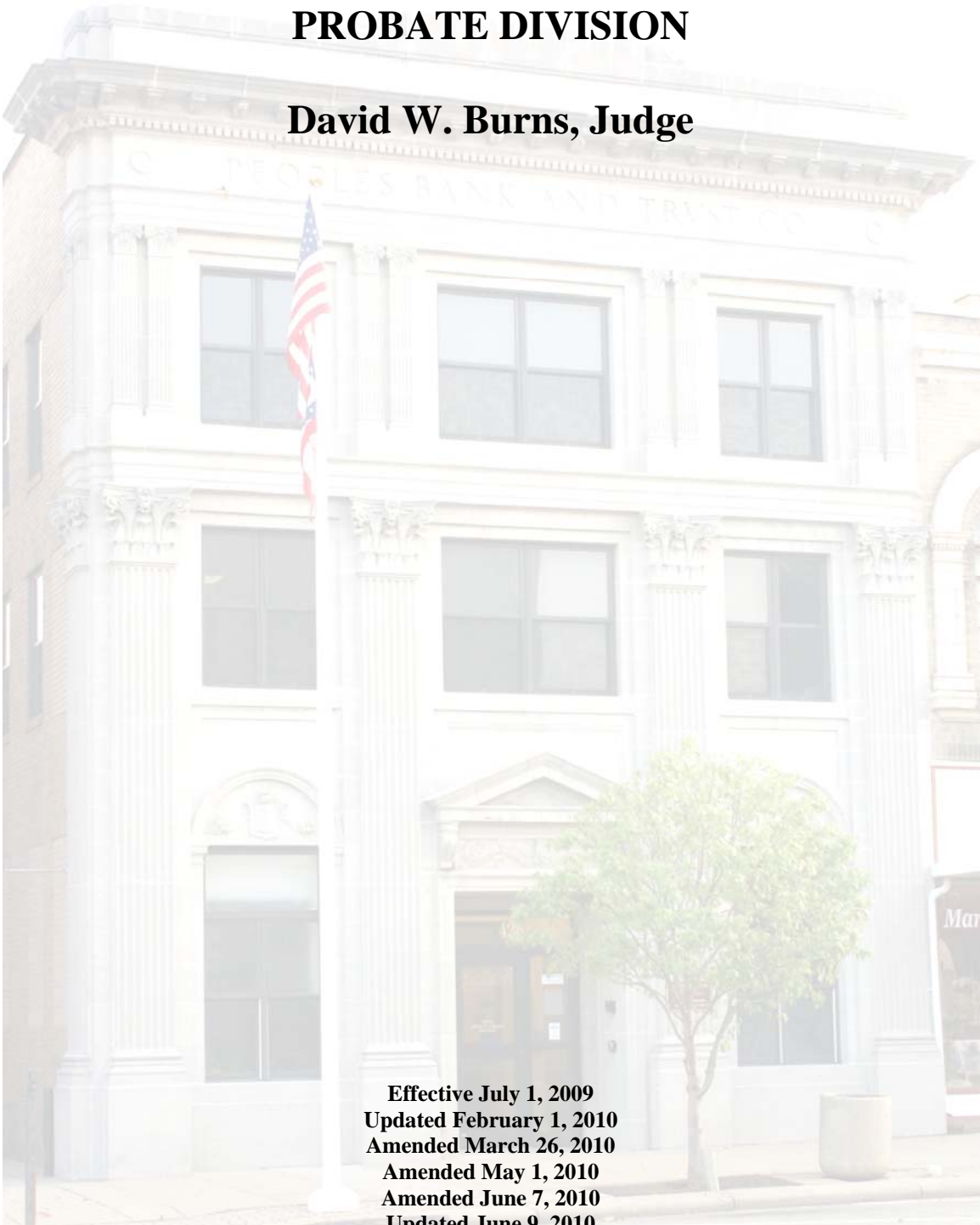


**COSHOCTON COUNTY
RULES OF PRACTICE AND PROCEDURE OF THE
COURT OF COMMON PLEAS
PROBATE DIVISION**

David W. Burns, Judge



**Effective July 1, 2009
Updated February 1, 2010
Amended March 26, 2010
Amended May 1, 2010
Amended June 7, 2010
Updated June 9, 2010**

Updated March 1, 2011

PURSUANT TO ARTICLE IV, SECTION (5) OF THE OHIO CONSTITUTION AND THE RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO, IT IS ORDERED THAT THE FOLLOWING BE THE RULES OF PRACTICE AND PROCEDURE OF THE PROBATE COURT OF COSHOCTON COUNTY, OHIO.

Application of any rule may be waived or modified by motion filed with the Court and for good cause shown.

In the event of any conflict between any provision of these rules with either the Ohio Revised Code or the applicable rules of any Court with superior jurisdiction, then the statutory provision of such other Court's rule shall prevail.

**COMMON PLEAS COURT OF COSHOCTON COUNTY, OHIO
PROBATE DIVISION**

LOCAL PROBATE COURT RULES

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SUP. R. 8 COURT APPOINTMENTS

LOCAL RULE 8.1 COURT APPOINTMENTS

(A) Persons appointed by the court to serve as fiduciaries, attorneys, appraisers, magistrates in involuntary appointment proceedings, investigators, guardian ad litem, commissioners and trustees for suit may be selected from lists maintained by the Court. The Court shall keep a separate list of qualified guardians ad litem.

(B) Appointments will be made from such lists taking into consideration the qualifications, skills, expertise and caseload of the appointee in addition to the type, complexity and requirements of the case.

(C) Court appointees will be paid a reasonable fee with consideration given to the factors contained in Prof. Cond. Rule 1.5, the Ohio Revised Code, and the Local Rules of Court relating to fees.

(D) Compensation for all appointed counsel for Probate cases shall be at a rate of \$55.00 per hour out of Court and \$65.00 per hour in Court, with a cap of \$500.00 per case. Additional fees may be approved at the Court’s discretion for cases involving additional litigation.
(Effective 3/1/2011)

SUP. R. 9 SECURITY PLAN

LOCAL RULE 9.1 SECURITY PLAN

 This Court’s security plan is under review and will be filed in conjunction with Case No. 20480008 in the Probate Division of Coshocton County Court of Common Pleas and with the Supreme Court of Ohio. The security plan is confidential and is not a matter of public record.

SUP. R. 11 RECORDING OF PROCEEDINGS

LOCAL RULE 11.1 RECORDING OF PROCEEDINGS

(A) The Court will make a digital recording of the proceedings as the record of the Court unless a stenographic record is requested. Parties who desire to have a stenographic record of the proceedings must notify the Court in writing and the requesting party shall pay the costs of the stenographic record unless otherwise ordered by the Court.

(B) The Court will allow an interested party to listen to a copy of the electronic recording upon request made not less than forty-eight (48) hours in advance. Media shall not be removed from the Court.

(C) Any interested party may request a stenographer approved by the Court transcribe an electronic recording. A person making the request shall pay the cost of the transcription and must make a deposit in advance for such transcript as set forth by the transcriber.

SUP. R. 12 CONDITIONS FOR BROADCASTING AND PHOTOGRAPHING COURT PROCEEDINGS

LOCAL RULE 12.1 BROADCASTING AND PHOTOGRAPHING

No radio or television transmission, voice recording device, other than a device used in making an official record of the proceeding for the Court, or the making or taking of photographs, shall be permitted without the prior approval of the Judge.

SUP. R. 26 COURT RECORDS MANAGEMENT AND RETENTION

LOCAL RULE 26.1 COURT RECORDS MANAGEMENT AND RETENTION

Pursuant to Rule 26 (G) of the Rules of Superintendence for the Courts of Ohio, the Probate Division of the Court of Common Pleas, Coshocton County, Ohio adopts the Court Records Management and Retention and schedules as set forth, and will be followed in conjunction with, the Rules of Superintendence for the Courts of Ohio.

LOCAL RULE 26.2 DISPOSITION OF EXHIBITS

(A) All exhibits offered for admission during a hearing or trial shall be labeled by party name and item identification. In a proceeding recorded by a Court stenographer, custody of exhibits offered or proffered shall be given to the stenographer, unless otherwise ordered by the

Court. If the proceeding is electronically recorded, exhibits shall be retained in the case file, unless otherwise ordered by the Court.

(B) Upon agreement of the parties or by order of the Court, copies may be substituted for the original exhibit. Disposal of exhibits shall be pursuant to Sup. R. 26.

SUP. R. 51 STANDARD PROBATE FORMS

LOCAL RULE 51.1 STANDARD PROBATE FORMS

Standard probate forms shall be used where applicable. Where a standard form has not been prescribed by this Rule, the form used shall be that required by the Civil Rules or prescribed or permitted by the Probate Division of the Court of Common Pleas.

SUP. R. 52 SPECIFICATIONS FOR PRINTING PROBATE FORMS

LOCAL RULE 52.1 COMPUTERIZED FORMS

Computer generated forms must comply with the specifications and format outlined by the Rules of Superintendence. The signature of the applicant or attorney constitutes a certificate that the computer generated forms comply with the rules. All computer forms presented for filing must be generated with the exact wording as well as blank lines as they appear in the uniform forms.

LOCAL RULE 52.2 FORM SPECIFICATIONS

The type size for the body of all forms filed in this Court cannot be less than ten (10) point, nor greater than twelve (12) point.

SUP. R. 53 HOURS OF THE COURT

LOCAL RULE 53.1 HOURS OF THE COURT

The Court Office shall be open for the transaction of ordinary business from 8:00 a.m. to 4:00 p.m. on all business days, Monday through Friday, except for legal holidays and such other

occasions as may be specifically ordered by the Court. Additionally, the Court shall be closed the day after Thanksgiving.

SUP. R. 54 CONDUCT IN COURT

LOCAL RULE 54.1 CONDUCT IN COURT

(A) All parties or witnesses appearing herein shall be treated with professional courtesy and respect by counsel. Conduct which interferes, or tends to interfere with the proper administration of justice and/or the business of the Court is strictly prohibited and may, at the discretion of the Court, subject the offending counsel, parties or other participants to sanctions, including, but not limited to, contempt.

(B) Appearance in Court under the influence of alcohol or drug abuse by any person is strictly prohibited. Any party or other person appearing in this Court who appears to be under the influence of alcohol and/or any drug of abuse shall, at the discretion of the Court, may be ordered to submit to alcohol testing and drug screening. A positive alcohol test and/or drug test may result in a finding of direct contempt. A finding of contempt may subject the contemner to a fine, incarceration or both.

(C) All persons must dress in proper attire when entering a courtroom. No attorney, party, observer or witness shall be permitted to appear in the courtroom or offer testimony while dressed in shorts and/or tank tops or other inappropriate attire. It shall be the duty of counsel to advise the parties and witnesses of this rule prior to their appearance in Court.

SUP. R. 55 EXAMINATION OF PROBATE RECORDS

LOCAL RULE 55.1 REMOVAL OF FILES

(A) The general records of the Court shall be subject to inspection or shall be open to inspection by all members of the public during regular office hours of the Court.

(B) The Court prohibits removal of files.

LOCAL RULE 55.2 PHOTOCOPIES

Copies of public records shall be provided at a cost of 25¢ per page. If a request is received to send copies by regular U.S. mail, such copies will be mailed only if the cost of the copies, postage and any other mailing expenses are pre-paid. (Section 149.43 O.R.C.)

LOCAL RULE 55.3 CONFIDENTIAL RECORDS

Files of adoption, mental illness and Ohio Estate Tax returns are confidential by statute and may be accessed only as authorized by the Judge.

SUP. R. 57 FILINGS AND JUDGMENT ENTRIES

LOCAL RULE 57.1 COMPLETE STREET ADDRESS AND TELEPHONE NUMBER

When required on a Court document, an address must be a street address and, if applicable, any post office box numbers used as a mailing address. The address of the fiduciary who is not an attorney at law must be the fiduciary's legal residence. A fiduciary who is an attorney at law may use an office address. Reasonable diligence shall be exercised to obtain the complete addresses of the surviving spouse, next of kin, legatees and devisees. Also, a telephone number of the fiduciary or attorney must be included on all executed Court documents.

LOCAL RULE 57.2 CASE NUMBER

All filings, including attachments, must have the case number on each page.

LOCAL RULE 57.3 ORIGINAL SIGNATURES

All filings must contain original signatures. In all matters with multiple fiduciaries, the signature of all fiduciaries is required on all documents. Persons who are not an attorney may not sign on behalf of an attorney.

LOCAL RULE 57.4 COURT FILINGS

All filings must be legible, on 8-1/2" x 11" paper and the type size for the body of the document shall not be less than ten (10) point or greater than twelve (12) point. Filings that are not legible for any reason including poor handwriting or photocopying may be refused, or if

filed, may be stricken unless there is a legibly typed copy attached thereto. The Court will accept for filing only pleadings that are complete.

LOCAL RULE 57.5 CERTIFICATE OF NOTICE OF ENTRY OF JUDGMENT

Any proposed entry submitted to the court which is subject to Civ. R. 58(B) as modified by Civ. R. 73(I) must contain a certificate of service including the names and addresses of all parties and other interested persons required to be served.

LOCAL RULE 57.6 SOCIAL SECURITY NUMBER

Social security numbers are confidential and shall not be filed in any filing in this Court that is available for inspection by the general public.

LOCAL RULE 57.7 ACCOUNT NUMBERS

Pursuant to Rules of Superintendence Rule 44, all financial asset account numbers in any public record document filed in this Court shall be omitted. It is the responsibility of the person filing the document to redact the account number. (Effective 3/1/2011)

LOCAL RULE 57.8 DEATH CERTIFICATE TO BE EXHIBITED

Upon the initial filing of any matter captioned in the name of a deceased individual, the applicant shall exhibit to the Court a copy of the decedent's death certificate. Upon the termination of a guardianship due to the death of the ward, the applicant shall exhibit to the Court a certified copy of the ward's death certificate.

LOCAL RULE 57.9 FACSIMILE FILINGS

(A) Pursuant to the authority extended the Court by Civil Rule 5(E) and Juvenile Rule 8, the Court adopts the following procedures for the acceptance of facsimile copies, subsequent to the original complaint, of pleadings and other papers not longer than five (5) pages in length may be filed in this manner.

(B) The Court shall maintain an independent private telephone line, publish the number of the same, and maintain a facsimile machine for utilization by members of the bar authorized

to practice law in Ohio in filing documents with the Court and its Clerk as provided herein. The facsimile telephone number is (740) 623-6514.

(C) The filing of pleadings or other papers, subsequent to the original complaint and not requiring a security deposit pursuant to Local Rule, may be filed with the Clerk by facsimile copy. Within three (3) business days after the transmission to the Clerk of a facsimile copy, an original document bearing original signatures shall be filed with the Clerk. The Clerk shall docket any facsimile copy when received as a facsimile copy. Thereafter, when the original document is filed, the Clerk shall docket it in the usual and customary manner and the filing shall relate back to the date upon which the facsimile copy was filed. In the event any facsimile copy is received by the Clerk after 3:30 p.m. on a regular business day or anytime on a weekend or holiday the facsimile copy shall be considered filed on the next ensuing regular business day for the Clerk. To insure timely filing of pleadings or other papers, contact the Juvenile Clerk prior to transmission at (740) 622-8969 or the Probate Clerk at (740) 622-1837.

(D) Any facsimile copy filed pursuant to this rule shall conform to the requirements of applicable Civil Rules, Juvenile Rules and Local Rules, in both form and substance, and shall be preceded in transmission by a cover page which includes the following information:

- (1) Name of forwarding attorney,
- (2) Address of forwarding attorney,
- (3) Ohio Supreme Court registration number of attorney,
- (4) Telephone number of attorney,
- (5) Facsimile telephone number of attorney,
- (6) Date and time of facsimile initiation, and
- (7) Number of pages in document being forwarded.

LOCAL RULE 57.10 FIDUCIARY SIGNATURE

Any pleading, filing or other document, which by law or rule requires the fiduciary's signature, shall have the original signature of the fiduciary. The attorney for the fiduciary may not sign for the fiduciary.

LOCAL RULE 57.11 ISSUANCE OF SUMMONS

A request for Issuance of Summons shall be filed with all original and amended complaints or petitions in civil actions.

SUP. R. 58 DEPOSIT FOR COURT COSTS

LOCAL RULE 58.1 DEPOSITS

The business of the Court will be conducted on a cash, check or money order basis. The court will not accept debit or credit cards. All deposits for court proceedings will be in accordance with the Court’s deposit, fee and costs schedule in effect on the date of filing of the pleading. A list of deposits required is as follows:

Estate	
Full Administration	\$125.00
Release	\$100.00
Summary Release	\$ 70.00
Estate Tax Only	\$ 37.50
Guardianship	
Minor	\$100.00
Incompetent	\$125.00
Adoptions	
Step-Parent	\$330.00
Additional Siblings	\$200.00
Private Placement	\$500.00
Agency	\$136.00
Trust	\$100.00
Minor’s Claim	\$ 52.50
Name Change	\$ 78.50
Birth Correction	\$ 14.50
Registration of Birth	\$ 14.50
Parentage	\$ 75.00
Custody/Visitation	\$ 70.00
Declaratory Judgment	\$ 75.00
Determination of Heirs	\$100.00
Foreign Will	\$42.50 + 25¢ per page

Marriage License	\$ 52.00
Presumption of Death	\$ 75.00
Probate of Will Only	\$ 47.50
Claim Against Estate	\$ 20.00
Will Contest	\$ 75.00
File Will Only (Not Probate)	\$ 30.00
Wrongful Death With Estate	\$ 37.50
Disinterment	\$ 60.00
Structured Settlement	\$ 90.00
Computer Fund	\$ 10.00
Computerized Legal Research	\$ 3.00
Certified Copies	\$ 1.00
Special Project Fee	\$ 10.00

These court costs may be changed by the Court without amendments of these Local Rules or as required by statute.

LOCAL RULE 58.2 INSUFFICIENCY OF COSTS DEPOSIT

If the costs deposit is inadequate to cover the costs or fee of any filing, the filing may not be accepted by the Court without payment of the appropriate filing cost or fee. The Court may, at its discretion, require an additional costs deposit in any matter.

SUP. R. 59 WILLS

LOCAL RULE 59.1 CERTIFICATE OF SERVICE OF NOTICE OF PROBATE OF WILL

The applicant for the admission of a will to probate or other person listed in Ohio R.C. 2107.19(A)(4) shall file a Certificate of Service of Notice of Probate of Will (Standard Probate Form 2.4) not later than two months after the appointment of the fiduciary or, if no fiduciary has been appointed, not later than two months after the admission of the will to probate. Proof of service shall consist of either waivers or notice of the probate of the will or original certified mail return receipt cards as provided under Civil Rule 73(E)(3). A waiver of notice may not be signed by any minor, or on behalf of a minor sixteen (16) or seventeen (17) years of age.

SUP. R. 60 APPLICATION FOR LETTERS OF AUTHORITY TO ADMINISTER ESTATE AND NOTICE OF APPOINTMENT

LOCAL RULE 60.1 FIDUCIARY’S ACCEPTANCE

All executors and administrators shall personally sign and file the Fiduciary’s Acceptance prior to the issuance of the Letters of Authority.

LOCAL RULE 60.2 CITATION/SUMMARY PAPERS

The Court will require a Citation to Surviving Spouse to Exercise Elective Rights along with a Summary of General Rights to Surviving Spouse to be filed with the original estate documents, unless waived, in all estates where there is a surviving spouse including estates where there is no will. The Court will then issue the Citation/Summary to the surviving spouse. The Court will accept a Surviving Spouse Waiver of Service of the Citation to Elect. However, it must accompany the original estate documents.

LOCAL RULE 60.3 APPOINTMENT OF NON-RESIDENT FIDUCIARIES

An applicant to be appointed fiduciary of a decedent’s estate, guardianship or trust, who is not a resident of this state, must be in compliance with Ohio Revised Code 2109.21 and use as the attorney of record an attorney licensed to practice law in Ohio. To assure the assets remain in Coshocton County, Ohio, during the administration of the estate or trust, the applicant must meet one or more of the following criteria as required by the Court:

- (1) Place a substantial amount of the assets in a custodial depository in this county, pursuant to Ohio Revised Code 2109.13;
- (2) Have a co-fiduciary who is a resident of this State;
- (3) Post a bond in compliance with Ohio Revised Code 2109.04.

LOCAL RULE 60.4 REQUIREMENT OF CERTIFICATE OF TITLE

For all estates, guardianships and trusts which contain real estate, a certificate of title that complies with the Marketable Title Act, shall be required and filed at the time of the Inventory. The following shall apply:

- (1) If there is a certificate of title dated within ten years of the due date it will meet the requirements of this rule if brought current to date of filing.
- (2) If the deed contains multiple separate tracts then the fee shall be \$240.00 per tract.
- (3) If the deed contains one chain of title the fee shall be \$240.00.

(Effective 08/10/09)

(4) A certificate of title will not be required in an estate if the spouse is entitled to the decedent's share of the property, and the property is being transferred to the spouse; or in a guardianship if the property is being transferred to the spouse and the spouse is appointed guardian of the ward.

SUP. R. 61 APPRAISERS

LOCAL RULE 61.1 APPRAISERS AND APPRAISALS

With Court approval, the executor or administrator of an estate shall appoint one suitable or disinterested appraiser. The following persons shall be disqualified from being such an appraiser unless a consent is signed by the fiduciary and the fees are disclosed:

- (1) A person related by blood or marriage to the decedent;
- (2) A person related by blood, marriage or employment to the attorney for the estate;
- (3) A person related by blood, marriage or employment to the fiduciary for the estate.

LOCAL RULE 61.2 SELF-DEALING APPRAISER

During the administration of the estate or within twelve (12) months of the appointment of the appraiser, no appraiser shall directly purchase or negotiate the purchase, sale, trade or management of property that he or she has appraised from the estate. This proscription may be waived by the Court upon application by the fiduciary.

LOCAL RULE 61.3 READILY ASCERTAINABLE VALUE OF REAL PROPERTY

Notwithstanding Local Rule 61.1, the market value of real estate as found in the Coshocton County Auditor's property records may be acceptable as the readily ascertainable value of the property and no further appraisal of such property shall be required except as provided under Local Rule 61.5. A copy of said evaluation shall be attached to the appropriate form.

LOCAL RULE 61.4 READILY ASCERTAINABLE VALUE OF MOTOR VEHICLE

Notwithstanding Local Rule 61.1, the market value of any motor vehicle as found in the current N.A.D.A. Official Used Car Guide under the category “Average Retail” or in the current Kelley Blue Book may be accepted as the readily ascertainable value of the property and no further appraisal of such property shall be required except as provided under Local Rule 61.5. A copy of the appropriate page from said booklet shall be attached to the appropriate form.

LOCAL RULE 61.5 DISPUTED APPRAISAL

An administrator, executor, fiduciary, beneficiary or creditor of a decedent’s estate may file a written request with the Probate Court not later than five (5) days prior to the date set for hearing on the Inventory and Appraisal that any property deemed to be appraised by readily ascertainable value shall be appraised by a suitable and disinterested appraiser as provided in Local Rule 61.1.

LOCAL RULE 61.6 APPRAISER’S FEES

(A) Appraiser’s fees for real estate shall be based upon the entire undivided value of the assets subject to appraisal (not the decedent’s interest in the property which may be fractional). Fees may be computed as set forth below or at a mutually agreeable rate between the fiduciary/executor and appraiser:

- (1) \$1.50 per thousand for the first \$200,000 of valuation;
- (2) \$1.00 per thousand in excess of \$200,000 of valuation;
- (3) The minimum appraiser fee shall be \$50.00.

(B) When an appraisal of multiple properties is performed, the above fee schedule shall apply to each property, not the aggregate value of all properties. Fees paid in compliance with this rule may be paid without application and entry.

(C) If a Coshocton County appraiser is employed to appraise real estate located in another county, in addition to the fee calculation in Paragraph (A) above, the appraiser may also charge a mileage fee.

(D) Any appraiser fee requested in excess of the above schedule and appraisals of personalty must either be by agreement between the fiduciary and the appraiser or must be approved by the Court prior to the appraisal being made.

(E) All appraisers shall give to the fiduciary and the attorney of record a written appraisal of each property appraised on the appropriate form provided by the Court or a form which is in substantial compliance therewith. The signature of the appraiser shall constitute a certificate that the appraisal was performed truly, honestly and impartially.

(F) Appraiser's fees may be paid by the fiduciary within six (6) months after the appraisal is completed or upon completion of the estate unless otherwise ordered by the Court. The proceedings shall remain open until the fiduciary has accounted for the payment of the appraisal fee. Should payment not be made pursuant to this rule, the fiduciary and/or attorney shall be held personally liable for the payment of the appraisers' fees.

SUP. R. 62 CLAIMS AGAINST ESTATE

LOCAL RULE 62.1 CLAIMS FILED WITH THE COURT

(A) All claims filed with the Court will be processed in accordance with O.R.C. 1311, 2107, 2113, 2117, and 2129.

(B) *No Claim will be processed unless a \$20.00 filing fee is received.*

SUP. R. 64 ACCOUNTS

LOCAL RULE 64.1 FIDUCIARY'S SIGNATURE AND ADDRESS

(A) All accounts must be personally signed by the fiduciary and contain the full name, current address and telephone number of the fiduciary.

(B) All fiduciaries must sign the account when multiple fiduciaries have been appointed.

LOCAL RULE 64.2 DELINQUENCY IN FILING AN ACCOUNT

(A) No expenditures, sale, distribution or fee will be approved while the fiduciary is delinquent in filing an account. See also Sup. R. 78.

(B) If a final account cannot be fully rendered when due, a partial account should be filed along with a status report.

LOCAL RULE 64.3 EVIDENCE OF ASSETS

(A) The Court requires all assets be exhibited at the time of filing a partial account.

(B) Cash balances shall be verified by Bank Certificate signed by a bank officer of the financial institution. Assets held in a safe deposit box of a fiduciary or by a surety company on current inventory thereof shall be certified by the manager of the safe deposit box department of the financial institution leasing the safe deposit box or by a qualified officer of the surety company if the assets are held by a surety. If the assets are held by a bank, trust company, brokerage firm, or other financial institution, such exhibition may be made by proper certification as to the assets so held.

LOCAL RULE 64.4 COURT COSTS PAID

A final and distributive account shall not be approved until all court costs are paid.

LOCAL RULE 64.5 TIME FOR FILING

(A) For decedent's estates, the final and distributive account due within six (6) months after appointment of the fiduciary may be extended by Application to thirteen (13) months for the reasons enumerated in Ohio R.C. 2109.301(B)(1). All subsequent accounts must be filed on an annual basis unless the Court otherwise orders. Accounts not filed in compliance with this rule shall be subject to citation.

(B) For guardianships and trusts, the first account shall be filed within six (6) months following the date of the appointment of the fiduciary and all subsequent accounts shall be filed on an annual basis, unless otherwise ordered by the Court.

(C) Notices shall be issued to the attorney of record when an account is not filed when due. Failure to respond in writing within seven (7) days will result in the notice being sent to the fiduciary.

(D) If a fiduciary is delinquent in filing an account or exhibiting assets and no extension has been granted, a citation shall be issued requiring the fiduciary to appear forthwith and show cause why the account has not been filed or why the assets have not been exhibited.

LOCAL RULE 64.6 ACCEPTABLE VOUCHERS

(A) Acceptable vouchers are: “paid” bills; cancelled checks with the endorsement of the beneficiary on the back, imaged copies or receipts signed by the beneficiary.

(B) Vouchers must be provided to the Court for verification on all trusts and guardianships. Upon the verification of vouchers by the Court, all vouchers shall be returned to the attorney of record and/or fiduciary. Vouchers shall not be required on estates.

(Effective 3/1/2011)

LOCAL RULE 64.7 CERTIFICATE OF TERMINATION

No partial or final accounting is required to be filed if the sole beneficiary or heir is also the sole fiduciary. The fiduciary shall be discharged and the estate completed after filing with the Court within thirty (30) days after completing the administration of the estate a Certificate of Termination pursuant to Section 2109.30(B)(2) O.R.C.

SUP. R. 65 LAND SALES

LOCAL RULE 65.1 LAND SALES

(A) In cases involving public sale the complainant shall, prior to the issuance of an order of sale, file with the Court evidence of title showing the record condition of the title to the premises described in the complaint, prepared and extended by a reasonable abstract or title or an

attorney's certificate to a date subsequent to the date in which the complaint was filed. This rule shall apply to estates, guardianships, etc. that have not previously filed a certificate of title.

(B) When an order of private sale is required, excepting those cases where the consent of all necessary parties to the proceedings has been filed or cases involving the sale of fractional interest, then the complainant shall be required, by affidavit or testimony under oath, to establish: (1) whether or not the sale has been the subject of prior negotiations; (2) the amount offered for the sale of the property; (3) the appraised value in the land sale proceedings; (4) the identity of the prospective purchaser and counsel, if any; (5) whether or not the proposed transaction will be, or has already been, placed in escrow; and (6) the identity of the escrow agent.

(C) The Court may, in its discretion, appoint a disinterested person, answerable to the Court, who shall investigate the circumstances surrounding the proposed transaction, view the property, ascertain whether the proposed sale is justified, and report his findings in writing. The report shall be a part of the record. The compensation for the person performing these services shall be fixed by the Court, according to the circumstances of each case, and shall be taxed as costs.

(D) In all land sale proceedings involving the sale of real estate owned by the ward under guardianship, service of process on the ward is required and may not be waived.

(E) Confirmation of sale must be filed before the case can be closed.

SUP. R. 66 GUARDIANSHIPS

LOCAL RULE 66.1 GUARDIANSHIPS

(A) An inventory is to be filed within ninety (90) days of the appointment. The inventory is to state all assets and shall include copies of all bank statements stating the account balances at the time the inventory is filed.

(B) Waivers from all next of kin listed must be filed as well as a certificate of service.

(C) A non-oral hearing will be set within thirty (30) days of the filing of the inventory.

(D) An application to expend funds shall not be granted if an inventory has not been filed or if an account is overdue. 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 that ward's support, maintenance, medical care or education.

(E) Funds shall not be released to a guardian except upon an order of the Court.

(F) 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.

(G) None of a 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 Expend Funds.

(H) All guardians are required to inform the Court within 24 hours, in writing, of a change of address and/or change of telephone number for either the ward or the guardian.

(I) Guardian's Bond: Unless waived by the Court, a guardian over the estate of a ward is required to file a bond for at least 2/3 of the total assets of the ward prior to the guardianship hearing. Said bond must be valid for the entirety of the guardianship. (Effective 01/31/11)

LOCAL RULE 66.2 GUARDIANSHIP FOR INCOMPETENTS

(A) All applications for the appointment of a guardian on the grounds of mental incompetency shall be accompanied by either a statement of a physician or clinical psychologist or a statement that the prospective ward has refused to submit to an examination.

(B) A notice of hearing shall be served upon all next of kin who are residents of the State of Ohio unless waived.

(C) A notice of hearing shall be personally served upon the prospective ward within seven (7) days of the hearing date.

(D) A Probate Court Investigator shall personally serve the prospective ward within seven (7) days of the hearing date. The Probate Court Investigator shall file a report with the Court concerning the application for the appointment of a guardian on the grounds of mental incompetency. This report shall be maintained as a confidential record.

LOCAL RULE 66.3 GUARDIANSHIP OF MINORS

(A) All applications for the appointment of guardian shall be captioned in the name of the proposed ward.

(B) Notice of hearing shall be given to all next of kin who are residents of the State of Ohio, unless waived.

(C) All applications for the appointment of a guardian of minor, if other than by the natural parent shall state: (1) the relationship of the applicant to the minor; (2) the reason that the applicant and not the natural parent is making the application; and (3) the reason for the necessity of the guardianship. Custody affidavit (O.R.C. 3109.27) shall be a required filing on all guardianships involving minors. A copy of the minor's birth certificate must be filed with an Application for Appointment of Guardian of Minor.

(D) The Court will not establish a guardianship for school purposes only. Custody for school purposes is a matter to be heard and determined by the Juvenile or Domestic Relations Divisions.

(E) If the ward is fourteen years of age or over, the ward must come into the Court to be personally served a copy of the Notice of Hearing.

LOCAL RULE 66.4 INDIGENT GUARDIANSHIPS

(A) Eligibility for indigency will be determined by filing an affidavit of indigency (Form OPD-206R) to waive costs and payment of attorney fees.

(B) Invoices for payment of attorney fees shall be submitted within 30 days of the appointment and/or filing of inventory and then on a quarterly, bi-annual or annual basis for ongoing services. Payment shall be made upon motion and entry through the Indigent Guardianship Fund as funds become available.

 (1) The Court will only reimburse for routine office expenses at its sole discretion. All Court costs are waived for indigent guardianships.

 (2) Any attorney appointed by the Court to represent a ward in a guardianship matter shall be appointed by entry and a copy of such entry shall be attached to any invoice submitted to the Court for payment of attorney fees. (Effective 05/01/10)

LOCAL RULE 66.5 GUARDIAN’S REPORT

(A) The guardian of the person shall file the first guardian’s report within six (6) months from the date of the appointment of the guardian and then annually thereafter.

(B) A Statement of Expert Evaluation must accompany the guardian’s report.

(C) The guardian of the person shall file the guardian’s annual report.

(D) When a physician or clinical psychologist states on a Statement of Expert Evaluation that to a reasonable degree of medical certainty it is unlikely the ward’s mental competence will improve, the Court will dispense with the filing of subsequent Statement of Expert Evaluation when subsequent guardian’s reports are filed.

(E) All applications for the appointment of a guardian on the grounds of mental incompetence, for dismissal of such guardianship, or for declaration of competency, shall be

accompanied by a Statement of Expert Evaluation, a statement of a physician, clinical psychologist or a statement that the prospective ward has refused to submit to an examination.

(F) A Statement of Expert Evaluation (Standard Probate Form 17.1) filed concerning an application for the appointment of a guardian on the grounds of mental incompetency shall be maintained as a confidential record.

LOCAL RULE 66.6 TERMINATION OF GUARDIANSHIP

(A) Application to Terminate a Guardianship of a Minor requires notice to all persons designated in Ohio R.C. 2111.04 and any other individuals who received actual notice of the original appointment of the guardian.

(B) Application to Terminate a Guardianship of a deceased incompetent requires an Application to Terminate Guardianship to be filed along with waivers from persons designated in Ohio R.C. 2111.04 and any other individuals who received actual notice of the original guardian, Certificate of Service and a certified copy of the death certificate. When there are no known assets, an Application to Terminate a Guardianship shall be filed along with a copy of the death certificate, final accounting and Certificate of Service evidenced by certificate of mailing.

(C) Application to Terminate a Guardianship of a minor requires an Application to Terminate Guardianship filed along with waivers from the persons designated in Ohio R.C. 2111.04 and any other individuals who received actual notice of the original appointment of the guardian and Certificate of Service.

(D) If an annual accounting is required, the final guardian's account will be approved at the time the guardianship is terminated or within thirty (30) days from the date of the termination of the guardianship.

(E) All court costs will need to be paid in full before the termination of the guardianship will be granted.

LOCAL RULE 66.7 EMERGENCY GUARDIANSHIPS

(A) For all applications for the appointment of an emergency guardian, a physician shall provide a Statement of Expert Evaluation and supplement to the Statement of Expert Evaluation stating why is it reasonably certain that immediate action is required to prevent significant physical injury to the person of the minor or alleged incompetent.

(B) The applicant shall exercise due diligence in giving notice of hearing upon the proposed ward in all emergency guardianships.

LOCAL RULE 66.8 GUARDIANSHIPS-VETERANS AFFAIRS

(A) 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, of all pleadings filed therein, including, but not limited to, the initial application for appointment, all applications for authority to expend funds, and the annual accountings.

(B) All Applications for Authority to Expend Funds shall first be submitted to the Department of Veterans Affairs for review and approval prior to its submission to the Court. The Application for Authority to Expend Funds shall bear the stamp and signature of an authorized representative of the Department of Veterans Affairs to confirm its review and approval of the request.

(C) 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.

(D) 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 of Consent is obtained.

SUP. R. 68 SETTLEMENT OF INJURY CLAIMS OF MINORS

LOCAL RULE 68.1 SETTLEMENT OF CLAIMS OF INJURY TO MINORS

(A) An application for settlement of a minor's claim that exceeds twenty-five thousand dollars (\$25,000) shall be brought by the guardian of the estate. If the gross amount of the claim for injuries does not exceed twenty-five thousand dollars (\$25,000), the application shall be brought by the parent(s) of the child or the person having custody of the child. (Effective 03/26/10)

(B) The application for settlement shall be set for hearing. The applicant as well as the minor shall personally appear at the hearing unless otherwise waived by the Court.

(C) An application for approval of settlement of claim for injuries to a minor shall be accompanied by a current statement of an examining physician with respect to the injuries sustained, the extent of the recovery, and the physician's prognosis. Said statement shall be dated within ninety (90) days of the filing of the application for approval.

(D) 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.

(E) If the net amount of the claim for injuries does not exceed one thousand dollars (\$1,000), the Court has the discretion to order the delivery of the funds to the minor's parents or custodian.

(F) A certified copy of the minor's birth certificate must be presented to the Court upon the filing of the application to settle a minor's claim.

(G) A Guardian ad litem report shall be filed seven (7) days prior to the hearing date.

(H) Verification of Receipt and Deposit of Trust Assets must be filed within seven (7) days of the date of the Entry Approving Settlement of a Minor's Claim.

(I) Report of Distribution must be filed within thirty (30) days of date of the Entry Approving Settlement of a Minor's Claim.

(J) When the minor and parents are unrepresented by counsel, the attorney drafting the pleadings and other instruments shall be responsible for depositing the funds and for providing the financial institution with a copy of the Verification of Receipt and Deposit of Trust Assets. This Attorney shall obtain a signed receipt from the financial institution and deposit it with the Court within seven (7) days. This Attorney shall also be responsible for the filing of the Report of Distribution within thirty (30) days of the date of the Entry Approving Settlement of a Minor's Claim.

(K) Any attorney representing the applicant shall disclose his or her relationship with the payor.

LOCAL RULE 68.2 STRUCTURED SETTLEMENTS

In the event parties involved in claims for injuries to minors or incompetents desire to enter into a structured settlement, defined as a settlement wherein payments are made on a periodic basis, the following shall apply:

(A) The application shall include a signed statement from one of the following independent professionals specifying the present value of the settlement and the method of calculation of that value; an actuary, certified public accountant, certified financial planner, chartered life underwriter, chartered financial consultant or an equivalent professional.

(B) If the settlement is to be funded by an annuity, the application shall include a signed statement by the annuity carrier or the broker procuring the policy stating:

- (1) The annuity carrier is licensed to write annuities in Ohio.
- (2) The annuity carrier's rating from at least two of the following criteria:
 - i. A.M. Best Company: A++, A+ or A;
 - ii. Duff & Phelps Credit Rating Company (Claims Paying Ability Rating): AAA, AA+ or AA;

- iii. Moody's Investors Service (Financial Strength): AAA, AA1 or AAA2;
- iv. Standard & Poor's Corporation (Financial Strength): AAA, AA+ or A.
- v. Weiss Research Inc.: A+ or A.

C) In addition to the requirements of Paragraph (B) above, an annuity carrier must meet any other requirements the Court considers reasonably necessary to assure that funding to satisfy periodic payment settlements will be provided and maintained.

(D) The annuity carrier shall guarantee there will be no premature withdrawals or hypothecation of the annuity without prior Court approval.

LOCAL RULE 68.3 SETTLEMENT OF CLAIMS FOR INJURIES TO MINORS UNDER TWENTY-FIVE THOUSAND DOLLARS

(A) Applications involving the payment of twenty-five thousand dollars or less shall be by the parent or parents or by the person having custody of the minor, and shall be captioned in the name of the minor. If either or both parents are deceased, or their whereabouts are unknown, such facts shall be noted in the caption. If the parents are divorced or separated, and custody has been awarded to the applicant, the application shall so state. A parent who is not the applicant, as well as minors fourteen years of age or over, must consent to the application in writing. (Effective 3/1/11)

(B) The application shall be accompanied by a current statement of the examining physician in respect to the injuries sustained, the extent of recovery thereto, and the physician's prognosis.

(C) After reviewing the case the Court will determine if a hearing is necessary. If a hearing is necessary, the presence of the minor, applicant and attorney shall be required.

(D) The Court will not authorize payment to anyone other than the minor except under extraordinary circumstances.

(E) The application shall state what additional consideration, if any, is being paid to persons other than the minor.

(F) The application shall state what arrangements, if any, have been made with respect to counsel fees, which fees shall be subject to review by the Court.

(G) A recommended distribution of the gross proceeds shall be filed with the Court.

SUP. R. 70 SETTLEMENT OF WRONGFUL DEATH AND SURVIVAL CLAIMS

LOCAL RULE 70.1 SETTLEMENT OF CLAIMS

(A) Application for approval of settlement of a claim for wrongful death shall contain a statement of facts, including the amount to be received in settlement of the claim and the amount, if any, to be received in the settlement of the right of action for conscious pain and suffering. The statement shall include the proposed allocation of the compensation to be received in settlement of the action for wrongful death.

(B) A hearing upon the application may be set, at the discretion of the Judge.

(C) The application shall state what arrangements have been made with respect to counsel fees, which fees shall be subject to review by the Court.

(D) Guardians ad litem may be required for minor beneficiaries.

(E) A Guardian ad litem report shall be filed seven (7) days prior to the hearing date.

LOCAL RULE 70.2 MULTIPLE BENEFICIARIES

A wrongful death trust with its own case number shall be created for each beneficiary.

SUP. R. 71 COUNSEL FEES

LOCAL RULE 71.1 ATTORNEY FEES

Counsel in decedent's estates shall enter into a dated written fee agreement with the fiduciary for the estate and file the fee agreement with the Court at the time the inventory is filed. That agreement shall contain an estimate of the total fee and shall be provided to any beneficiary or residual beneficiary upon request. The Court may allow attorneys to charge a maximum of \$250.00 per hour for their fees unless a different fee agreement is filed with the Court and with the prior approval of the fiduciary. Said request may be approved by the Court. If a written fee agreement is filed with the Court the following alternative fee schedule may be used as a guide. The Court may approve said fee application at its discretion.

(A) On the personal property which is subject to administration and for which the fiduciary is charged and upon the proceeds of real estate that is sold under a power of will as follows:

- (1) For the first \$100,000.00 at a rate of 4.5%;
- (2) All above \$100,000.00 and not exceeding \$400,000.00 at the rate of 3.5%;
- (3) All above \$400,000.00 at the rate of 2.5%.

(B) On real property that is not sold at a rate of 2%.

(C) On real estate sold by judicial proceedings according to the judgment entry confirming the proceedings.

(D) On all other property not included in this rule:

(1) If a federal estate tax return is not required, 1 ½ % of all such property subject to Ohio estate tax.

(2) If a federal estate tax return is required, 2 ½% of all such property subject to federal estate tax.

LOCAL RULE 71.2 ATTORNEY SERVING AS FIDUCIARY

In all matters where an attorney is the fiduciary of the estate, guardianship or trust, and that attorney or another is the attorney of record, detailed records shall be maintained describing time and services as fiduciary and as attorney, which records shall, upon request, be submitted to the Court for review. Absent other circumstance, the Court will not require a

hearing or application with respect to the fiduciary commission of an attorney serving as fiduciary if the attorney agrees to accept one-half or less of the commission which would otherwise be allowed to the fiduciary. The “Rules of Professional Conduct” shall govern the reasonableness of all fees, notwithstanding statutory allowances. The Court assumes an attorney, appointed as fiduciary, has been selected due to the attorney’s special knowledge and abilities resulting in a savings of fees to the estate, guardianship or trust.

LOCAL RULE 71.3 EARLY PAYMENT OF ATTORNEY FEES

Attorney fees for the administration of decedent’s estate shall not be paid or advanced from any source until the final account or final closing documents are prepared for filing unless otherwise approved by the Court upon application. Such application shall contain a statement that the fee is required in advance of the time permitted by Sup. R. 71(B) and shall set forth the reason for requesting early payment of fees. The application shall be accompanied by a consent as to the amount and the timing of the fees by the fiduciary and notification to all beneficiaries. After receipt of the application for early payment of fees and proof of service to all beneficiaries, and there being no objections filed within 30 days, attorney fees may be approved at the discretion of the Court.

LOCAL RULE 71.4 NOTICE AND CONSENT FOR ALL ATTORNEYS FEES IN GUARDIANSHIPS

(A) In guardianship administration, the Court shall consider applications for attorney fees for the establishment of the guardianship upon the filing of the inventory, and shall consider additional fees annually upon the filing of each account. Notice of the application shall be given to the guardian of the estate and upon order of the Court, other interested persons. The guardian of the estate may waive notice of the hearing and consent to the payment of fees. All applications for attorney fees in guardianships shall be accompanied by a statement of all attorney and guardian fees approved by the Court in that guardianship in the last five (5) years.

(B) After the death of the ward, the Court will consider attorney fees and guardian fees as liens on the ward’s assets. If the fees are approved by the Court, the fees may be paid out of the guardianship assets and included in the final guardianship account.

(C) The Court may require notice of the hearing on the fees be given to the estate fiduciary of the deceased ward or other interested persons.

(D) The Court may allow attorneys to charge a maximum of \$250.00 per hour for their services unless a written fee agreement between the attorney and guardian is filed for approval with the Court. Any deviation set forth in the fee agreement may be approved by the Court. (Note: The “Rules of Professional Conduct” shall apply)

LOCAL RULE 71.5 NOTICE AND CONSENT FOR ATTORNEY FEES IN TRUSTS

(A) In trust administration, the Court shall consider applications for attorney fees for the establishment of the trust upon the filing of the inventory, and shall consider additional fees annually upon the filing of each account. All applications submitted for payment of attorney and trustee fees in trusts shall be accompanied by an itemized statement. (Effective 06/07/10)

(B) Notice of application shall be given to the trustee. The trustee may waive notice of the hearing and consent to payment of fees. The Court may require notice of the hearing on the payment of the fees be given to the trust beneficiaries who are affected by the payment of fees.

(C) The Court may allow attorneys to charge a maximum of \$250.00 per hour for their services unless a written fee agreement between the attorney and trustee is filed for approval with the Court. Any deviation set forth in the fee agreement may be approved by the Court. (Note: The “Rules of Professional Conduct” shall apply)

LOCAL RULE 71.6 CONTESTED FEES

The burden is upon the attorney to prove the reasonableness of the fee as governed by the “Rules of Professional Conduct”. A detailed fee statement may be required which includes the itemization and date of service performed, time expended, identification of the individual(s) performing the services and the hourly rate charged.

LOCAL RULE 71.7 CONTINGENT FEES

- (A) A fee agreement should be in existence prior to the settlement of the case.
 - (B) Should a proposed fee agreement exceed the amounts listed below, 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.
 - (C) 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.
 - (D) Pending a review of itemized time records and documents submitted that substantiates fees charged, the maximum contingent fees that may be allowed by the Court are as follows:
 - 1) 25% without a trial
 - 2) 33 1/3 % if a trial is held
 - 3) 40% if an appeal is taken
 - (E) Should the Contingent Fee Schedule not be approved by the Court, the matter may be set for hearing for further clarification.
- (Effective 3/1/11)

SUP. R. 72 EXECUTOR’S AND ADMINISTRATOR’S COMMISSION

LOCAL RULE 72.1 EXECUTOR/ADMINISTRATOR COMMISSION

- (A) Executors and administrators shall be allowed commissions upon the amount of all the personal estate, including the income from the personal estate, that is received and accounted for by them and upon the proceeds of real estate that is sold pursuant to Ohio R.C. 2113.35.

- (B) Where there is a claim for extraordinary services, an application shall be filed setting forth an itemized statement of the services rendered. The Court may require the application to be set for hearing with notice given to parties affected by the payment of fees in accordance with Civ. R. 4.1.

(C) Except for good cause shown, commissions will not be allowed if there is a delinquency in the filing of an account.

(D) The commissions of co-executors in the aggregate shall not exceed the commissions which would have been allowed to one executor or administrator acting alone except where the instrument under which the co-executors serve provided otherwise.

(E) Where counsel fees of extraordinary nature have been awarded for services to the estate which normally would have been performed by the executor or administrator, the said executor's or administrator's fee may be reduced by the amount awarded to counsel for those services rendered, unless, for good cause shown, the Court finds that such a ruling would be unfair.

(F) When the fiduciary or his firm is also the attorney for the estate and the fiduciary's commission is being claimed, the Court may set a hearing on the application for allowance of attorney fees.

SUP. R. 73 GUARDIAN'S COMPENSATION

LOCAL RULE 73.1 GUARDIAN'S COMPENSATION

(A) The compensation for services of non-attorney guardians shall be computed as 3% of the total income and 3% of the total expenditures.

(B) For attorneys acting as guardians, the Court may allow attorneys to charge \$250.00 per hour. If the guardian desires a higher deviation from the stated hourly amount, application must be made to the Court stating the reason for said deviation. The Court may approve said fee in its discretion. (Note: The "Rules of Professional Conduct" shall apply)

SUP. R. 74 TRUSTEE'S COMPENSATION

LOCAL RULE 74.1 TRUSTEE'S COMPENSATION

(A) Except where the instrument creating the trust makes provision for compensation, a trustee who is accountable to the Court, may charge quarterly for ordinary services performed by the trustee in connection with the administration of each separate trust estate:

(1) An amount to be computed on the fair market value of the principal of the trust property, in accordance with the following schedule, such compensation to be charged one-half to income and one-half to principal, unless the beneficiary or beneficiaries have the power to invade the corpus in which case all compensation shall be paid out of income unless otherwise provided in the instrument creating the trust:

(2) Six percent of the first two hundred thousand dollars of gross income received during the accounting period.

(3) Four percent of the gross income in excess of two hundred thousand dollars up to two million dollars received during the accounting period.

(4) Two percent of the gross income in excess of two million dollars received during the accounting period.

(B) 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 a date, determined by the trustee, such date to commence during the calendar quarter of the original receipt of trust property and each anniversary date thereafter.

(C) Conversion of trust assets to cash shall not be considered gross income for determining the compensation under items (A)(2) through (A)(4).

(D) All compensation paid under items (A)(2) through (A)(4) shall be chargeable to income unless otherwise ordered by the Court.

(E) Four dollars per thousand dollars of the first one hundred thousand dollars of fair market value of trust corpus; three dollars and fifty cents per thousand dollars of the next two hundred thousand dollars of fair market value of trust corpus; one dollar and fifty cents per thousand dollars above three hundred thousand dollars of the fair market value of trust corpus.

(F) All compensation paid under item (E) shall be chargeable to trust corpus unless otherwise ordered by the Court.

(G) Any additional compensation for extraordinary services (including distribution and termination fees) or allowance of expenses must be submitted to the Court for review upon written application.

(H) The Court reserves the right to set any application for compensation for hearing and require service of written notice thereof upon all interested parties in a manner directed by the Court. Such notice shall contain a statement of the amount of compensation for which application is made.

(I) Payment of trustee fees may be made quarterly.

(J) A separate fee may be charged for the preparation and filing of fiduciary income tax returns.

(K) 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.

(L) 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:

(1) Where the instrument under which the co-trustees are acting provided otherwise,
or

(2) 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.

LOCAL RULE 74.2 CORPORATE TRUSTEES

(A) Except where the instrument creating the Trust provides for compensation, testamentary trustee may charge fees on the same basis as it charges for living trusts.

(B) When assets are invested in common trust funds (pooled funds), management fees may be charged within the fund rather than at the account level. However, a trust's portion of those fees may not exceed those that may have been charged to the trust had it not participated in the pooled funds.

(C) On each accounting where fees have been taken, an affidavit is required which asserts that the fees charged and included in the accounting represents those charges for similar services in living trusts.

SUP. R. 75 LOCAL RULES

LOCAL RULE 75.1 NOTICE ON PROBATE OF WILL

(A) Notice on admission of will to probate shall be given within two (2) weeks of the admission to probate to comply with R.C. 2107.19. A copy of the will shall be included in the notice to the legatees and devisees named in the will.

(B) The fiduciary, applicant for admission of the will to probate, applicant for release from administration, any other interested persons, or the attorney shall file the certificate.

Notices shall be made according to Civil Rule 73(E).

- (1) Personal service
- (2) Residential service
- (3) Certified mail service (preferred by the Court)
- (4) Ordinary mail service if certified mail returned “refused” or “unclaimed”
- (5) By publication for three (3) consecutive weeks, proof of which must be filed with the Court.

(C) Notice shall be issued to all of the following:

- (1) Surviving spouse of the testator
- (2) Legatees and devisees named in the will
- (3) All persons who would be entitled to inherit from the testator under O.R.C. 2105 if he/she had died intestate.

(D) Will contest deadline-three (3) months after the filing of certificate of notice.

(E) Fiduciary or his/her attorney MUST provide proof of service.

(F) Probate form 1.0 Surviving Spouse, Next of Kin, Legatees and Devisees shall accompany any Will submitted to the Court. If additional next of kin are discovered, an amended form 1.0 shall be filed with the Court.

(G) A Will may be filed with the Court but need not be probated if there are no assets pursuant to O.R.C. 2941.22, 2107.09 and 2107.10.

LOCAL RULE 75.2 NOTICE ON ACCOUNTS

(A) In all estate and trust accounts, a certificate of service of account to heirs or beneficiaries is required with the account (form 13.9).

(B) Upon the filing of an Account (partial or final), the Court shall assign a non-oral hearing date/time. Prior to this hearing date, the attorney shall cause green return receipt cards or waivers to be filed with the Court.

- (1) In the event the attorney is unable to file all the waivers or green cards by this hearing date, he/she must file a motion requesting a continuance in order to afford time to file the waivers/green cards, or cause notice to be sent as required.

(C) Waivers or Notices shall be obtained/given to the following:

- (1) In testate estates, all residual beneficiaries along with all specific bequest beneficiaries who have not signed a receipt for the specific bequest.
- (2) In intestate estates, all next of kin.
- (3) In trusts, all beneficiaries and trustees.

(Effective 06/07/10)

LOCAL RULE 75.3 INVENTORY & APPRAISAL/OHIO ESTATE TAX RETURNS

(A) Upon filing inventory without all waivers received, the Court shall assign a non-oral hearing date/time. Prior to this hearing date the attorney shall cause waivers and/or green return receipt cards, along with a Certificate of Service to be filed with the Court.

- (1) In the event the attorney is unable to file all the waivers or green return receipt cards by this hearing date, he/she must file a motion requesting a continuance, in order to afford time to file the waivers/green cards, or cause notice to be sent as required.
- (2) In the event the certificate of service is not filed by hearing date and a motion to continue has not been filed, a Notice of failure to approve inventory will be issued to the attorney and executor/administrator.

(B) Waivers or Notices shall be obtained/given to all of the following:

- (1) Surviving spouse
- (2) In testate estates, all beneficiaries named in will
- (3) In intestate estates, all next of kin

(C) The name and address of the appraiser shall be typed or printed on the return of any appraisal. The appraiser shall sign the certificate of appraiser located at the bottom of the Inventory and Appraisal form or the attached appraisal. If more than one appraiser is used, a separate certificate shall be signed by each appraiser as to the items he/she appraised.

(D) No Ohio estate tax return is required for estates of less than \$200,000 for date of death on or after January 1, 2001 and for estates of less than \$338,000 for date of death on or after January 1, 2002 pursuant to O.R.C. 5731.21. Part B of Estate Tax Form 22 must still be completed and filed when no Ohio estate tax return is required to be filed. Part 2 of this form should not be filed.

LOCAL RULE 75.4 RELIEVING ESTATES FROM ADMINISTRATION

(A) In cases of estates entitled to be relieved from administration where there is a Will, said Will may be presented for probate. If the entire estate will be consumed in the payment of debts, costs and applicable statutory allowances, or if the Will distributes the net of Descent and Distribution, and there is no real estate involved, then the Will may be filed only and need not be admitted to probate. If the Will is admitted to probate, an application for an order relieving the estate from administration may be filed in lieu of the appointment of the executor named in the

Will. If probate of the Will is denied, an application for an order relieving the estate from administration may be granted and distribution made under the laws of intestate succession. Where no heirs are known to the applicant, the court shall set the application for hearing not less than three weeks from the date of such filing and shall require publication.

(B) When an application to relieve an estate from administration has been filed, at least five days notice in writing of the hearing on the application shall be given to the surviving spouse, heirs at law and creditors of said estate unless notices are waived or found unnecessary. Upon the estate having no surviving spouse, publication shall be made not less than three weeks from the date of such filing.

(Effective 3/1/11)

(C) Commissioner's compensation shall be set by the court on a case-by-case basis upon application to the Court.

LOCAL RULE 75.5 SUMMARY RELEASE FROM ADMINISTRATION

(A) A summary release from administration may be filed if: the applicant is decedent's surviving spouse entitled to one hundred percent (100%) of the allowance for support and decedent's funeral and burial expenses have been prepaid; **or** the surviving spouse has paid or is obligated in writing to pay decedent's funeral and burial expenses and the value of the assets does not exceed the \$40,000 allowance for support plus an amount not exceeding \$5,000 for decedent's funeral and burial expenses; **or** the applicant who is not the surviving spouse has paid or is obligated in writing to pay decedent's funeral and burial expenses and the value of the assets is the lesser of \$5,000 or the amount of decedent's funeral and burial expenses.

(B) Required filings are: Application for Summary Release, including supporting documentation of decedent's ownership i.e. copy of a title, bank statement, etc.; standard probate form 1.0 and either a copy of a paid funeral bill or a signed agreement of the funeral home to accept later payment, and entry granting summary release.

(C) The procedure is intended to be a speedy uncomplicated process to assist the public in those situations where a full estate or release from administration is not needed. However, the Court reserves the right to require additional filings or set hearing if it deems they are necessary to assure proper collection of assets, payment of obligations and distribution of decedent's assets.

LOCAL RULE 75.6 ADOPTIONS

(A) In all adoption cases, Court costs are required to be paid at the time of the filing. The Court should be consulted in advance for current deposit information.

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

(C) The criminal background checks pursuant to Ohio Revised Code 2151.86(B) shall be filed in all cases.

(D) The Court requires consent to the adoption be signed and filed by the natural parent who is married to the petitioner in a stepparent adoption.

(E) All adoption assessment reports shall be filed using ODJFS form 1698.

(F) Hearings regarding pre-adoption placements of children are required prior to the filing of all petitions for adoption except in stepparent adoptions, adoptions by natural grandparents, and placements made by agencies authorized by law. A Custody Affidavit (O.R.C. 3127.23) shall be filed on all adoptions involving minors.

(G) All hearings regarding pre-adoption placements of children, and for Interlocutory Order shall be set before the Court. Hearings are required on all Final Decrees of Adoption, except those cases in which an Interlocutory Order has been issued, unless otherwise ordered by the Court. Said hearing shall be set before the Probate Judge.

(H) In all placement hearings the birth parent shall be represented by an attorney. The fees for the attorney for the birth parent will be assessed as costs to the petitioner.

(I) A full accounting of all disbursements made in connection with the adoption must be filed with the Court before the petition is heard in all adoptions, excluding stepparent and grandparent.

(J) After the filing of a Final Decree of Adoption involving a minor for whom a child support order was in effect at the time of the filing of the decree, petitioner or petitioner's counsel shall give notice to the Domestic Relations Court or the Juvenile Court that issued the child support order and to the Coshocton County Child Support Enforcement Agency that the minor has been adopted. The name of the child after the adoption shall remain confidential.

LOCAL RULE 75.7 INSOLVENCY CLAIMS

Upon filing a Schedule of Claims in accordance with Sections 2117.25, Revised Code, the executor or administrator shall, by application and entry, request a hearing on both the determination of insolvency and the application for an order in connection therewith. (O.R.C. 2117.15)

LOCAL RULE 75.8 FAMILY ALLOWANCE CLAIM

The Application for apportionment of a family allowance pursuant to Section 2106.13 shall be prepared and filed on the standard probate forms. Any hearing on this application for family allowance shall be set with proper notice to all interested parties.

LOCAL RULE 75.9 CERTIFICATE OF TRANSFER

(A) A certificate of transfer of real estate must have the description of the real estate reviewed by the Auditor of the County in which the real estate is located prior to filing with the Court. If the Auditor disapproves the Court may order the transfer.

(B) All certificates of transfer shall indicate what share of the decedent's interest each beneficiary is receiving.

(C) Certificate of Transfers will not be accepted by the Court until the inventory and appraisal is filed.

LOCAL RULE 75.10 COURT SERVICE ON COSHOCTON COUNTY ATTORNEYS

Any document(s) placed by a deputy clerk, employee or official of this Court in an attorney's mailbox located within the Court, will be considered as sufficient service. Any such service or delivery shall be deemed effective two business days after the date the document(s) are placed in that mailbox. Business days are considered Monday through Friday except holidays as provided by law.

LOCAL RULE 75.11 DELINQUENT FILINGS

(A) Inventory's on estates, trusts and guardianships that are past due, a notice shall be issued to the attorney of record when an inventory is not filed when due. Failure to respond in writing within seven (7) days will result in the notice being sent to the fiduciary.

(B) If the inventory is not filed within thirty (30) days after notice is sent, a Citation will be sent to the fiduciary and the attorney requiring their appearance before the Judge to show why no filing has been made with the Court.

(C) Accounts on estates, trusts and guardianships that are past due, a notice shall be issued to the attorney of record when an account is not filed when due. Failure to respond in writing within seven (7) days will result in the notice being sent to the fiduciary.

(D) If the account is not filed within thirty (30) days after notice is sent, a Citation will be sent to the fiduciary and the attorney requiring their appearance before the Judge to show why no filing has been made with the Court.

LOCAL RULE 75.12 ATTORNEYS OF RECORD

The application for the appointment of a fiduciary shall contain the name, address, Ohio Supreme Court registration number and telephone number of the attorney representing the fiduciary. If such attorney shall resign, the attorney and fiduciary shall notify the Court and the

LOCAL RULE 75.16

WAIVERS AND MODIFICATIONS

- (A) Application of any rule may be waived or modified by motion filed with the Court and for good cause shown.
- (B) In the event of any conflict between any provision of these rules with either the Ohio Revised Code or the applicable rules of any Court with superior jurisdiction, then the statutory provision of such other Court's rule shall prevail.

SUP. R. 78 CASE MANAGEMENT

LOCAL RULE 78.1

CIVIL ACTIONS: (Excluding Land Sales)

- (A) For the purpose of insuring the readiness of civil cases, the Probate Division may require pre-trial or status conferences.
- (B) At such hearing, decisions shall be made and all counsel attending must have full authority to enter into a binding final pre-trial order.
 - (1) The Court will rule on all pre-trial motions.
 - (2) Briefs on all legal issues shall be submitted.
 - (3) Proposed jury instructions shall be submitted.
 - (4) Proposed jury interrogatories shall be submitted.
 - (5) Clients shall be present unless excused by the Court.
 - (6) No motions shall be heard after the final pre-trial without Order of the Court and after showing good cause.
- (C) The trial date shall not be changed nor shall the trial be continued without Order of the Court after showing good cause.

LOCAL RULE 78.2

CIVIL ACTIONS: LAND SALES

All land sales which have not been concluded within one (1) year from the date of filing shall be set for pre-trial conference within ten (10) days following the expiration of one year.

The following decisions shall be made at the pre-trial conference and all counsel attending must have full authority and enter into a binding pre-trial order.

- (A) The attorney of record and fiduciary must attend the pre-trial conference.
- (B) A written status report shall be filed with the Court no later than seven (7) days prior to the pre-trial conference.
- (C) The status report shall address the issues as to the efforts being made to sell the real estate and when the case will be closed.

LOCAL RULE 78.3 MENTAL ILLNESS & MENTAL RETARDATION HEARING

All hearings shall comply with R.C. Chapters 5122 and 5123.

LOCAL RULE 78.4 ADOPTIONS

The status of pending pre-placement applications and adoption proceedings shall be reviewed annually and the Court shall order further action as necessary. Additional rules on adoptions are located in Local Court Rule 75.6.

LOCAL RULE 78.5 WITHDRAWAL AND SUBSTITUTION OF COUNSEL

(A) An attorney desiring to withdraw shall file a motion to withdraw stating the reasons for withdrawal. The motion shall contain the last known address and telephone number of the client. The Court shall not issue an entry approving the withdrawal until the attorney has filed a certification that the following conditions have been fulfilled:

- (1) Notice has been given to the client stating all filing deadlines affecting the client;
- (2) Notice has been given to all attorneys, unrepresented parties and interested persons;
- (3) Attorneys withdrawing from representation of a fiduciary shall file the written acknowledgment of the withdrawal signed by the fiduciary or withdrawal shall be granted after a

hearing with notice to the fiduciary. The attorney shall also notice any bonding agencies involved.

(B) No attorney shall be permitted to withdraw from a case sooner than twenty (20) days prior to a trial or dispositive hearing, except for extraordinary circumstances that require permission of the Court.

(C) Substitution of counsel shall be in writing but does not require approval of the Court. Notice shall be given to all attorneys, unrepresented parties and interested persons.

LOCAL RULE 78.6 MISCELLANEOUS MATTERS

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

LOCAL RULE 78.7 FAILURE TO COMPLY

Failure to comply with this Case Management Rule may result in dismissal pursuant to Civ. R. 41 and other sanctions, including but not limited to, payment of costs and attorney fees.

LOCAL RULE 78.8 JURY MANAGEMENT

The Coshocton County Common Pleas Court General Division Rule 23 as they relate to juries, shall apply to proceedings in the Probate Division except to the extent that by their nature they would be clearly inapplicable.

APPENDIX

LOCAL RULES REVISED