders that the entire case document be restricted from public access, a copy of the court's order shall be filed in the case file. A journal entry shall reflect the court's order. Case documents ordered restricted from public access or information in documents ordered redacted shall not be available for public

access and shall be maintained separately in the case file.

For purposes of public access to Court records, the Court manages its paper file the same as its electronic file. Generally, the Court will not restrict access to one such file-type without restricting access to the other.

**Rule 57.3 MOTIONS TO OBTAIN ACCESS TO INFORMATION CONTAINED WITHIN COURT RECORDS THAT HAVE BEEN GRANTED RESTRICTED PUBLIC ACCESS**

Any person, by written motion to the court, may request access to a case document or information in a case document that has been granted restricted public access pursuant to division 57.2 of these rules. The Court shall give notice of the motion to all parties in the case and, where possible, to the non-party person who requested that public access be restricted. The Court may schedule a hearing on the motion. If a hearing is scheduled, the filing party shall complete a "Written Request for Service" (Form 200.47) that lists the names and addresses of all persons who are to receive service of the motion. Notice shall be served via certified mail.

A court may permit public access to a case document or information in a case document if it finds by clear and convincing evidence that the presumption of allowing public access is no longer outweighed by a higher interest. When making this determination, the court shall consider whether the original reason for the restriction of public access to the case document or information in the case document pursuant to division 57.2 of these rules no longer exists or is no longer applicable and whether any new circumstances, as set forth in that division, have arisen which would require the restriction of public access.

The information that has been granted restricted public access that is the subject of the motion will remain under seal pending the Court's ruling on the motion.

If the motion is granted, the Court shall release only the specific information that warrants release and shall keep the remainder under restricted public access.

**Rule 57.4 FILINGS BY MAIL**

Pleadings and applications which commence proceedings and for which the Court must collect an initial case deposit against costs, and all estate tax returns, must be filed in person.

Pleadings, motions, applications and other filings as set forth below may be filed with the Court by U.S. Mail or other delivery services subject to the conditions set forth by the Local Rules or by the Court. If there is a deficiency in the proposed pleadings, motions, applications, filings or payment of costs, such items will be returned to the sender without being filed.

A. Decedent's Estates

- Attorney Fee Applications; Consents and Waivers of Notice of Hearing
- Appointments of Appraisers
- Applications to Transfer Motor Vehicles;
- Applications for Certificates of Transfer; Entries approving

such Applications; Proposed Certificates of Transfer

- Claims against the Estate
- Exceptions to Inventories and Accounts
- Consents to Sell Real Estate with Waiver of Bond
- Fiduciary Bonds
- Motions and Entries setting such Motions for hearing
- Suggestions of Death
- Affidavits and Entries Finding that a Person is One and the Same
- Notification of Change of Address
- Initial Application to Extend Time of Administration
- Status Reports
- Estate Tax Form 22 where no Ohio estate tax return is required

B. Guardianships

- Inventories and Amended Inventories
- Applications to Release Funds
- Guardian's Reports Expert Evaluations
- Attorney Fee Applications
- Guardian Fee Applications
- Guardian Bonds
- Notifications of Change of Address
- Motions and Entries setting such Motions for hearing

C. Trusts

- Lists of Beneficiaries
- Attorney Fee Applications
- Trustee Fee Applications
- Trustee Bonds
- Inventory and Amended Inventories
- Notifications of Change of Address
- Motions and Entries setting such Motions for hearing
- Requests for Notification

D. Adoptions; Because adoption proceedings are sealed by statute, subject to the conditions as set forth in this Local Rule, the Court will accept the following filings relating to adoptions through the U.S. Mail or other delivery services provided that the pleadings are sealed in an envelope, that is prominently labeled "ADOPTION ² FILE UNDER SEAL":

- Home Studies
- Pre-Finalization Reports
- Proofs of Service of Notice
- Petitioners Final Account
- Petitions for Identifying Information
- Social and Medical History Updates

If a file-stamped copy of the pleadings, motions, applications and other filings is desired to be returned to the sender, a copy of such pleadings and a self-addressed, postage pre-paid envelope must be enclosed.

Any pleading, motion, application or other filing which is to be set for hearing must be accompanied by the appropriate entry setting the matter for hearing. The Court will set such

matters for hearing at its sole discretion. A proposed entry for the Court's consideration must accompany any pleading, motion, application or other filing that requires an entry.

**Rule 57.5 FACSIMILE FILING**

Documents may be eligible for submission by facsimile filing. This rule does not authorize filings by any other electronic means.

A. Prohibitions – Documents intended for the following purposes will not be accepted for facsimile filing:
   1. To commence a proceeding or file a pleading that requires service of summons to follow;
   2. To deposit a will or to file a will or trust; to deposit for safekeeping an instrument or power of attorney nominating a guardian;
   3. To tender a surety bond;
   4. To file an account;
   5. To file an estate tax form, other than the ET Form 22;
   6. To obtain a Certificate of Transfer of Real Estate;
   7. To adopt a minor;
   8. To obtain an Application for Sale or Transfer of a Motor Vehicle;
   9. To make any filing for which a filing by mail is prohibited under R.C. 2109.021;
   10. To make any filing when the cost deposit is insufficient to cover the costs of the filing; and/or
   11. Documents requiring original signatures of persons other than the attorneys.

B. Original Filing:
   1. A document submitted by fax shall be accepted as the effective original filing. While the person making the fax filing NEED NOT file any source document with the Court, the filer must maintain the source document filed by fax with original signatures as otherwise required under the applicable rules, together with the source copy of the facsimile cover sheet used for the particular filing. The source document filed by fax shall be maintained by the person making the filing until the case is closed and all opportunities for post judgment relief are exhausted. These documents shall be maintained and made available for production upon request of the Court.

C. Definitions:
   1. A “facsimile transmission” means a transmission of a source document by a facsimile machine that encodes a document into optical or electrical signals, transmits, and reconstructs the signals to print a duplicate of the source document at the receiving end.
   2. A “facsimile machine” means a machine that can send and receive a facsimile transmission.
   3. “Fax” is an abbreviation for “facsimile” and refers, as indicated by the context to facsimile transmission or to the document so transmitted.

D. Cover Page:

1. The person sending the fax shall also provide a cover page containing the following information: name of the court; title of the case; the case number; the title of the documents submitted; the date of transmission; the transmitting telephone number; an indication of the number of pages including the cover page; the name, address, telephone number, fax number, Supreme Court registration number of counsel, if applicable; and the email address of the person filing the fax document, if available.
2. A document sent to the Court by fax without a cover page may, in the Court's discretion, be entered in the Case Docket and filed, or deposited in a file of failed faxed document with a notation of the reason for the failure, in which instance, the document will not be considered as filed with the Court.
3. The Court is not required to send any form of notice to the sending party of a failed fax filing. However, if practicable, the Court may inform the sending party of a failed or rejected fax filing. If the document had been served upon other parties by the sender, the sender shall notify the parties served that the filing was rejected or failed.

E. Signature:

A party who wishes to file a signed source document shall either fax a copy of the signed source document, or a fax copy of the document without the signature but with the notation "/s/" followed by the name of the signing person where the signature appears in the signed source document. A party who files a signed document by fax is representing that the physically signed source document is in the possession/control of the sender.

F. Exhibits:

Each exhibit to a fax-produced document that cannot be accurately transmitted via fax for any reason must be replaced by an insert page that describes the exhibit and explains why it is missing. Unless the Court otherwise orders, the missing exhibit shall be filed with the Court, as a separate document, not later than five (5) court days following the filing of the fax document. Failure to file the missing exhibit as required may result in the Court striking the document or exhibit.

Any hard copy exhibit filed in this manner shall be attached to a cover sheet containing the case heading, case number, the filer's identification information, and be titled as the party's "Notice of Filing of Exhibit XX to the _____" (identify the filing in which the exhibit was omitted) and shall be served on the other parties in accordance with the Civil Rules.

G. Time of Filing:

1. Subject to the provisions of these rules, all documents sent by fax and accepted by the Court shall be considered filed with the Court as of the date the Court file-stamps the document received, as opposed to the date and time of the fax transmission. The Court is deemed open to receive facsimile

transmissions of documents on the same days and same times the Court is regularly open for business.

2. Fax filings may only be transmitted directly through the facsimile equipment operated by the Court on telephone number (513) 732-8183. The Court's facsimile machine operates seven (7) days a week and twenty-four (24) hours a day, including holidays. The Court will not acknowledge receipt of a fax filing. The risks of transmitting a document by fax to the Court shall be borne by the sending party. Anyone using facsimile filing is urged to verify receipt of filing by the Court through whatever technological means are available.
3. No document filed by fax that requires a filing fee shall be accepted by the Court for filing unless sufficient funds on deposit to cover the filing fee and Court cost. No additional fee shall be assessed because the filing is made by fax.

H. Page Limit on facsimile filings:
Facsimile filings shall not exceed fifteen (15) pages in length including cover page. Each fling must relate to a single case and all filings must conform to Civ. R. 10, Civ. R. 11, and unless clearly not applicable Civ. R. 57 and Civ. R. 73.

**Rule 57.6 CURRENT ADDRESS**

When an address is required on a Court filing for an attorney or fiduciary, the address must include a current street address and, if applicable, may include any post office box numbers used as a mailing address. The address of an attorney fiduciary or non-attorney fiduciary must be the fiduciary's legal residence. The Court must be notified in writing of a change in a required address within 30 days of the change occurring. A Notice of Change of Address form may be filed to report a change of address. Reasonable diligence shall be exercised to obtain the complete street addresses of the surviving spouse, children, next of kin, legatees and devisees, as applicable to the particular filing.

**Rule 57.7 ELECTRONIC RETURN RECEIPT**

Electronic Proof of Service for certified mail or express mail provided to the Court through the United States Postal Service electronic return receipt program shall be deemed adequate evidence of service in accordance with the service requirements of Civ. R. 73 and Civ. R. 4.0 through 4.6.

**Rule 57.8 OMISSION OF PERSONAL IDENTIFIERS**

All documents submitted to the court for filing shall omit personal identifiers from the documents and comply with Sup.R. 44 and Sup.R. 45.

**Rule 58.1 COURT COSTS**

Deposits ordinarily shall be required upon the initial filing of any action or proceeding. The deposit may be applied as filings occur and additional deposits may be required. The Court shall maintain and make available a current list of costs. The Court accepts only the following methods of payment of court costs: (1) Cash, (2) Money Order and Cashier's Checks, (3) Law Firm

Checks and (4) Fiduciary Account Checks.

All pre-paid but unearned costs $100.00 or less upon final disposition of the case shall automatically be refunded to the fiduciary as part of the fiduciary fee or applicant in non-estate case types. If the case balance is over $100.00, those funds shall be distributed as any other estate asset. The estate attorney shall check with the Court to determine the projected balance of costs prior to final distribution.

**Rule 58.2 WITNESS FEES**

Upon the filing of a praecipe for subpoena of witnesses, the party shall deposit for each witness an amount sufficient to pay the witness fee as prescribed by law.

**Rule 59.1 WILLS**

Before an application is made to admit a will to probate, to appoint an estate Fiduciary, or to relieve an estate from administration, each applicant or the applicant's attorney shall examine the records of the Probate Court of Wills deposited pursuant to R.C. §2107.07.

If a will presented to probate contains alterations, interlineations or extraneous markings, the admission of the will may be set for hearing pursuant to R.C. §2107.26.

All persons listed on Form 1.0 whose addresses are known shall be given Notice of Probate of Will by certified mail unless such notice is waived. The fiduciary or other person specified in R.C. §2107.19(A)(4) shall provide an affidavit with regard to the names and/or places of residence of those persons identified on Form 1.0 listed as unknown, stating they are unknown and cannot with reasonable diligence be ascertained. The affidavit should set forth the circumstances of the person's name or residence being unknown and the efforts made to ascertain such information. Notice by publication shall be required if the identity and/or address of any next of kin and/or beneficiary is unknown, unless the Court otherwise orders.

Where the will names a living trust as a beneficiary, a copy of the trust shall be displayed to the Court, however, it is not required to be filed with the Court.

**Rule 59.2 WILL FOR DEPOSIT**

Any will that is deposited with the Court for safekeeping pursuant to R.C. 2107.08 shall be accompanied by a completed Will for Deposit form (Form 102.00). The Court will provide the depositor with a Certificate of Deposit of Will (Form 102.01) as a receipt for the deposit of the will.

**Rule 59.3 LOST, SPOLIATED, OR DESTROYED WILL**

An applicant seeking to have the Court admit to probate, under R.C. §2107.26, an original will that is lost, spoliated, or destroyed shall file an Application to Admit Lost, Spoliated, or Destroyed Will to Probate (Form 2.01). The Court shall set the matter for hearing using an Entry Setting Hearing and Ordering Notice (Form 2.02). The Applicant shall send by certified mail Notice of Hearing on Application to Admit Lost, Spoliated, or Destroyed Will to Probate (Form 2.04) to those individuals requiring notice who do not sign a Waiver of Notice and Consent to Admit Lost, Spoliated, or Destroyed Will to Probate (Form 2.03). Prior to the hearing, the Applicant must file an Affidavit in Proof of Service (Form 200.10).

**Rule 60.1 APPLICATION FOR AUTHORITY TO ADMINISTER ESTATE AND NOTICE OF APPOINTMENT**

The Court will not permit the appointment of Co-Administrators.

Any person filing an Application for Authority to Administer Estate shall give notice thereof to the decedent's surviving spouse and to all next of kin unless such notice is waived. This requirement shall not apply to applicants who are named in the decedent's will nor to an applicant who is the decedent's surviving spouse. When the surviving spouse is the natural parent of all of the decedent's children, only the surviving spouse is required to waive.

The notice shall contain the date, time and place of the hearing, and it shall be served in accordance with Civil Rule 73 at least seven (7) days prior to the date set for hearing. For good cause shown, the Court may permit notice to be served by ordinary mail. Evidence of such notice shall be documented by the filing of an "Affidavit of Service".

Applications shall be set for hearing unless all waivers of notice have been obtained.

Where the Application is for the appointment of a Special Administrator pursuant to RC §2113.15, the Court in its discretion may waive or modify the notice requirements. Furthermore, the Court in its discretion may set or waive a bond, it may limit the Special Administrator's powers, and it may require the filing of expedited status report(s).

The examination required by Rule 59(A) of the Rules of Superintendence for the Courts of Ohio shall be completed before an Application for Authority to Administer an estate is filed.

Any applicant who is not represented by an attorney may be required to display photographic identification.

Upon the filing of an Application for Authority to Administer Estate, the applicant shall display a copy of the decedent's death certificate or other evidence of death acceptable to the Court. This requirement may be waived by the Court for good cause shown.

Whenever an applicant resides outside Clermont County, Ohio all estate assets shall remain in Clermont County or an Ohio county contiguous thereto.

**Rule 60.2 SPECIAL ADMINISTRATION**

A creditor may apply for the appointment of a Special Administrator pursuant to R.C. 2113. 15 for the sole purpose of receiving claims under R.C. 2113.17. The application shall consist of an Application for Appointment of a Special Administrator, proposed Entry appointing a Special Administrator, proposed Letters of Authority for a Special Administrator, Fiduciary Bond, signed Fiduciary Acceptance, Application for Authority to Administer the Estate, and Surviving Spouse, Next of Kin, Legatees, and Devisee. Upon appointment of a Special Administrator the fiduciary shall serve a Notice of Appointment of a Special Administrator upon all parties listed on the Surviving Spouse, Next of Kin, Legatees, and Devisee. The Court shall set a hearing on the Application for Authority to Administer the Estate. The Applicant shall serve notice of the hearing to all those listed on the Surviving Spouse, Next of Kin, Legatees, and Devisee. Once

appointed, the Special Administrator may receive claims against the estate. Within thirty days of the appointment of an administrator, the Special Administrator shall file an account containing a list of claims presented against the estate and their amounts. The Special Administrator may seek compensation for priority expenses, including but not limited to attorney and fiduciary fees, in administering the estate. The Court may approve such compensation upon the application of the Special Administrator. The application shall contain a list of all expenses including any attorney and fiduciary fees and a proposed entry approving the compensation. The Court may or may not set the application for hearing.

**Rule 60.3 REAL ESTATE TRANSFER ONLY**

Application for Sole Asset: Certificate of Transfer may be approved pursuant to Rev. Code Sec. 2113.61(D) without a full estate administration or release from administration after six months from the date of death if:

1) the sole probate asset of the decedent is real estate;
2) the decedent was not subject to Medicaid Estate Recovery, and
3) no estate has been administered or a release from administration has been granted.

Form 12.3 enumerates the necessary documents to be filed pursuant to this rule.

**Rule 60.04 APPLICATION TO RELEASE MEDICAL RECORDS**

A person eligible to be appointed as a personal representative of an estate under Ohio law or named as executor in a will for a decedent who resided in Clermont County may file with this Court an Application to Release Medical Records and Medical Billing Records (Form MX50.0) seeking the release of the decedent's medical records and medical billing records for use in evaluating a potential wrongful death, personal injury, or survivorship action. Applicants named as an executor of the will shall submit the will and file it for record only as part of the Application to Release Medical Records and Medical Billing Records. Along with the application, the applicant shall complete and provide a Surviving Spouse, Children, Next of Kin, Legatees, and Devisees Form (Form 1.0). The application may be filed prior to the filing of any Application for Authority to Administer the decedent's estate. The Court may set the matter for hearing. The Applicant shall send Notice of Application to Release Medical Records and Medical Billing Records and Notice of Hearing on Application to Release Medical Records and Medical Billing Records (Form MX50.3) to those individuals listed on the Form 1.0. The Applicant shall file an Affidavit in Proof of Service (Form 200.10) following service of Notice of Application to Release Medical Records and Medical Billing Records and Notice of Hearing on Application to Release Medical Records and Medical Billing Records (Form MX50.3) upon the nonconsenting parties. Upon hearing of the Application, the Court may issue an Entry Authorizing Release of Medical Records and Medical Billing Records (Form MX50.4). Should the Applicant obtain Waiver of Notice of Application to Release Medical Records and Medical Billing Records and Waiver of Notice of Hearing on Application to Release Medical Records and Medical Billing Records (Form MX50.2) from all those individuals listed on Surviving Spouse, Children, Next of Kin, Legatees, and Devisees, the Court may issue an Entry Authorizing Release of Medical Records and Medical Billing Records (Form MX50.4) without a hearing after ten days of the filing of the application. The Court's Entry shall direct all medical providers that provided medical care or treatment to the

decedent to release those medical records and medical billing records to the applicant for the limited purpose of deciding whether or not to file a wrongful death, personal injury, or survivorship action. The medical records and medical billing records are confidential and shall not be made available for public viewing unless otherwise provided for by law or subsequent court order. Upon obtaining the requested applicable records the applicant shall file a Report on Receipt of Medical Records and Medical Billing Records (Form MX50.5) with the Court within 60 days of the Entry listing the name of the providers which released the records, the time period which the records cover, certifying that all requested medical records and medical billing records have been received and shall indicate whether an administration of the decedent's estate will be filed.

**Rule 61.1 APPRAISERS AND APPRAISALS**

Where the probate estate includes assets which are of a special or unusual character, the fiduciary may appoint one or more qualified persons to appraise those assets.

All probate assets shall be included in the Inventory, however, assets whose value are readily ascertainable need not be appraised.

With regard to real estate, the fiduciary may use the property's fair market value as determined by the County Auditor for real estate tax purposes in lieu of a formal appraisal. The County Auditor's value shall be documented by written evidence which shall be attached to the Inventory. The Court may accept the purchase contract price in an arm’s length transaction to determine the value of real estate.

With regard to household goods and other tangible personal property, no formal appraisal shall be required unless the estimated value exceeds $5,000.00. Where the fiduciary chooses to dispose of tangible personal property by public auction, the gross proceeds from the auction may be used in lieu of a formal appraisal.

With regard to motor vehicles, the fiduciary may use values obtained from any nationally recognized valuation guide.

Notwithstanding the foregoing, the Court may order a formal appraisal of any asset for good cause shown. Such an order may be issued upon the Court's own motion or at the request of any interested party.

Appraisals shall be made by licensed real estate agents, licensed real estate appraisers, licensed auctioneers, credentialed personal property appraisers, or such other persons who by experience and training are qualified to make such appraisals. Furthermore, such appraisals shall be in writing and shall include the appraiser's original signature.

The following persons shall be disqualified from being such an appraiser: (1) A person related by blood or marriage to the decedent, (2) a beneficiary of the estate, (3) a person related by blood, marriage or employment to the attorney of the estate, and (4) a person related by blood, marriage or employment to the fiduciary of the estate.

No appraiser or broker shall be permitted to purchase or acquire, directly or indirectly, any of the property he or she appraises, except at public auction.

The fiduciary or applicant shall certify on each appointment of appraiser that the appraiser is a qualified and suitable person in accordance with this rule.

**Rule 61.2 INVENTORY AND APPRAISAL**

Prior to filing an Inventory, counsel shall examine the deed or deeds by which the decedent is vested with title to the real estate being administered. Counsel shall further examine the current records of the County Auditor and filings with the County Recorder where the property is located during the ten years immediately preceding his death for the purpose of confirming the decedent's ownership interest therein. The cost of such limited examination shall be deemed as part of attorney's fees as determined in accordance with Local Rule 71 .1.

Upon filing an Inventory, the executor or administrator shall serve notice of the hearing upon the decedent's next of kin in estates where the decedent died intestate, the beneficiaries of the estate listed on Form 1.0 in estates where the decedent died testate, and attorneys of record for such interested parties, unless notice of hearing is waived. Notice may be served by ordinary mail or by personally delivering a copy of the notice to the person entitled to receive it.

Where the name or address of an interested party is unknown, and where prior notice by publication for that person or class of persons has not already been made in the estate proceedings, the fiduciary shall publish notice of the hearing once each week for three consecutive weeks unless the Court otherwise orders. Evidence of notice shall be documented by the filing of an "Attorney Certification" which sets forth the manner of service.

The administrator or executor shall send a copy of the Inventory and Appraisal to the decedent's next of kin in intestate estates, the beneficiaries of the estate listed on Form 1.0 in estates where the decedent died testate, and attorneys of record for all such interested parties. This requirement may be modified or waived by the Court for good cause shown.

Upon discovering new probate assets, the fiduciary or his attorney shall file a Report of Newly Discovered Assets (Form 39L). Real estate that is included in a Report of Newly Discovered Assets shall be valued pursuant to Local Rule 61.1. Unless otherwise ordered by the Court, Reports of Newly Discovered Assets shall not be set for hearing, and notice to interested parties shall not be required.

Upon discovering that the Inventory contains any other error, the fiduciary shall file an Amended Inventory. At the discretion of the Court, the Amended Inventory may be approved upon filing, or may be set for hearing. If set for hearing, notice shall be given to all interested parties unless waived.

Consents to Power to Sell Real Estate (Form 11.0) shall not be filed prior to the filing of an Inventory and must be accompanied by a Waiver of Bond on Consent to Sell Real Estate (Form ES 11.A), unless there is already sufficient bond posted.

The Court may waive the appraisal requirement if all beneficiaries of a will receiving a specific bequest of more than $100 in cash, all residual beneficiaries, or heirs

of an intestate estate sign Form 6.2A Waiver of Appraisal and Consent to Value of the Inventory.

**Rule 62.1 CLAIMS; INSOLVENCY; MEDICAID; SUPPORT ARREARAGE; RELEASE FROM ADMINISTRATION; ADOPTION AND NAME CHANGE PROCEEDINGS**

A. Claims

No estate, guardianship, or trust shall be closed until all claims filed with the Court have been resolved. If a claim has been rejected, a copy of the rejection and the proof of service shall be filed with the Court along with a certification that the claim is barred by virtue of a failure to commence an action thereon.

B. Insolvency

When an estate appears to be insolvent, the fiduciary shall file a Representation of Insolvency (Form 24.0), Schedule of Claims (Form 24.4), and Judgment Entry Setting Hearing and Ordering Notice (Form 24.1). Thereafter the fiduciary or attorney for the fiduciary shall serve Notice of Hearing on Representation of Insolvency and Schedule of Claims (Form 24.2), with copies of Form 24.0 and Form 24.4 attached, in accordance with the Judgment Entry Setting Hearing and Ordering Notice. Before the hearing on the Representation of Insolvency and Schedule of Claims, the fiduciary or attorney for the fiduciary shall file Verification of Service Notice of Hearing on Representation of Insolvency and Schedule of Claims (Form 24.3). A proposed Judgment Entry of Insolvency shall be presented at the hearing.

C. Medicaid

The person responsible for the estate of a decedent subject to the Medicaid Estate Recovery Program instituted under R.C. §5111.11 or the estate of a decedent who was the spouse of a decedent subject to the Medicaid Estate Recovery Program shall file with the court and submit a properly completed Medicaid Estate Recovery Reporting Form described in R.C. §2117.061 to the administrator of the said program not later than thirty days after the granting of letters testamentary, the administration of the estate, or the filing of an Application to Relieve Estate from Administration (Form 5.0). The Court shall send a copy of the form to the Administrator of the Estate Recovery Program, if required by law.

D. Child Support Arrearage

If the fiduciary has received written notification that a beneficiary has a child support arrearage, no distributions shall be made to said beneficiary without a hearing before the Probate Court and due notification of the appropriate Child Support Enforcement Agency (CSEA).

E. Release from Administration

Notice by publication in a release from administration shall be required if the identity and/or address of any next of kin and/or beneficiary is unknown, unless the Court otherwise orders.

F. Adult Name Change

Applicants requesting a change of name of an adult shall execute and file with the Court an Authorization for Release of Information (Form 271.00) expressly authorizing the Clermont County Probate Court to obtain from Ohio Courts Network (OCN) and any other law enforcement information system and any court system, current and previous residences, civil and criminal history records, driving records, birth records, public records, or any criminal justice agency records that the applicant may have in any federal, state, county, and municipal jurisdictions. A fully executed Form 271.00 shall be filed with the application for change of name of adult.

Attorney fees requested in a name change proceeding in excess of $500.00 must be accompanied by attorney time records.

G. Minor Name Change

An Individual having legal custody of a minor may apply to the Court for appointment as a Guardian ad Litem for the purposes of applying for a name change of the Minor. An applicant for appointment as a Guardian ad Litem shall complete Form 21.22 and provide proof of legal custody. Applicants requesting a change of name of a minor shall execute and file with the Court an Authorization for Release of Minor Information (Form 272.00) expressly authorizing the Clermont County Probate Court to obtain from Ohio Courts Network (OCN), any other law enforcement information system and any court system, current and previous residences, delinquency records, civil and criminal history records, driving records, custody/visitation records, birth records, public records or any criminal justice agency records that said minor may have in any federal, state, county, and municipal jurisdictions. A fully executed Form 272.00 shall be filed with the application for change of name of minor.

Attorney fees requested in a name change proceeding in excess of $500.00 must be accompanied by attorney time records

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H. Adoption

Petitioner(s) filing a petition for adoption of a minor shall execute and file with the Court an Authorization for Release of Information (Form 271.00) expressly authorizing the Clermont County Probate Court to obtain from Ohio Courts Network (OCN) and any other law enforcement information system and any court system, current and previous residences, civil and criminal history records, driving records, birth records, public records or any criminal justice agency records that the Petitioner(s) may have in any federal, state, county, and municipal jurisdictions. A fully executed Form 271.00 shall be filed with the Petition for Adoption of Minor.

Attorney fees requested in a minor adoption proceeding in excess of $2,500.00 must be accompanied by attorney time records. Other than with prior Court approval, pursuant to a showing of extraordinary circumstances, the maximum fee is $5,000.00. Multiple minors may be on one petition if the consenting parent(s) and/or parent(s) whose consent is not required are the same. An Attorney assisting the Petitioner(s) in adopting

multiple minors shall only charge one fee not to exceed $5,000.00 regardless of the number of the petitions filed with the Court.

Parents who are the subject of a Petition for Adoption filed in this Court and whose consent is alleged to not be required shall be served with a Notice to Parent of Right to Counsel (Form AD18.2A) advising them of the right to be represented by legal counsel. If the parent(s) are indigent, or unable to by reason of lack of property or income to hire legal counsel, the Court will appoint legal counsel by Entry Appointing Counsel (Form AD18.10).

Attorneys who are appointed by this Court to represent indigent parents in minor adoption proceedings shall submit a form provided by the Court when requesting reimbursement for fees. All fee requests shall be submitted within ten (10) business days of the last hearing indicated on the form. Compensation will be made at the maximum rate of $50.00 per hour for out-of-court services and $60.00 per hour for in-court services. The maximum compensation permitted to an attorney representing an indigent parent in a minor adoption proceeding is $1,500.00. The itemization of hours spent in-court and out-of-court by an attorney is required on every form submitted. The itemization must be in tenths of an hour (6 minutes) increments. Once the maximum has been reached, no additional reimbursement will be paid unless the billing is accompanied by an order granting extraordinary fees. Motions for extraordinary fees may be set for hearing in front of the Court. Additional documentation by the attorney, including the nature of the services rendered, may be required with the motion for extraordinary fees.

Attorney fees requested in an adult adoption proceeding in excess of $500.00 must be accompanied by attorney time records.

**Rule 64.1 FIDUCIARY ACCOUNTS**

Every account presented to the Court shall comply with the Rules of Superintendence of the Courts of Ohio and shall be examined by the Clerk and shall include an itemized statement of all receipts of the fiduciary, an itemized statement of all disbursements and distributions made by the fiduciary referenced by number, an itemized statement of all funds, assets, and investments on hand at the end of the accounting period, and, where real estate has been sold, a copy of the closing statement bearing the signature of the fiduciary.

All fiduciaries must sign the account where multiple fiduciaries have been appointed, unless otherwise ordered by the Court.

A partial account shall have an accounting period which ends not more than six (6) months prior to the time it is presented, and it shall specify the number of the account using ordinal numbers, e.g., First Partial Account.

When presenting an account for audit, the fiduciary shall provide copies of all bank statements for the entire accounting period. In addition, the fiduciary shall provide documentation showing the net proceeds from any sales of personal property. With regard to disbursements and distributions made during the accounting period, fiduciaries shall provide vouchers or other proof of payment. Acceptable vouchers or proofs shall include but not be limited to signed receipts,

invoices marked paid by the creditor, cancelled checks, bank statement entries regarding electronic withdrawals, and check substitutes issued by financial institutions.

The fiduciary or his counsel shall comply with section 2109.32 RC and certify that a copy of the account shall be provided to each heir of an intestate estate and each beneficiary of a testate estate. Copies need not be served where the address of an heir or beneficiary is unknown or in cases where the beneficiary of a specific bequest has received his or her distribution as attested by a previous account filed in the proceedings.

In the case of a Final Account, the executor or administrator shall give notice of hearing to the following persons whose addresses are known: in the case of intestate estates to all heirs and their counsel of record and in the case of testate estates to the residuary beneficiaries and their counsel of record. When a will creates a charitable trust, notice of hearing shall be afforded the Ohio Attorney General, Charitable Trusts Division.

Status Reports shall not be required unless mandated by Rule 78 of the Rules of Superintendence for the Courts of Ohio or requested by the Court.

Where an heir or beneficiary is a minor, a guardianship must be established either in Clermont County or elsewhere before any distribution is made unless the value of the distribution is $25,000.00 or less and distribution may be made in conformity to section 2111.05 RC. The Court may require the deposit of all sums of $25,000.00 or less in the Court’s depository and generally such funds will not be available until the ward attains majority. Section 581 4.02(E) should also be considered in the case of minor heirs or beneficiaries.

A guardian shall file a Partial Account annually. A guardian shall not be required to give notice of hearings for Partial Accounts except in the case of Veteran's Guardianships where notice shall be given to the Veteran's Administration. Unless waived, a guardian shall give notice of the hearing on the Final Account to the following persons whose addresses are known: in the case of an incompetent, to the Ward's next-of-kin, or in the discretion of the Court to the fiduciary of the Ward's estate. In the case of a minor, to the Ward if the Ward has reached the age of 16 years, otherwise to the Ward's next-of-kin. In all cases, to counsel of record for any represented party.

With regard to accounts filed by trustees, Partial Accounts shall be rendered at least biennially. When presenting an Account, the trustee shall file a current list of the names and addresses of all persons interested in the trust. Unless waived, the trustee shall serve notice of the hearing on an Account to the following persons whose addresses are known: all income beneficiaries, counsel of record for any represented party, and the Ohio Attorney General, Charitable Trusts Division for charitable trusts.

Service of notice of hearings for all accounts may be made by ordinary mail or by personally delivering a copy of the notice to the person entitled to receive it. Evidence of notice shall be documented by the filing of an "Affidavit of Service" which sets forth the manner of service.

If an account is not timely filed and no arrangement has been made for an extension of the due date, a Citation to Appear shall be issued compelling the attendance of both the attorney and the fiduciary.

**Rule 64.2 SHOW CAUSE HEARINGS**

A fiduciary and attorney who have been cited for a show cause hearing shall personally appear. Counsel shall not appear in lieu of a cited fiduciary unless the Court grants leave for the attorney to appear in that capacity.

**Rule 65.1 LAND SALE PROCEEDINGS**

In land sales proceedings, the Court will require a preliminary and final judicial report pursuant to ORC Section 2329.191.

In land sales proceedings, the Court shall appoint one suitable and disinterested person as appraiser. Compensation for such appraiser shall be determined by the Court.

Rule 65 of the Rules of Superintendence for the Courts of Ohio shall be followed.

Counsel shall furnish to the Court a certificate of assurance that all sales proceeds have been properly distributed in accordance with the closing statement.

All land sales that have not been concluded within nine (9) months from the date of filing shall be set for a status conference. A written status report shall be filed at least seven days prior to such status conference.

Attorney fees for real estate sold by judicial proceedings shall be collected and paid into the Court as costs from the net sales proceeds. The guideline fee for attorney compensation shall be set by the Court as follows:

The first $10,000.00 of the purchase price at the rate of 6%, the next $40,000.00 at a rate of 4%, and all above $50,000.00 at the rate of 2%.

**Rule 66.01 DEFINITIONS FOR A GUARDIANSHIP**

The terms defined in Sup.R. 66.01 have the same meaning when used in Local Rule 66. Due to the manner in which the Supreme Court of Ohio has numbered Sup.R. 66.01 through 66.09 by using 4 digits, all of this Court's local rules pertaining to Guardianships shall be similarly numbered.

**Rule 66.02 APPLICATION OF GUARDIANSHIP RULES**

Local Rules 66.01 through 66.19 and 73.1 and 73.2 apply in an adult guardianship administered through this Court, unless otherwise indicated in the particular Local Rule, or unless expressly waived by Court Order. The Court will not permit the appointment of Co-Guardians.

**Rule 66.03(A) EMERGENCY GUARDIANSHIPS**

Pursuant to Ohio Revised Code Section 2111.02, if a minor or incompetent has not been placed under a guardianship, and if an emergency exists and it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or incompetent, at any time after it receives notice of the emergency, the Probate Court, ex parte, may issue an order that it considers necessary to prevent injury to the person or estate of the minor or incompetent, or may appoint an emergency

guardian for a maximum period of seventy-two hours.

Applications for emergency guardianship must be accompanied by a completed Statement of Expert Evaluation (Form 17.1), along with a completed Supplement for Emergency Guardian of Person (Form 17.1A) and a fully executed Authorization for Release of Information (Form 271.00). Applications should also contain any attachments or exhibits that may assist the Probate Court in determining whether to grant an emergency guardianship.

Once the Application has been filed and the appropriate filing fee paid, the Application and any accompanying materials will be reviewed by the Judge or Magistrate. The Judge or Magistrate may, but is not required to, meet with the applicant or attorney filing the Application.

An emergency guardianship will be granted only if there is reasonable certainty that immediate action is required to prevent significant injury to the person or estate of the individual. The Probate Court recognizes that an emergency guardianship should not be granted where another remedy may be appropriate.

If the Judge or Magistrate declines to grant an emergency guardianship, the Probate Court may, in its discretion, schedule the matter on an expedited basis.

If the Judge or Magistrate approves the request for emergency guardianship, the following will occur:

1. A Judgment Entry will issue granting emergency guardianship for a period of seventy-two (72) hours.

2. A hearing will be scheduled within seventy-two (72) hours in order to determine whether to extend the emergency order for up to thirty (30) days. Unless otherwise waived by the Court, a physician shall personally appear at the hearing to testify why it is reasonably certain that immediate action is required to prevent significant physical injury to the person or the minor or the alleged incompetent.

3. The person over whom the emergency guardianship is sought is the only person required to be served with any notices required under R.C. 2111.02(B)(3), unless the Court requires notice to other persons. Due to the short time constraints the law imposes in emergency guardianship proceedings, the Court requires that all notices be served in person. If necessary, the applicant must file an application for appointment of a special process server, who must file a return of the service before expiration of the initial 72 hour emergency guardianship period or within three Court Days after filing of the entry granting an extension.

4. As soon as possible after the issuance of the emergency guardianship order, a Probate Court Investigator will visit with the ward.

5. Following hearing, the Probate Court may extend the seventy-two (72) hour

emergency guardianship for a period not to exceed thirty (30) days, in which case a Judgment Entry will issue.

**Rule 66.03(B) GUARDIAN COMMENTS AND COMPLAINTS**

This local rule is applicable to all guardians appointed by the Court pursuant to R.C. 2111.02. Comments and complaints (hereinafter collectively referred to as "complaints") received regarding the performance of guardians and the resulting documents and correspondence are considered to be case documents and accessible to the public, unless otherwise excluded pursuant to Superintendence Rule 44 (C)(2). The Court will note actions with respect to the complaint in the case docket.

The Court will not accept or act upon an oral or telephonic complaint against a guardian, other than to provide the address to which to hand-deliver, fax, or mail the written complaint. The Court will not accept an anonymous complaint. When the Court receives the written complaint regarding a guardian's performance, it will date-stamp the complaint. Complaints received by fax on days the Court is closed shall be deemed to have been received on the next day the Court is open.

When a complaint is received at the Court by hand-delivery, fax, or mail:

(A) Within five (5) court days of receipt of the complaint the Court shall send a letter to the complainant acknowledging the receipt of the complaint and providing a copy of this rule. A copy of that letter, the complaint and the rule shall be provided to the guardian and guardian’s counsel, unless previously mailed.

(B) Within ten (10) court days of the mailing to the complainant, the Court shall perform an initial review of the complaint after a study of the guardianship case, and

(1) Send the complainant a letter dismissing the complaint as unsubstantiated/unspecific/insufficient and send a copy of the complaint and response to the guardian and guardian’s counsel; or

(2) Send a copy of the complaint to the guardian and guardian’s counsel and request a response to the complaint within fifteen (15) court days from the date of mailing. The forwarding letter shall advise the guardian and guardian’s counsel that a failure to respond will result in a show cause hearing being set with the attendance of the guardian required. A copy of the forwarding letter shall be provided to the complainant; or

(3) Notify the complainant, the guardian and guardian’s counsel and refer the matter to the Court Investigator for an investigation and a report within fifteen (15) court days from the date of referral; and/or

(4) When appropriate, refer the matter to the appropriate law enforcement agency pursuant to R.C. 2101.26 if the complaint alleges abuse, neglect, or exploitation of the ward. When the Court refers a complaint

to law enforcement, the Court will take such emergency action as it determines necessary to protect the interests of the ward while being cognizant of the need to have minimal impact on investigation by law enforcement.

(C) Upon the expiration of the period for the responsive reports from the guardian or Court Investigator to be filed, or upon their earlier filing, the case file (including the written response(s) and the complaint) shall be submitted to the Magistrate and within fifteen (15) court days the Magistrate shall do one or more of the following:

(1) Find the complaint to have been resolved or unsubstantiated and advise the complainant, guardian and guardian's counsel accordingly by letter;

(2) Set a review conference or a show cause hearing with notice to the complainant, the ward, the guardian and guardian's counsel, and other interested parties; or

(3) Appoint a guardian ad litem or attorney to represent the best interests of the ward.

Except when administratively dismissing a complaint or acting in an emergency, the Court shall not act without a hearing. The Magistrate shall issue findings and conclusions with respect to any hearing held on the complaint. The Court's journalization relating to the Magistrate's Decision will close the complaint. The Court's actions may include dismissal, directives for remedial action, establishing periodic review dates, allocating costs and fees, referral to law enforcement for investigation, sanctions, removal, and any other actions permitted by law.

When the ward is a veteran and the Court appointed the guardian under Revised Code Chapter 5905, notice of the complaint, reports, hearings and actions shall be given to the Administrator of Veterans Affairs of the United States pursuant to R.C. 5905.03.

All complaints, comments and disposition shall be kept within the Court file of the ward where the guardian was appointed.

**Rule 66.04 DURABLE POWER OF ATTORNEY**

If the proposed ward has executed a valid durable power of attorney for finances or durable power of attorney for health care that remain in effect, the applicant must file true and accurate copies of the powers of attorney with the Application for Appointment of Guardian of Alleged Incompetent (Form 17.0). At the hearing, the applicant must present satisfactory evidence of why one or both of the powers of attorney are ineffective in meeting the ward's needs. The Court establishes a rebuttable presumption that valid durable powers of attorney are less restrictive alternatives to guardianship.

Unless otherwise ordered by the Court, the durable power of attorney for finances shall remain valid and effective when the guardian of the person only is also the

designated ward's agent.

Unless otherwise ordered by the Court, the durable power of attorney for health care shall remain valid and effective when the guardian of estate only is also the designated ward's agent.

Unless otherwise ordered by the Court, a durable power of attorney for finances or durable power of attorney for health care are terminated and void when the guardian of the person or estate is not the designated ward's agent.

**Rule 66.05(A) GUARDIAN BACKGROUND CHECKS**

An applicant for appointment as a guardian, including as an emergency guardian, must submit to a civil and criminal record check satisfactory to the Court and execute and file with the Court an Authorization for Release of Information (Form 271.00) expressly authorizing the Clermont County Probate Court to obtain from Ohio Courts Network (OCN) and any other law enforcement information system, any court system, current and previous residences, civil and criminal history records, driving records, birth records, public records or any criminal justice records that the applicant may have in any federal, state, county, and municipal jurisdictions. A fully executed Form 271.00 shall be filed with the application for appointment of guardian. In place of a civil and criminal background check, an Ohio attorney applicant currently in good standing with the Supreme Court of Ohio, may obtain and submit to the Court a Certificate in Good Standing with disciplinary information, issued by the Supreme Court of Ohio.

**Rule 66.05(B) GUARDIAN WITH TEN OR MORE ADULT WARDS**

To assist the Court in meeting its supervisory responsibilities under Sup.R. 66.05(B) and in satisfaction of the responsibilities arising under Sup.R. 66.08(H), by January 31 of each year, a guardian with ten or more wards through the probate courts of Ohio shall register with this Court on the local Multi-Guardian Annual Registration Form, or on a standard form adopted for that purpose by the Ohio Supreme Court. The registration shall include a listing of the guardian's wards, the case number and the appointing Court. At all times, the guardian shall advise the Court of any change in the guardian's name, address, telephone number and electronic mail address within ten days of the change occurring.

If the guardian will be seeking compensation from the guardianship or from the Court, the guardian shall accompany the annual registration with a fee schedule that differentiates guardianship services fees as established by local rule from legal fees or other direct services.

A guardian with 10 or more wards shall include with the Guardians Report form a certification stating whether the guardian is aware of any circumstances that may disqualify the guardian from continuing to serve as a guardian.

**Rule 66.06 GUARDIAN FUNDAMENTALS TRAINING REQUIREMENT**

A Guardian holds a unique role with respect to the ward and the Guardian has an obligation to obtain an understanding of the fundamentals of that relationship. Formalized training is one means to gain that competency.

Every guardian must meet the guardianship fundamentals training requirements under Sup.R. 66.06 by completing prior to appointment or within six month thereafter, a six-hour guardian fundamentals course provided by The Supreme Court of Ohio, or with prior approval of this Court, another entity. Those failing to meet the requirement shall be subject to citation for contempt of court and subject to sanctions including, but not limited to imposition of a fine, denial of compensation, and removal. A guardian who has served at any time after June 1, 2010, or who is serving on June 1, 2015, shall have until June 1, 2016 to complete the guardian fundamentals course, unless the Court waives or extends the requirement for good cause. The guardian is responsible for providing to the Court in a timely manner documentation that establishes compliance with the guardian fundamentals training requirement.

**Rule 66.07 GUARDIAN ANNUAL CONTINUING EDUCATION**

After completing the guardian fundamentals course, every guardian shall annually complete a three-hour guardian continuing education course provided by the Supreme Court of Ohio, or with prior approval of this Court, another entity.

If a guardian fails to comply with the guardian continuing education requirement, the guardian shall not be eligible for further appointment until the requirement is met. The guardian also may be subject to sanctions and/or removal.

By December 31 of the first calendar year after completing the guardian fundamentals course, or its waiver by Court order, the guardian is responsible for providing to this Court documentation demonstrating compliance with this guardian continuing education requirement, including the title, date, location and provider of the education, or a certificate of completion containing such information.

Thereafter, by December 31st of each year, the guardian shall annually provide this Court documentation detailing compliance.

**Rule 66.08 GENERAL RESPONSIBILITIES OF THE GUARDIAN TO THE COURT**

**A. Orders, rules and laws.** The guardian shall obey all orders of this Court and shall perform all guardianship duties in accordance with the state and federal laws and rules and this Court's local rules as all of them may be effective during the guardianship.

**B. Pre-Appointment meeting.** The person seeking to be appointed as the guardian is expected to have met with the proposed ward at least once prior to appearing before the Court for the hearing on the application, unless the Court has waived the pre-appointment meeting for good cause.

**C. Reporting abuse neglect or exploitation.** If the guardian becomes aware of allegations of abuse, neglect or exploitation of the ward, the guardian shall immediately report the same to the appropriate law enforcement authorities, Adult Protective Services, and the Court.

**D. Limitation or termination of guardianship.** A guardian shall seek to limit or terminate the guardianship authority and promptly notify this Court if any of the following occurs:

(1) A ward's ability to make decisions and function independently has improved;

(2) Less restrictive alternatives are available;

(3) A guardianship is no longer in the best interest of a ward;

(4) A ward has died; or

(5) A minor attains the age of majority.

A termination of a guardianship shall require notice to all persons designated in R.C. 2111.04 and to any other individuals who received actual notice of the original appointment of the guardian. It is the responsibility of the applicant for termination to perfect service pursuant to Civ.R. 73 when a termination is requested. A Certificate of Service with supporting documentation satisfactory to the Court must be filed prior to the consideration of the application for termination.

**E. Change of residence.** A guardian appointed by this Court shall inform the Court as to any change of address for either the guardian or the ward. This notification must be made ten (10) days prior to the proposed address change. The Notice of Change of Address (Form 200.20) may be used for that purpose, but it is not required. If the ward's residence is changed, the reason for the change should be indicated. Failure to notify the Court, under this rule, may result in the guardian's removal and/or the reduction or denial of the guardian's compensation.

The guardian shall not move the ward from Clermont County, Ohio or into a more restrictive setting without prior Court approval, unless a delay in obtaining authorization for the change of residence or setting would affect the health and safety of the ward.

**F. Court approval of legal services and proceedings.** The guardian of an indigent ward shall not contract for the payment of legal services without the prior approval of this Court. While a guardian is generally required to seek prior approval of this Court before filing a suit for the ward, prior approval shall not be required when the suit is filed in this Court.

**G. Annual plan.** Annually, the guardian of the person of an adult incompetent shall file the Guardian's Report (Form 17.7). Unless otherwise ordered by the Court each Guardian's Report for an incompetent shall be accompanied by a Statement of Expert Evaluation (Form 17.1). If a physician or clinical psychologist states as an Additional Comment on a Statement of Expert Evaluation, that it is their opinion that

to a reasonable degree of medical or psychological certainty that the ward's mental capacity will not improve, the Court may dispense with the filing of subsequent Statements of Expert Evaluation with the Guardian's Report.

Pursuant to Sup.R. 66.08(G) the guardian of the person for an adult shall include with the annual Guardian's Report an addendum stating the guardian's goals and plans for meeting the personal needs of the ward. The Court may request that the guardian of the estate of an adult incompetent submit a report identifying the guardian's goals and plans for financially meeting the ward's needs.

**H. Application to Appoint Limited Guardian of an Estate to Manage the Finances of an Adult Incompetent Ward.** After obtaining a Waiver and Consent (Form 15.1), a duly appointed and current Guardian of the Person of an Incompetent who is in compliance with the requirements for Guardians may file with the Court an Application to Appoint a Limited Guardian of an Estate to Manage the Finances of an Adult Incompetent Ward (Form 17.01) to be appointed a limited Guardian of the Estate. An Attorney for the Applicant may file An Application to Waive Bond, Waive Inventory, and Waive Account on a Limited Guardianship (Form 17.01B). The Guardianship of the Estate shall be limited to terminating contracts entered into by the Ward during or prior to the Guardianship, terminating automatic withdrawals from the Ward's financial institution, establishing payment for placement of the Ward, or other financial actions related to managing the Ward's assets. The limited Guardian of the Estate shall not handle any assets of the Ward. The Letters of Guardianship issued to the Limited Guardian of the Estate shall last for only six months. Upon the expiration of six months, the Limited Guardian of the Estate shall submit a Report of Limited Guardian of the Estate (Form 17.01R) outlining the financial activity of the Limited Guardian of the Estate during the Limited Guardianship of the Estate.

**H. Ward's principal income.** A guardian shall inform this Court and apply to terminate the guardianship of the estate if the principal income of the ward is from governmental entities, a payee for that income is identified, and no other significant assets or income exist.

**I. Reserved**

**J. Conflict of interest.** The guardian shall avoid actual or perceived conflicts of interest with the ward and endeavor to avoid the appearance of impropriety (perceived self-serving, self-dealing or perceived actions adverse to best interests decisions) when dealing with the ward's assets and needs. A potential conflict for the guardian may arise if the guardian's immediate family (parent, spouse, or child) is employed or contracted by the guardian. The guardian shall disclose all conflicts to the Court in a clear and unequivocal manner. Doing so, facilitates a determination whether the conflict can be mitigated or eliminated through the use of a guardian ad litem, a limitation of the powers of the guardian, or other actions. The Court may determine that waiver of the conflict is in the best interest of the ward.

**K. Identification of legal documents.** Within three months of appointment, the guardian

of the person and/or the guardian of the estate shall file a list of all of the ward's known important legal papers, including but not limited to estate planning documents, advance directives, powers of attorney and the location of such papers. If it becomes known to the guardian that such information has changed or the existence of other important legal papers becomes known, the guardian shall report that new information to the Court in writing within thirty days of discovery. The Guardian has a continuing duty of disclosure throughout the guardian's service.

**Rule 66.09 GENERAL RESPONSIBILITIES OF THE GUARDIAN TO THE WARD**

**A. Professionalism, character, and integrity.** A guardian shall act in a manner above reproach, including but not limited to avoiding financial exploitation, sexual exploitation, and any other activity that is not in the best interest of the ward.

**B. Exercising due diligence.** A guardian shall exercise due diligence in making decisions that are in the best interest of a ward, including but not limited to communicating with the ward and being fully informed about the implications of the decisions.

**C. Least restrictive alternative.** Unless otherwise approved by this Court, a guardian shall make a choice or decision for a ward that best meets the needs of the ward while imposing the least limitations on the ward's rights, freedom, or ability to control the ward's environment. To determine the least restrictive alternative, a guardian may seek and consider an independent assessment of the ward's functional ability, health status, and care needs.

**D. Person-centered planning.** A guardian shall advocate for services focused on a ward's wishes and needs to reach the ward's full potential. A guardian shall strive to balance a ward's maximum independence and self-reliance with the ward's best interest.

**E. Ward's support system.** A guardian shall strive to foster and preserve positive relationships in the ward's life unless such relationships are substantially harmful to the ward. A guardian shall be prepared to explain the reasons a particular relationship is severed and not in the ward's best interest.

**F. Communication with ward.**

(1) A guardian shall strive to know a ward's preference and belief system by seeking information from the ward and the ward's family and friends.

(2) A guardian shall do all of the following:

a) Meet with the ward as needed, but not less than once quarterly or as determined by this Court;
b) Communicate privately with the ward;
c) Assess the ward's physical and mental conditions and limitations;
d) Assess the appropriateness of the ward's current living arrangements;
e) Assess the need for additional services;
f) Notify the court if the ward's level of care is not being met; and
g) Document all complaints made by a ward and assess the need to report the

complaints to this Court.

**G. Direct services.** Except as provided in Sup.R. 66.04(D), a guardian shall not provide any direct services to a ward, unless otherwise approved by this court. Unless a guardian is related to the ward by consanguinity (a blood relationship) or affinity (kinship by marriage), the guardian shall not deliver the ward direct services, as defined in Sup.R. 66.01(B), without approval of this Court.

**H. Monitor and coordinate services and benefits.** A guardian shall monitor and coordinate all services and benefits provided to a ward, including doing all of the following as necessary to perform those duties: (1) Having regular contact with all service providers; (2) Assessing services to determine they are appropriate and continue to be in the ward's best interest; (3) Maintaining eligibility for all benefits; and (4) Where the guardian of the person and guardian of the estate are different individuals, consulting regularly with each other.

**I. Extraordinary medical issues.** (1) A guardian shall seek ethical, legal, and medical advice, as appropriate, to facilitate decisions involving extraordinary medical issues; and (2) A guardian shall strive to honor the ward's preferences and belief system concerning extraordinary medical issues.

**J. End of life decisions.** A guardian shall make every effort to be informed about the ward's preferences and belief system in making end of life decisions on behalf of the ward.

**K. Caseload.** A guardian shall appropriately manage the guardian's caseload to ensure the guardian is adequately supporting and providing for the best interest of the wards in the guardian's care.

**L. Duty of confidentiality.** A guardian shall keep the ward's personal and financial information confidential, except when disclosure is in the best interest of the ward or upon order of the probate division of a court of common pleas.

**Rule 66.10 GUARDIANSHIP OF MINORS**

Proceedings for the appointment of a guardian of a minor shall be governed as follows:

(A) A certified copy of the minor's birth certificate must be displayed to the Court with the guardianship application. A copy will be made by the Court and the original will be returned to the submitter.

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

(C) The Court will not establish any guardianship over the person of a minor where another Court has jurisdiction over custody of the minor.

(D) When the minor has not been in Ohio for 6 months, the Court will not accept

for filing an Application for Guardianship unless it is alleged that the minor has been:
(1) abandoned (no contact) by the parents for more than 90 days,
(2) has a medical emergency, or
3) the minor's "home state" has declined jurisdiction. (See Ohio's Uniform Child Custody Jurisdiction Enforcement Act- Chapter 3127).

(E) The guardian of a minor ward's estate must demonstrate that the ward's parent(s) are unable to fulfill their responsibility to support the ward before the Court will consider allowing an expenditure from the ward's estate for the purpose of the ward's support, maintenance, medical care or education.

**Rule 66.11 NEXT OF KIN FOR GUARDIANSHIP OF INCOMPETENT ADULTS**

For purposes of completing the Next of Kin of Proposed Ward (Form 15.0), the applicant, pursuant to R.C. 2111.01(E), shall identify and provide the address for any person, whether or not an Ohio resident, who at that time would be entitled to inherit from the proposed ward under the Ohio laws of intestacy and all known children of the proposed ward.

**Rule 66.12 INVENTORY, FUND RELEASE, AND EXPENDITURES**

Within three months of appointment, a guardian of the estate shall file an inventory of the ward's assets and income. If the assets include real estate, a legal description of the ward's real estate interest should accompany the Inventory. Funds in the name of the ward shall not be released to the guardian without the approval of an Application to Release Funds to Guardian (Form 15.6) or other specific court order. All applications for release of funds shall specify the exact amount to be released, the financial institution holding the fund, its address, and the person in whose name the fund is held. The expenditure of funds by a guardian shall not be approved until a Guardian's Inventory (Form 15.5) has been filed and an Application for Authority to Expend Funds (Form 15.7) has been approved. None of the ward's assets may be accessed through an automated teller machine, debit card, or credit cards. Electronic payment of routine and recurring expenses is permitted upon receiving approval of an Application for Authority to Release Funds (Form 15.6).

Within 30 days of the discovery of new assets, the guardian of the estate shall file a Report of Newly Discovered Assets (Form 15.51) with the Probate Court.

**Rule 66.13 WARD'S ALLOWANCE ACCOUNT**

A Guardian of the Estate may apply to the Court to establish a Ward's Allowance Account. An allowance account shall be separate from the Guardian's account and may allow for payment of routine and recurring expenses for the benefit and enjoyment of the ward. Such payments may utilize a debit card or other electronic payment device. The Account shall not permit the withdrawal of funds from the account for cash by means such as an automatic teller machine or other device. To establish such an account the Guardian shall submit an Application for Authority to Establish Ward Allowance Account and Authority To Expend Funds From Said Account and Order Establishing A Ward's

Allowance Account and Order Authorizing Expenditure of Funds Form 15.14. Upon approval of the Court through an Order Establishing a Ward's Allowance Account Form 15., the Guardian shall submit an Application for Authority to Expend Funds from the Guardian's Account Form 15.7 and an Application to Release Funds from the Guardian's Account Form 15.6. Such applications shall state how much money will be transferred from the Ward's Guardian Account and into the Ward's Allowance Account. No funds shall be transferred until Court approval through an Order Authorizing the Expenditure of Funds and an Order Releasing Funds from the Guardian's Account. The Guardian shall monitor the expenses of the allowance account and shall work with the Ward in approving expenses. The Guardian shall list the beginning and ending balance of the Ward's Allowance Account upon submitting the Annual Guardian's Account. The Guardian is not required to provide itemized purchases through the Allowance Account on the Guardian's Annual Account. The Guardian shall provide bank statements showing the activity of the account during the applicable accounting period for review by the Court. After review by the Clerk, the Allowance Account bank statements shall be returned to the Guardian.

**Rule 66.14 DEPOSIT OF WILL BY GUARDIAN**

The guardian shall deposit ward's last will and testament with the Court for safekeeping, if the will is in the possession of the guardian. If the ward's will is not in the possession of the guardian, upon being advised of the location, the Court shall order the holder to deposit the will with the Court for safekeeping.

**Rule 66.15 POWERS OF ATTORNEY BY GUARDIAN PROHIBITED**

The Court, through this Local Rule, exercises its discretion under R.C. 2111.50(A)(2)(c) and hereby prohibits a guardian appointed by the Court from executing a power of attorney or any other document which purports to appoint an agent to execute any of the duties or responsibilities imposed upon the guardian by law, rule, or order of the Court, unless otherwise approved by a specific order of the Court.

**Rule 66.16 RESERVED**

**Rule 66.17 INDIGENT WARDS**

The applicant or the guardian must file with the Court an Affidavit of Indigency, if the waiver of court costs is requested or payment of compensation from the Indigent Guardianship Fund is requested. False affidavits are punishable by findings of contempt, prosecution, or other sanctions.

**Rule 66.18 VETERANS' GUARDIANSHIPS**

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

For all guardianship proceedings wherein the proposed ward is receiving income from the Department of Veterans Affairs, the VA shall be a necessary party, entitled to notice and copies of all initial pleadings, all applications for attorney and guardian fees, applications for authority to expend funds for an extraordinary expenditure, and the

annual and final accountings. All notices to the Department of Veterans Affairs shall be sent by the guardian and not the Court.

The Court shall supply the guardian or the attorney for the guardian, at no cost, certified copies of any of the pleadings filed in the proceedings, for submission to the Department of Veterans Affairs.

All Applications for guardian's compensation or attorney's fees shall be set for hearing, and notice shall be given to the Department of Veterans Affairs, unless a Waiver or Consent is obtained.

**Rule 66.19 ADDITIONAL COST DEPOSIT**

Pursuant to RC 2111.031 and in addition to the basic cost deposit, the Court may require an Applicant for a guardianship to make an advance cost deposit in an amount the Court determines necessary (a) to defray the anticipated costs of examinations of an alleged incompetent, and (b) to cover the fees and costs to be incurred to assist the Court in deciding whether a guardianship is necessary.

**Rule 67.1 ESTATES OF MINORS NOT EXCEEDING TWENTY-FIVE THOUSAND DOLLARS**

An application relating to funds of a minor shall be captioned in the name of the minor. Unless otherwise ordered by the Court, funds of a minor shall be deposited in the Court's depository in the sole name of the minor, with principal and interest compounded, until the minor attains the age of majority.

**Rule 67.2 SUCCESSOR CUSTODIANS**

An Application Form MX150 may be filed with the Probate Court requesting the designation of a successor custodian under the Uniform Transfer to Minors Act. The Applicant may be a legal representative of the donor/transferor's estate, the deceased donor/transferor's fiduciary, the deceased custodian's fiduciary, the legal representative of the deceased custodian's estate, or a member of the beneficiary's family (defined as a parent, step-parent, spouse, adult sibling, grandparent, aunt or uncle of the beneficiary). The Application may suggest the name of a suitable successor; however, the appointment is within the Court's discretion. The Court may give notice to the beneficiary and conduct a hearing before designating a successor Custodian.

**Rule 68.1 SETTLEMENT OF CLAIMS FOR INJURIES TO MINORS**

An application for settlement of a minor's claim that exceeds twenty-five thousand dollars ($25,000.00) shall be brought by the guardian of the estate. If the net amount of the claim for injuries does not exceed twenty-five thousand dollars ($25,000.00), the application shall be brought by the parent(s) of the child or the person having custody of the child.

The application for settlement shall be set for hearing before the assigned magistrate. The applicant as well as the minor shall personally appear at the hearing unless otherwise waived by the Court. An application for approval of settlement of claim for injuries to a minor shall be accompanied by a current statement of the examining physician with respect to the injuries sustained,

the extent of the recovery, and the physician's prognosis. Said statement shall be made within 90 days of the filing of the application for approval. If the gross amount of the settlement for injuries does not exceed ten thousand dollars ($10,000.00) then the requirement of a physician's statement is waived.

A copy of the proposed release of claims shall be attached to the application for approval of settlement of claims for injuries to a minor.

**Rule 68.2 Structured Settlements**

Application for structured settlements exceeding $100,000.00 shall include an affidavit from an independent certified public accountant or other competent professional, specifying the present value of the settlement and the method by which that value was calculated.

If the parties involved in claims desire to enter into a structured settlement, defined as a settlement wherein payments are made on a periodic basis, the following rules shall also apply:

If the settlement is to be funded by an annuity, the annuity shall be provided by an annuity carrier who meets or exceeds the following criteria:

The annuity carrier must be licensed to write annuities in Ohio and, if affiliated with the

Liability carrier or the person or entity paying the settlement, must be separately capitalized, licensed and regulated and must have a separate financial rating.

The annuity carrier must have a minimum of $100,000,000.00 of capital and surplus, exclusive of any mandatory security valuation reserve.

The annuity carrier must have one of the following ratings from at least two of the following rating organizations: (1) A.M. Best Company: A++, A+, or A, (2) Moody's Investors Service (Financial Strength): Aaa, Aa1 , or Aa2, (3) Standard & Poor's Corporation (Claims Paying/Solvency): AAA or AA, and (4) Fitch Ratings: AAA, AA+, or AA.

In addition to the requirements immediately above, an annuity insurer must meet any other requirement the Court considers reasonably necessary to assure that funding to satisfy periodic-payment settlements will be provided and maintained.

A qualified insurer issuing an annuity contract pursuant to a qualified funding plan under these rules may not enter into an assumption reinsurance agreement for the annuity contract without the prior approval of the Court, the owner of the annuity contract and the claimant having the beneficial interest in the annuity contract. The Court will not approve assumption reinsurance unless the re-insurer is also qualified under these rules.

The annuity insurance carrier and the broker procuring the policy shall each furnish the Court with an affidavit certifying that the carrier meets the criteria set forth above as of the date of the settlement and that the qualification is not likely to change in the immediate future. The broker's affidavit shall state that the determination was made with due diligence based on rating information which was available or should have been available to an insurance broker in the structured

settlement trade.

If the parties desire to place the annuity with a licensed insurer in Ohio that does not meet the above criteria, the Court may consider approving the same, but only if the annuity obligation is bonded by an independent insurance or bonding company, licensed in Ohio, in the full amount of the annuity obligation. The application shall include a statement of the actual cost to the defendant of the settlement, the actual cost shall be used to fix and determine attorney's contingency fees.

**Rule 68.3 Sale of Structured Settlement Payments**

All applications for approval of sale of structured settlement payments shall be filed and set for hearing.

The application shall include a statement of the income, living expenses, and other financial obligations of the person desiring to sell the structured settlement payments as well as a detailed statement as to how the sale proceeds will be applied and/or utilized by the applicant.

**Rule 68.4 APPLICATION FOR COURT TO CREATE STATUTORY MINOR TRUST**

When a minor is entitled to money whether by settlement or judgment for personal injury or damage to tangible or intangible property, inheritance, or otherwise, an Application for Court to Create Statutory Minor Trust and Approve Trust Agreement (Form 60.0) may be filed with the Probate Court. Prior to the appointment as a trustee of a trust created pursuant to this section, the person to be appointed shall obtain a Waiver of Notice and Consent to Appointment of a Trustee of a Statutory Minor Trust (Form 60.1 ) from the parent(s) or guardian(s) of the minor beneficiary of the trust, unless otherwise ordered by the Probate Court. The Trustee shall also submit with the Application the Irrevocable Trust Agreement signed by the Trustee in front of two witnesses (Form 60.2), and the Entry Creating Statutory Minor Trust and Approving Trust Agreement (Form 60.3). Monies received by the Trust shall be deposited into a Court approved Depository by Entry Ordering Deposit of Statutory Minor Trust Funds (Form 60.4). The money shall be for the benefit of the minor beneficiary and, unless ordered by the Probate Court, shall not be disbursed until the minor beneficiary reaches 25 years of age.

**Rule 70.1 Settlement of Claims For Wrongful Death**

When opening an estate for the sole purpose of pursuing a claim for the wrongful death of the decedent, an Application to Appoint Fiduciary Without Bond, Waive Filing of Inventory and Accounts (Form 4.2A) must be filed to determine, at the court's discretion, if the fiduciary must be bonded.

An Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims (Form 14.0) shall be filed prior to the distribution of any settlement in a wrongful death action. The trial counsel or attorney for the estate shall submit an Affidavit of Medical Claims and Subrogation (Form 14.4). All applications to settle claims for wrongful death shall be set for hearing. All interested parties to the distribution of the net proceeds of the settlement shall be listed by name, residence, and relationship to the decedent on the proposed entry approving settlement or distributing wrongful death proceeds. Interested parties shall be those persons described in R.C. §2125.02(A)(1) and

shall include not less than two degrees of kinship as computed by the Civil Law. If all persons listed on the Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims do not waive notice of hearing on the application by signing either Form 14.1 or Form 14.10, whichever is applicable, the Court will require notice, by certified mail, not later than seven days prior to the hearing to those individuals who do not waive notice. Form 14.02, Notice of Hearing on Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims will be used to notify those individuals who have not waived notice.

When the Court is called upon to endorse an agreed entry of distribution or to adjust the shares of distribution, notice to or consents from the interested parties shall be required.

The applicant is required to appear at the hearing regarding an application to approve a wrongful death settlement or proposed distribution. An applicant shall have 30 days following approval in which to file the report of distribution unless otherwise ordered by the Court. The report of distribution shall be approved only after appropriate vouchers are presented.

If a wrongful death beneficiary is a minor, the applicant shall file an Application to Appoint a Guardian Ad Litem (Form 14.9) to represent the minor wrongful death beneficiary. The Guardian Ad Litem shall be a disinterested attorney licensed to practice in Ohio. The guardian ad litem shall prepare a report to the Court which shall be filed no later than seven days prior to the hearing indicating whether or not the proposed settlement and distribution is in the minor's best interest.

The applicant in an Application for the Settlement and Distribution of Claims for Wrongful Death involving the periodic settlements as a result of asbestos litigation may obtain a signed Waiver and Consent to Wrongful Death and Survivorship Claim (Form 14.10) from all beneficiaries that will waive notice for all future hearings. The Applicant can then file an Application to Waive Hearing on Application to Approve Settlement and Distribution of Wrongful Death and Survival Claim (Form 14.W). Upon approval of the Court by Entry Granting Application to Waive Hearing on Application to Approve Settlement and Distribution of Wrongful Death and Survival Claim (Form 14.E), all future applications will be reviewed and ruled upon without further hearing.

Attorney fees for completing probate work associated with the filing of an Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims (Form 14.0) shall be considered a part of a wrongful death settlement and shall be paid from the contingent fee.

Attorney fees for probate work related to the opening of an estate and appointing of a fiduciary for the purposes of pursuing a wrongful death or survival claim in excess of $1,000.00 must be accompanied by time records and a motion for extraordinary fees.

If a minor, or adult under the age of 25, is entitled to a distribution from the settlement of a wrongful death action, a Wrongful Death Trust may be created, pursuant

to R.C. §2125.03 by filing an Application for Court to Create Wrongful Death Trust and Approve Trust Agreement (Form 15.15). Prior to the appointment as a trustee of a trust created pursuant to this section, the Applicant shall obtain a Consent to Appointment of Trustee (Form 15.17) from each adult wrongful death beneficiary under the age of 25 who is a beneficiary of the wrongful death trust and the guardian of each minor wrongful death beneficiary of the trust. The Trustee shall also submit with the Application the Irrevocable Trust Agreement signed by the Trustee in front of two witnesses (Form 15.16), and the Entry Creating Wrongful Death Trust and Approving Trust Agreement (Form 15.18). Monies received by the trust shall be deposited into a Court approved depository by Entry Ordering Deposit of Wrongful Death Trust Funds (Form 15.19). The money shall be for the benefit of the minor beneficiary and, unless ordered by the Probate Court, shall not be disbursed until the minor beneficiary reaches 25 years of age.

If the wrongful death proceeds do not exceed twenty-five thousand dollars, they may be deposited into the Court's depository, pursuant to Local Rule 67.1 Estates of Minors Not Exceeding Twenty-Five Thousand Dollars.

If no wrongful death trust is created or the monies are not deposited in the Court's depository, the guardianship of the minor's estate shall be created in the county in which the minor lives, unless otherwise approved by the Court.

**Local Rule 71.1 Attorney Fees in Decedent's Estates**

**A. Fee Governance**

Attorney fees are governed by the Rules of Professional Conduct and the Rules of Superintendence adopted by the Supreme Court of Ohio. The Court has the ultimate responsibility and authority to review attorney fees in decedent's estates as required by such rules.

**B. Fee Agreement**

Counsel shall enter into a dated written fee agreement with the fiduciary prior to or upon the filing of the Inventory with the Court. The fee agreement shall contain an estimate of the total fee for the administration of the decedent's probate estate. A copy of the fee agreement shall be provided to any residuary beneficiary of the probate estate upon request. If the attorney for the estate is also the fiduciary or if the fiduciary is an attorney associated with the attorney for the estate, a copy of the fee agreement shall be provided to all residual beneficiaries of the probate estate upon its execution. Counsel shall file with the Court a Certificate of Fee Agreement on Form 210.05 prior to or upon the filing of the Inventory with the Court.

**C. Fees for which an Application to Approve Attorney Fee is Not Required**

Attorney fees for services rendered in a Sole Asset Certificate of Transfer are approved up to $500.00 without the need of an Application to Approve Attorney Fee (Form 10.5).

Attorney fees for services rendered in a Summary Release from Administration

are approved up to $1,000.00 without the need of an Application to Approve Attorney Fee (Form 10.5).

Attorney fees for services rendered in a Release from Administration are approved up to $2,000.00 without the need of an Application to Approve Attorney Fee (Form 10.5). When attorney fees are requested in a Release from Administration, the fee should be listed as a debt on the Assets and Liabilities of Estate to be Relieved from Administration (Form 5.1) and noted whether the fee will be paid out of the assets of the estate relieved from administration or if the fee will be paid outside of probate assets.

Attorney fees for services rendered in a full estate administration are approved up to $2,500.00 without the need of an Application to Approve Attorney Fee (Form 10.5).

**D. Fees for which an Application to Approve Attorney Fee is Required**

If counsel requests a fee exceeding $500.00 for services rendered in a Sole Asset Certificate of Transfer, a fee exceeding $1,000.00 for services rendered in a Summary Release from Administration, a fee exceeding $2,000.00 in a Release from Administration or a fee exceeding $2,500.00 in a full estate administration then the following shall apply:

If counsel requests a fee within the guideline set forth below, but all of the residuary beneficiaries of the probate estate and all other parties affected by the payment of the fee have not consented in writing to the payment of the fee, an Application to Approve Attorney Fee (Form 10.5) signed by the applicant and attorney and supported by the attorney's time records shall be filed with the Court. It is within the discretion of the Court whether the application will be approved or set for hearing

If counsel requests a fee that is not within the guideline set forth below, an Application to Approve Attorney Fee (Form10.5), signed by the attorney and applicant and supported by attorney's time records for all services, including time for services both within and outside of the guideline, shall be filed with the Court. If all of the residuary beneficiaries of the probate estate and all other parties affected by the payment of the fee have consented in writing to the payment of the fee, the application may be approved or set for hearing at the Court's discretion. If all of the residuary beneficiaries of the probate estate and all other parties affected by the payment of the fee have not consented in writing to the payment of the fee, the application shall be set for hearing. Notice of hearing shall be sent by the attorney to all residuary beneficiaries of the probate estate and all other parties affected by the payment of the fee pursuant to Civil Rule 73.

**E. Guideline**

Attorney fees for the administration of a decedent's probate estate, which are also deemed to be compensation for any expenses incurred by counsel for the filing of forms and pleadings, as set forth below may serve as a guide in determining fees to be charged to the probate estate for legal services of an ordinary nature rendered as attorney for the fiduciary in the administration of a decedent's probate estate. The Court does not have, nor is there recognized, any minimum or maximum fees that will automatically be approved by the Court. Misrepresentation of this guideline may result in sanctions, including the disapproval of or par or total repayment of attorney fees. Attorney fees

calculated under this guideline shall be rebuttably presumed to be reasonable.

1. On all personal property, gross sale price of real estate, and income subject to administration, as follows: For the first $50,000.00 at a rate of 5.5%; All above $50,000.00 and not exceeding $100,000.00 at the rate of 4.5%; All above $100,000.00 and not exceeding $400,000.00 at the rate of 3.5%; All above $400,000.00 at the rate of 2.0%.
2. On all real property subject to administration not sold and passing to a surviving spouse at the rate of 1%.
3. On all other real property subject to administration not sold: For the first $200,000.00 at a rate of 2.0%; All above $200,000.00 at a rate of 1.0%.
4. All other property, which is includable on an estate tax return or that passes outside of probate as a result of the decedent's death, excluding life insurance which is not payable to the estate, at the rate of 1% of all such property, except for joint and survivorship property that passes to a surviving spouse which shall be compensated at the rate of ½ of 1%.
5. For real estate sold by judicial proceedings, the attorney fees shall be calculated in accordance with Local Rule 65.1 and may be in addition to the amount calculated under the paragraph above.

## F. Attorney Fees when Attorney Serves Both as Fiduciary and Counsel

Where the fiduciary is also the attorney for the estate, or if the attorney for the estate is associated with the fiduciary's law firm on the date the fiduciary is appointed, reasonable attorney fees shall be rebuttably presumed to be one-half of the guideline amount as set forth above. This paragraph shall not apply if the fiduciary fee is waived.

## G. Time Sequence for Payment of Fees

Attorney Fees for the administration of a decedent's probate estate shall be paid at the time the Fiduciary's Final Account or Certificate of Termination is prepared for filing with the Court, and such fees shall not be paid prior to two weeks before the filing of the Fiduciary's Final Account or Certificate of Termination.

The Court may, upon application and for good cause shown, approve an Application for Partial Payment of Attorney Fees without a hearing prior to the time the fiduciary's final account is filed with the Court. In all such cases, the application must state the total amount of the attorney fees and any anticipated extraordinary fees estimated to be requested for the complete administration of the decedent's probate estate. Partial attorney fee requests should not exceed 50% of the total amount of the attorney fees estimated to be requested for the complete administration of the decedent's probate estate.

When multiple attorneys have been retained by the fiduciary or fiduciaries for the probate estate, or when it is anticipated that attorney fees will be paid to more than one attorney or law firm, all fee requests shall be considered by the Court simultaneously.

Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing the accounts required by R.C. §2109.30, et seq.

**Rule 71.2 Contingent Fees**

If the contingent fee agreement does not exceed 33 1/3% of the recovery, or 40% if an appeal is taken, no application for approval of the agreement need be filed and ratification of the contingent fee agreement may be done at the time of settlement. Should a proposed fee agreement exceed these amounts, prior to entering into any such contingent fee agreement, a fiduciary shall file an application with the Court for authority to enter into such fee agreement. A copy of the proposed fee agreement shall be attached to the application. All contingent fees are subject to review and approval by the Court at the time of settlement, notwithstanding the fact that the Court previously approved a fiduciary's application for authority to enter into a contingent fee agreement.

**Rule 72.1 Executor's and Administrator's Commissions**

Unless authorized by the Court, extraordinary fiduciary commissions shall not be awarded for travel expenses that would not have been incurred but for the fact that the fiduciary resides outside of Clermont County.

In cases where extraordinary executor or administrator's fees are requested involving multiple fiduciaries and separate fee applications will be filed by more than one fiduciary, all fee requests shall be considered by the Court simultaneously.

**Rule 73.1 GUARDIAN'S COMPENSATION**

Compensation for services as guardian of the estate shall be allowed not more frequently than annually, upon the filing of the annual account, application and entry, and shall be supported by calculations and documentation found in the annual account. The following schedule shall apply as a guideline, unless extraordinary compensation is requested:

For the first $200,000.00 of income 3.0%;
For the first $200,000.00 of expenditures 3.0%;
For expenditures in excess of $200,000.00 2.0%;
Upon the fair market value of the principal 0.2%.
A guardian of an estate shall be permitted a minimum annual fee of $500.00.

Balances carried forward from one accounting period to another shall not be considered income. Investment of funds shall not be considered expenditures. Final distribution of unexpended balances to a ward at the close of a guardianship shall be considered as expenditures.

For purposes of computing a guardian's compensation as herein provided, the fair market value of the principle shall be determined by the guardian as of the last day of the month the guardian is appointed and annually thereafter, or such other date the Court may approve upon application. The compensation so determined may be charged during the ensuing year. The annual principle valuation shall be adjusted from time to time to reflect additions to and withdrawals from the principle of the estate, and the compensation for the remaining portion of the annual period shall be similarly adjusted to reflect such revised valuation.

When a guardian is applying for compensation as guardian of the person, the guardian shall consider the factors set forth in Sup.R. 73. The application for

compensation should address each applicable factor (itemization of expenses, additional compensation, apportionment of the aggregate compensation between co-guardians and denial or reduction). All applications for compensation as guardian of the person shall contain a good faith estimate of the number of hours expended by the guardian during the period covered by the fee application.

The compensation of co-guardians, when separate parties are appointed as guardian of person and guardian of the estate shall not exceed the compensation that would be allowed to one guardian. In the event co-guardians cannot agree on the division of the compensation, the Court shall determine an equitable allocation of any guardian compensation awarded.

Compensation for services as guardian of an indigent ward may be paid from the indigent guardianship fund. Before payments will be approved from the indigent guardianship fund an Affidavit of Indigency must be filed in the case. The maximum hourly rate for compensation paid from the indigent guardianship fund is the hourly rate established for payments made to assigned counsel and guardians ad litem in the Juvenile Division of this Court, unless otherwise ordered in a particular case. Time shall be reported in tenths of an hour (6 minute increments). In no case shall guardian's compensation be paid from the county indigent guardianship fund where the guardian is related by blood or marriage to the ward or where the guardian or his/her employer receives compensation from third parties for guardianship services.

**Rule 73.2 ATTORNEY'S FEES FOR GUARDIANSHIP ADMINISTRATION**

A written application for the allowance of attorney fees for guardianship administration, signed by the attorney and fiduciary and supported by the attorney's time records, shall be filed with the Court. Attorney fees may be requested following the filing of the Guardian's Inventory and annually thereafter. An attorney fee of $1,000.00 for services rendered through the filing of the Inventory and a fee of $1,500.00 for services relating to the filing of the annual account shall be rebuttably presumed to be reasonable.

Except for good cause shown, neither compensation for a guardian, nor fees to the attorney representing such guardian, will be allowed while such guardian is delinquent in filing an inventory, account, or Guardian's Report. The Court may deny or reduce compensation if there is such a delinquency or failure to faithfully discharge the duties of fiduciary.

**Rule 74.1 TRUSTEE'S COMPENSATION**

Except where the instrument creating the trust makes provision for compensation, the annual fee charged by a trustee appointed by this Court for ordinary services performed in connection with the administration of each separate trust estate shall not exceed the following:

An amount to be computed on the fair market value of the principal of the trust property in accordance with the following schedule:

$14.00 per $1,000.00 on the first $1,000,000.00;
$11.00 per $1,000.00 on the next $2,000,000.00;
$ 9.00 per $1,000.00 on the next $2,000,000.00;

$ 7.00 per $1,000.00 on the balance.

The trustee may charge a minimum fee of $1,500.00 annually.

Such compensation shall be charged one-half to income and one-half to principal, unless otherwise provided in the instrument creating the trust or applicable law.

For the purpose of computing the trustee's compensation as herein provided, the fair market value of the principal of the trust property shall be determined by the trustee as of the last day of the month of the original receipt by the trustee of the trust property and annually thereafter, or such other date the Court may approve upon application. At the option of the trustee, fee valuations may be made on a monthly or quarterly basis, each valuation to be coordinated with the original annual valuation date as selected by the trustee. If this option is selected by the trustee, the trustee must continue to compute the fee on the monthly or quarterly valuation basis, unless approved by the Court upon application.

Additional compensation for extraordinary services may be allowed upon application. The Court may require that the application be set for hearing and notice thereof be given to interested parties in accordance with Civil Rule 73(E). The notice shall contain a statement of amount of the compensation sought.

The compensation of co-trustees in the aggregate shall not exceed the compensation which would have been payable if only one trustee had been acting, except in the following instances:

Where the instrument under which the co-trustees are acting provides otherwise; or where all the interested parties have consented in writing to the amount of the co-trustees' compensation, and the consent is endorsed on the co-trustees' account or evidenced by separate instrument filed therewith.

A separate schedule of the computation of trustee's compensation shall be shown in the trustee's account as a condition of its approval.

Except for good cause shown, neither compensation of a trustee nor fees to the counsel representing the trustee will be allowed while the trustee is delinquent in filing an account required by RC 2109.303.

Every corporate trustee shall provide the Court with a copy of its fee schedule by the 1st day of January of each year. Corporate trustee shall also immediately provide the Court with a copy of any revisions made during the year.

**Rule 74.2 ATTORNEY FEES FOR TRUST ADMINISTRATION**

An application for the allowance of attorney fees for testamentary trust administration shall have attached thereto an itemized statement of the services performed, the date services were performed, the time spent in rendering the services and the rate charged per hour. Attorney fees shall be approved no more frequently than annually and only in connection with the filing of an account.

## Rule 75.1 LOCAL RULES (SPECIAL PROVISIONS)

### A. APPLICATION OF LOCAL RULES

These Local Rules shall be applied prospectively as to all proceedings commenced on or after the effective date hereof.

### B. OMISSION/REDACTION OF PERSONAL IDENTIFIERS

The following rule shall apply, except with respect to documents that the Court maintains under seal pursuant to law:

When submitting a case document to a court or filing a case document with a clerk of court, a party to a judicial action or proceeding shall omit personal identifiers, as that terms is defined in Sup. R. 44, from the document. The last four digits of social security numbers and the last three digits of financial account numbers may be included.

Redacted or omitted personal identifiers shall be provided to the Court or clerk only as required by law or upon request by the Court or to a party by motion. Redacted or omitted personal identifiers shall be filed on a separate form under seal. Form 270.00 shall be used for this purpose.

The responsibility for omitting personal identifiers from a case document submitted to a court of filed with a clerk of court pursuant to this rule shall rest solely with the party. The court or clerk is not required to review the case document to confirm that the party has omitted personal identifiers.

### C. EVIDENCE OF TRUST

When a beneficiary of a decedent's estate is a trust, the fiduciary or counsel shall present evidence to the Court of the existence of the trust and the identity of the trustee no later than the filing of the entry approving inventory or the entry relieving the estate from administration.

A photocopy of the executed trust or a memorandum of trust shall be sufficient for this purpose.

### D. GUARDIAN AD LITEM

In accordance with section 2111.23 RC, the court shall appoint a guardian ad litem to protect the interests of a minor child or incompetent adult in a court proceeding when:

(1) The minor child has no parents, guardian, or legal custodian or the incompetent adult has no guardian;

(2) The interests of the minor child or incompetent adult and the interests of the parent, guardian, or legal custodian may conflict;

(3) The parent of the minor child is under eighteen years of age;

(4) Appointment is otherwise necessary to meet the requirements of a fair hearing.

When the guardian ad litem is an attorney admitted to practice in this state, the guardian may also serve as counsel to the ward, providing no conflict between the roles exist.

The party initiating the court proceeding in which a guardian ad litem is required shall suggest to the court arrangements for the compensation of the guardian ad litem. This shall be done at the time of the application for appointment and an appropriate order regarding compensation shall be incorporated in the entry of appointment.

A guardian ad litem shall be entitled to minimum compensation of $250.00. Compensation in excess of this amount shall be based upon the time and value of services to the ward and shall be subject to approval of the court at the time the matter comes on for final determination.

## RULE 78.1 CASE MANAGEMENT IN DECEDENT ESTATES, GUARDIANSHIPS AND TRUSTS

A. Each fiduciary shall adhere to the statutory or court-ordered time period for filing the inventory account, and if applicable, guardian's report. The citation process set forth in section 2109.31 of the Revised Code shall be utilized to ensure compliance. The attorney of record and the fiduciary shall be subject to the citation process. The court may modify or deny fiduciary commissions or attorney fees, or both, to enforce adherence to the filing time periods. If a decedent's estate must remain open more than six months pursuant to RC 2109.301 (B) (1), the fiduciary shall file an application to extend administration. (Standard Probate Form 13.8).

B. An application to extend the time for filing an inventory, account, or guardian's report shall not be granted unless the fiduciary has signed the application.

C. The fiduciary and the attorney shall prepare, sign, and file a written status report with the court in all decedent's estates that remain open after a period of thirteen months from the date of the appointment of the fiduciary and annually thereafter. At the court's discretion, the fiduciary and the attorney shall appear for a status review.

D. The court may issue a citation to the attorney of record for a fiduciary who is delinquent in the filing of an inventory, account, or guardians' report to show cause why the attorney should not be barred from being appointed in any new proceeding before the court or serving as attorney of record in any new estate, guardianship, or trust until all of the delinquent pleadings are filed.

E. Upon filing of the exceptions to an inventory or to an account, the exceptor shall cause the exceptions to be set for a pretrial within thirty days. The attorney and their clients, or individuals if not represented by an attorney, shall appear at the pretrial. The trial shall be set as soon as practical after pretrial. The Court may dispense with the pretrial and proceed directly to trial.

## Rule 78.2 ELECTION BY AN INCOMPETENT SURVIVING SPOUSE

When a surviving spouse is under guardianship or is subject to a legal disability, the fiduciary shall comply with the following procedure. The fiduciary shall serve a notice

of taking of the inventory to the surviving spouse and the guardian if one has been appointed. After serving the Notice of Taking of Inventory on the surviving spouse, the inventory shall be completed and filed. Upon the approval of the inventory, the fiduciary shall submit an Application for Appointment of Commissioner Where Spouse is Under a Disability Form 8.8, present a proposed Entry Appointing Commissioner Where Spouse is Under Disability Form 8.8E, and a proposed Entry electing to take under or against the will. Upon review of the Application for appointment of a Commissioner, the Court shall issue an entry appointing a Commissioner who shall prepare a report. After receipt of the Commissioner's Report, the Court shall elect whether to take under or against the will. The Court may or may not set the election for hearing.

**Rule 78.3 SPOUSAL CITATION AND SUMMARY OF RIGHTS**

Where appropriate, Form 8.6 Waiver of Service to Surviving Spouse of the Citation to Elect should be filed at the same time as the initial application for appointment of the fiduciary. Absent filing of a waiver, the Court shall serve by certified mail the spousal citation and summary of rights required by Ohio Revised Code Section 2106.02 within 7 days after the initial appointment of a fiduciary.