

**COMMON PLEAS COURT
HAMILTON COUNTY, OHIO
PROBATE DIVISION**

LOCAL RULES

**William Howard Taft Center
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Cincinnati, Ohio 45202
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Effective September 1, 1998

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Conduct and operations in the Hamilton County Probate Court are governed by the appropriate Rules of Superintendence as augmented by these Local Rules. Individuals using this court should familiarize themselves with both sets of rules.

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Rule 11.1 Record of Proceedings

A. Prior to any hearing, a party may submit an application for the Court to record the proceedings with its audio-electronic recording equipment. A nominal fee shall be charged and collected as costs in such case.

Alternatively, any party may provide a record by a court reporter paid for by the party requesting that court reporter's attendance. The audio-electronic recording shall be the official record.

B. Upon filing a praecipe, 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 this county for such transcription or as otherwise provided for by Hamilton County Common Pleas Local Rule.

C. For any matter in which the Court has received an application to record the proceedings, the original tape or tapes of the audio-electronic recording shall be maintained by the court for a period of sixty (60) days:

1. After journalization of a Decision of Magistrate adjudicating the recorded hearing; and/or,
2. Journalization of the final entry or judgment in the case. If a written request for transcription has been made, the original tape shall become part of the record of proceedings.

Rule 51.1 Standard Probate Forms

The applicable standard probate forms provided by the Hamilton County Probate 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)

The Hamilton County Probate Court may accept computer-generated probate forms, provided the following conditions are met:

- A. Such forms shall comply with the provisions of Rule 51 and Rule 52 of the Rules of Superintendence for the Probate Division of the Court of Common Pleas.
- B. Such forms shall be in the same form as those provided by the Hamilton County Probate Court with respect to type-style, font, pitch, line spacing, 8 1/2 x 11 page size, and twenty-four pound (24#) bond or heavier stock (70# bond preferred).
- C. Counsel certifies to the Court that any computer-generated forms are in full compliance with the Rules of Superintendence and the Local Rules of Court. All printed material shall be in the same sequence and in the same location on the page as the Standard Form. In the event of multiple page forms or two-sided forms, the printed material shall be on the same side or same page as the Standard Form.
- D. The Court shall reject such forms that deviate from the format of the standard probate forms provided by the Hamilton County Probate Court. Such forms may be rejected prior to filing or stricken from the record upon discovery and may subject the lawyer or law firm to such other sanctions as the Court deems appropriate.

Rule 53.1 Hours of the Court

Except as provided below, the Probate Court and its offices at 230 E. 9th Street shall be open for the transaction of business from 8:00 A.M. to 4:00 P.M. daily, except Saturday, Sunday and legal holidays. No filings are accepted after 3:45 P.M.

Rule 54.1 Court Security Plan

The 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

The official Probate Court file must accompany all filings when any filing is presented to the Court for approval. Said files shall not be removed from the Court.

Rule 57.1 Motions and Entries

- A. All motions shall be accompanied by a memorandum in support of the motion. Said 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.
- B. Except for good cause, all motions shall be set for oral argument and shall be accompanied by an entry setting the same for hearing. The moving party shall consult with opposing counsel or the opposing party, if pro se, to set a hearing date that is mutually agreeable. In the absence of an agreed hearing date, the Court shall set a date for hearing within thirty days.
- C. All entries and orders presented to the Court for approval shall 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 shall state the Court's decision with specificity. The use of the terms "entry" or "order" without more specificity shall cause such proposed entry to be rejected.
- D. All filings and entries which bear an endorsement of a party or counsel per telephone authorization shall state the date of said authorization and shall also contain a certificate of service by the attorney who prepared and filed the entry that notice has been given to the consenting party or counsel.
- E. The Court reserves the right to reject any pleadings in which the text or the signatures are illegible. All pleadings, motions, applications and other filings presented to the Court shall be in typeface and correctly captioned. Any information interlineated on a court form shall be in ink.
- F. All motions to withdraw as counsel shall be accompanied by an order compelling the attendance of the fiduciary. If the whereabouts of the fiduciary are unknown, counsel shall demonstrate due diligence in attempting to locate the fiduciary.
- G. It is strongly recommended that black ink be used for all signatures appearing on any court filings and for the completion of any forms which are printed or hand written. Attorneys must type all forms. Applicants appearing pro se are encouraged to type all forms.

Rule 58.1 Court Costs

Deposits 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.

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 R.C. §2335.06 or its equivalent.

Rule 59.1 Wills

- A. Before an application is made to admit a will to probate, to appoint an estate fiduciary, or to relieve an estate from administration, the applicant or the applicant's attorney shall examine the index of wills to determine if the decedent has deposited a prior will with the Court for safekeeping. Prior wills so deposited shall be filed in the estate proceedings for record purposes only.
- B. Fiduciaries appointed to administer testate estates shall file a Certificate of Service of Notice of Probate of Will within one hundred twenty days of their appointment or be subject to removal.
- C. One of the Court's Magistrates shall make the initial determination, upon presentation, whether a purported will shall be admitted to probate.

Rule 59.2 Admission of Wills With Irregularities

- A. If a will presented to probate contains alterations or extraneous markings and the original text remains legible, the admission of the will shall be set for hearing pursuant to R.C. §2107.181 and the witnesses to the will shall testify as to the execution of the will and the physical appearance or condition of the will at the time of execution.
- B. If a will presented to probate contains alterations or extraneous markings and the original text is rendered illegible, the admission of the will shall be set for hearing pursuant to R.C. §2107.26 unless it clearly appears that the alterations or extraneous markings on the face of the will were made by the testator with the intent to void the will.
- C. If a photocopy of an executed will is presented for probate, the admission of the will shall be set for hearing pursuant to R.C. §2107.26, except as provided below.
- D. A photocopy of a will which is executed as an original may be admitted to probate without further hearing if:
 - 1. the original unexecuted will is presented with the executed photocopy; or
 - 2. upon affidavit by the witnesses to the will that the photocopy was executed as an original, and that the document so executed was the one and only will executed by the testator.

- E. Any will presented for admission to probate under either R.C. §§2107.181 or 2107.26 shall be set for hearing and a record of the testimony shall be filed with the Court.

Rule 60.1 Application For Letters of Authority to Administer an Estate and Notice of Appointment

- A. Any person filing an Application for Letters of Administration who is not the surviving spouse or next of kin of the decedent shall give notice to the surviving spouse and next of kin of the decedent, including persons entitled to an allowance of support. Said notice shall be given regardless of the party's residency unless written waivers are obtained from said party. All written notices shall contain the date, time and place of the hearing and shall be served upon such persons at least seven (7) days prior to the date set for hearing. All such applications shall be set for hearing before the probate judge.
- B. Before filing an Application for Letters of Administration, the attorney or the proposed fiduciary shall determine if there is a will of the decedent on deposit with the Court by checking the index of wills.
- C. An applicant who has served as guardian of an estate shall not be granted letters of authority to administer the decedent's estate upon the death of the ward unless the guardian of the estate is also named as fiduciary in the ward's will, or upon a showing of good cause.
- D. The Court may deny the appointment of a proposed fiduciary who fails to meet the Court's minimum competency standards for administering an estate.

Rule 61.1 Appraisals

- A. When required by law, there shall be suitable and disinterested appraiser(s) appointed by the executor or administrator of an estate, with court approval. 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.
- B. Real estate appraisals shall be made by licensed real estate appraisers or other such persons who by professional experience and training are qualified to make real estate appraisals.

- C. As to all personal property with no reasonably ascertainable value, appraisals shall be made by licensed auctioneers, credentialed personal property appraisers, or such other persons who by experience and training are qualified to make such appraisals.
- D. With regard to household goods and personal effects valued in excess of \$2,000, the appraiser shall sign the standard probate appraisal form or a separate instrument that indicates the appraised value of said goods.
- E. 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.
- F. The fiduciary or applicant shall certify on each appointment of appraiser (H.C. Form 3.0) that the appraiser is a qualified and suitable person in accordance with this rule.

Rule 61.2 Inventory and Appraisal

- A. When an estate contains real estate, counsel shall examine record title to the real estate from the time it was acquired by the decedent. An inventory must be filed before consents to the sale of real estate may be filed.
- B. Upon the filing of an inventory as required by R.C. §2115.02, the executor or administrator shall serve notice of the hearing by certified or express mail upon the surviving spouse, next of kin and any beneficiary named under the will, as well as any attorneys who represent the same, unless such notice is waived.
- C. In order to perfect service upon any unknown next of kin in an intestate estate, the fiduciary shall publish notice of the filing of the inventory once each week for three consecutive weeks. For testate estates, this shall be accomplished when the will is filed.
- D. The County Auditor's valuation may be used for the appraisal where an estate is being relieved from administration except as otherwise ordered by the Court.

Rule 62.1 Claims Against an Estate and Bond Premiums

No estate, guardianship or trust shall be closed until all claims filed with the Court have been resolved, including claims for bond premiums. Bond premiums shall be regarded as administrative expenses and shall be paid when due. No application need be made for authority to pay bond premiums.

Rule 64.1 Fiduciary Accounts

- A. All accounts shall be examined by an Account Review Officer. You may:
1. Make an appointment to personally present your account; or
 2. May appear without an appointment and present your account on a first come/first served basis.
 3. If you have three or more accounts to present, you must schedule an appointment; and
 4. If you have more than one account to be presented the day before a citation docket, you must make an appointment.
- B. Supporting documentation for the accounting period shall include:
1. Itemized statement of all receipts of the fiduciary;
 2. Itemized statement of all disbursements and distributions verified by vouchers or proof, which shall be referenced to the account by number, letter or date;
 3. Itemized statement of all funds, assets and investments;
 4. Original or certified bank statement for each account on deposit.
 5. Each bank account statement for the entire accounting period; and
 6. Actual securities or a certificate of the person in possession of the same (R.C. §§2109.13 or 2131.21), except that if securities are in the process of transfer and are unavailable when the account is presented, the Court will accept:
 - a. an itemized affidavit of the brokerage firm handling said transfer; or;
 - b. an affidavit of the transfer agent of the corporation issuing said securities.
 7. If real estate has been sold, the account shall include a copy of the closing statement itemizing all of the disbursements.
- C. All corporate fiduciaries shall file a recapitulation of its accounts in conformity with standard probate Form 13.0.
- D. Unless notice is waived in writing, upon the filing of a final account, the fiduciary shall serve notice of the hearing on the account, to the following, whose addresses are known:
1. Decedents Estates - to the surviving spouse and all next of kin in an intestate estate and to all residuary beneficiaries in a testate estate.
 2. Guardianships.
 - a. Minors - to the ward if the ward has reached the age of majority or to the next of kin if the ward is under 18 years old.
 - b. Incompetents - to all of the ward's next of kin

3. Trusts - to all the trust beneficiaries.
4. Regardless of the nature of the matter - to counsel of any represented party described above.
5. Unless notice is waived in writing, upon the filing of a partial or current account, the fiduciary shall serve notice of hearing on the account to the following:
 - a. Charitable trusts - to the Ohio Attorney General, Charitable Trusts Division.
 - b. Veteran's Guardianships (R.C. 5905) - to the Veteran's Administration.
 - c. Trusts - to all income beneficiaries of the trust.
- E. A waiver of partial or current account may be filed to prevent an estate from being reported delinquent pursuant to R.C. §2109.30(B)(1)(e). The waiver shall be signed by all necessary parties as required by law. The following certification of counsel may be filed in those instances where a partial accounting may be waived:

"The undersigned, counsel for the estate, hereby certifies that all the requirements of R.C. §2109.30(B)(1)(e) have been satisfied to permit the filing of a waiver of partial account."
- F. An affidavit and entry affirming that there are no assets in the hands of the fiduciary may be presented in lieu of a current account in wrongful death cases.
- G. Certificates of Termination may be filed as permitted by law.
- H. If an account is not timely filed and no arrangement has been made for an extension of the due date, a Notice to Appear shall be issued compelling the attendance of both the attorney and the fiduciary.
- I. A partial or current account shall have an accounting period which ends not more than six (6) months prior to the time it is presented and approved by the Court. The partial or current account shall specify the number of the account using ordinal numbers (e.g., Third Partial Account).
- J. No handwritten accounts are permitted.

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 shall appoint one suitable and disinterested person as appraiser. Compensation for said appraiser shall be determined by the Court and shall not exceed \$150.00, unless because of the special and unusual character of the property to be appraised, additional compensation shall be appropriate to reasonably compensate the appraiser.

Rule 66.1 Guardianships

- A. 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 or education.
- B. Attorney fees for establishing a guardianship (in non-contested cases) shall not be awarded until the filing of an annual account.
- C. Funds shall not be released to a guardian except upon an order of the Court.
- D. 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.
- E. None of a ward's assets may be accessed through an automated teller machine or debit card. Electronic payment of routine and recurring expenses is permitted with court approval.

Rule 66.2 Emergency Guardianships

- A. For all applications for the appointment of an emergency guardian, a physician shall personally appear and testify why it is reasonably certain that immediate action is required to prevent significant 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.

Rule 67.1 Estates of Minors Not Exceeding Ten Thousand Dollars

- A. An application relating to funds of a minor shall be captioned in the name of the minor.
- B. Unless otherwise ordered by the Court, funds of a minor shall be deposited in the sole name of the minor, with principal and interested compounded, until the minor attains the age of majority.
- C. The attorney for said minor, or in case the applicant is not represented, the attorney for the payor, shall be responsible to immediately deposit said funds and thereafter file a completed Verification of Receipt of Deposit (Form 22.3) within seven (7) days of the issuance of the entry.

Rule 68.1 Settlement of Claims For Injuries to Minors

- A. An application for settlement of a minor's claim that exceeds ten thousand (10,000) dollars shall be brought by the guardian of the estate. If the gross amount of the claim for injuries does not exceed ten thousand (10,000) dollars, the application shall be brought by the parent(s) of the child or the person having custody of the child.
- B. 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.
- C. The injured minor and the applicant shall be present at the hearing.

Rule 68.2 Structured Settlements

In the event that parties involved in claims for injuries to minors 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:

- A. The application shall include an affidavit from an independent certified public accountant or equivalent professional, specifying the present value of the settlement and the method by which that value was calculated.
- B. 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:
 - 1. 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.

2. The annuity carrier must have a minimum of \$100,000,000.00 of capital and surplus, exclusive of any mandatory security valuation reserve.
 3. The annuity carrier must have one of the following ratings from at least two of the following rating organizations:
 - a. A.M. Best Company: A++, A+, or A.
 - b. Moody's Investors Service (Financial Strength): Aaa, Aa1, or Aa2.
 - c. Standard & Poor's Corporation (Claims Paying/Solvency): AAA or AA.
 - d. Duff & Phelp's Credit Rating Company (Claims Paying Ability Rating): AAA, AA+, or AA.
 4. In addition to the requirement of subsection (3) 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.
 5. 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 shall not approve assumption reinsurance unless the re-insurer is also qualified under these rules.
 6. 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 in subsection (3) 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.
 7. In the event 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.
- C. 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 contingent fees.

Rule 70.1 Settlement of Claims For Wrongful Death

- A. 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.

- B. The term "interested parties" who are subject to notice as set forth in R.C. §2125.02, shall include the surviving spouse, the children and the parents of the decedent or other next of kin who claim to have suffered damages.
- C. When the Court is called upon to endorse an agreed entry of distribution or to adjust the shares thereto, consents or notice from those "interested parties" designated above shall be required.
- D. 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 in which to file the report of distribution unless otherwise ordered by the Court.
- E. A magistrate shall approve the report of distribution of the wrongful death proceeds only after appropriate vouchers are presented.

Rule 71.1 Attorney Fees

- A. Counsel shall enter into a dated written fee agreement with the fiduciary for the estate by the time the inventory is filed. That agreement shall contain an estimate of the total fee and shall be provided to any residual beneficiary upon request. Attorney fees relative to all matters shall be governed by the Code of Professional Responsibility, DR 2-106. The Court has ultimate authority to set attorney fees in any matter.
- B. Attorney fees for the administration of estates shall not be paid until the final account is prepared for filing unless otherwise approved by the Court upon application and for good cause shown.
- C. Attorney fees may be allowed if there is a written application which sets forth the amount requested and will be awarded only after hearing, except as modified herein. Notice to parties affected by the payment of fees shall be in the form set forth in Appendix A-1.
 - 1. If the requested fee is within the guideline fee set forth below in (H), the account is not delinquent, and all parties affected by the payment of fees have consented in writing to the payment of said fees, in the form set forth in Appendix A-2, a written fee application shall not be required.
 - 2. If the requested fee is not within the guideline fee set forth below in (H), said application for attorney fees shall be set for hearing before the Probate Judge. Any party affected by payment of attorney fees may file a Waiver of Notice of Hearing on Application for Attorney Fees and Consent to Payment of Attorney Fees in the form set forth in Appendix A-3.
- D. The Court may set a hearing on any application for allowance of attorney fees regardless of the fact that the beneficiaries have given their consent.

- E. 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.
- F. Where the attorney, law partner or firm associate is appointed as fiduciary, the total administration fee for ordinary administration may not exceed the statutory fiduciary commission plus one-half of the attorney fees.
- G. As to all other matters, an application for the allowance of attorney fees 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.
- H. Attorney fees for the administration of a decedent's estate as set forth below may serve as a guide in determining fees to be charged to the estate for legal services of an ordinary nature rendered as attorney for the fiduciary in the complete administration of a decedent's estate. The Court does not have, nor is there recognized, any minimum or maximum fees that will automatically be approved by the Court. The following is not to be considered or represented to clients as a schedule of minimum or maximum fees to be charged. Misrepresentation of this guideline may result in sanctions, including the partial or total disgorging of attorney fees.
 - 1. On the personal property subject to administration and for which the fiduciary is charged as follows:
 - a. For the first \$50,000.00 at a rate of 5.5%;
 - b. All above \$50,000.00 and not exceeding \$100,000.00 at the rate of 4.5%;
 - c. All above \$100,000.00 and not exceeding \$400,000.00 at the rate of 3.5%;
 - d. All above \$400,000.00 at the rate of 2.0%.
 - 2. On real property that is not sold at a rate of 2%.
 - 3. On all property not included above:
 - a. Joint and survivorship property between a husband and wife included in a federal estate tax return or an Ohio estate tax return at the rate of ½% of all such property;
 - b. All other non-probate property included in a federal estate tax return or an Ohio estate tax return at the rate of 1% of all such property.
 - 4. On real estate sold by judicial proceedings, the guideline fee for attorney compensation shall set by the Court as follows:
 - a. The first \$10,000.00 of the purchase price at the rate of 6%, and;
 - b. All above \$10,000.00 at the rate of 2%.

- I. Attorney fees for services rendered in a relief from administration shall be listed on the back of the schedule of assets to be relieved (Form 5.1) as a debt. For fees under \$1,000, no application is required.

Rule 71.2 Contingent Fee Agreements

- A. Prior to an attorney entering into any contingent fee agreement with a fiduciary, an application for authority to enter into said agreement shall be approved by and filed with the Court. In all cases, there shall be a written fee agreement as required by R.C. §4705.15. The Court shall review the reasonableness of the attorney's fees and the itemized expenses of the litigation.
- B. If the contingent fee agreement does not exceed 33 1/3% of the recovery, or 40% if an appeal is taken, prior court approval is not required and the approval of the contingent fee agreement may be ratified at the time of settlement.
- C. If the contingent fee agreement exceeds 33 1/3% of the recovery or 40% if an appeal is taken, prior approval of the Court is required for the fiduciary to enter into such an agreement. Absent such prior approval, the maximum fee permitted shall not exceed 33 1/3% of the recovery.

Rule 72.1 Executor's and Administrator's Commissions

Unless otherwise 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 Hamilton County.

Rule 73.1 Guardian's Compensation

- A. Guardians' compensation shall only be awarded after application. Compensation shall be allowed upon the same basis as that set forth for trustee's compensation (Rule 74.1) except that for accounts under \$100,000.00 in market value, a maximum fee of 8/10 of 1% of market valuation at the end of the accounting period shall be allowed with a minimum fee of \$250.00 per year. A separate schedule of the guardian's computation, as set forth in Appendix B, shall be attached to said application.
- B. Additional compensation, reimbursement for expenses incurred by a guardian and for fees of a guardian of the person only may be fixed by the Court on application. The Court may require that any application for fees or for compensation be set for hearing and that notice of the hearing be given to interested parties as ordered by the Court. A copy of such notice, together with an affidavit of the service of such notice, shall be filed prior to the hearing.
- C. The compensation of co-guardians in the aggregate shall not exceed the compensation which would have been payable to only one guardian.

- D. 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 73.2 Veterans Administration - Guardianships

All applications for guardian compensation or attorney fees shall be set for hearing, and notice shall be given to the Veterans Administration Office, unless a waiver or consent is obtained from the Veterans Administration.

Rule 74.1 Trustee Compensation

Trustee's compensation shall be as follows:

A. CORPORATE TRUSTEES

1. Except where the instrument creating the trust provides for compensation, a testamentary trustee may charge fees on the same basis as it charges for living trusts.
2. 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.
3. On each accounting where fees have been taken, an affidavit is required which asserts that the fees charged and included in the accounting represent those charges for similar services in living trusts.
4. A separate schedule of the computations of the trustee's compensation shall be set forth in the trustee's account as a condition of its approval, in the form set forth in Appendix C.
5. Corporate Trustees are to furnish their fee schedules to the Court on the 1st day of January of each year and whenever a change in fees is made within any calendar year.

B. INDIVIDUAL TRUSTEES

1. Except where the instrument creating the trust makes provision for compensation, the trustee may charge fees on the same basis as is currently being charged by the banking institution with which the trust is doing business. However, an appropriate deduction on the trustee's fee must be made where the trustee has delegated any of his or her duties.
2. Additional compensation or reimbursement for expenses incurred by a trustee may be fixed by the Court on application. The Court may require that any application for fees or for compensation be set for hearing and that notice of the hearing be given to interested parties as ordered by the Court. A copy of such

notice, together with an affidavit of the service of such notice, shall be filed prior to the hearing.

3. On each accounting where fees have been taken, an affidavit will be required setting forth that the fees charged are based on the schedules of the "name" bank.
4. A separate schedule of the computations of the trustee's compensation shall be set forth in the trustee's account as a condition of its approval, in the form set forth in Appendix C.

Rule 75.1 Local Rules (Special Provisions)

A. CIVIL COMMITMENT OF THE MENTALLY ILL

1. When an affidavit of mental illness has been accepted and an order of detention issued, the Court shall immediately appoint an attorney to represent the respondent. The Court shall also appoint a qualified psychiatrist to act as an independent physician who may testify as to the respondent's psychiatric condition if called upon to do so.
2. While the patient/respondent is being held pursuant to the order of detention, a "voluntary" commitment shall not be accepted, unless the record or entry has been signed and approved by the patient/respondent's court-appointed counsel.

B. JOINT CONTROL OF ASSETS

1. All bank accounts and brokerage accounts, including but not limited to checking accounts, money market accounts and certificates of deposit, shall remain in the joint control of the fiduciary and counsel for the estate or such other suitable person as the Court may approve in any of the following situations:
 - a. When the fiduciary is not a resident of Hamilton County, Ohio or any Ohio county contiguous to Hamilton County;
 - b. When the fiduciary is guardian of the estate of a ward; or
 - c. When the Court determines that the best interests of the estate will be served by the requirement of joint control.
2. The joint control requirement may be waived by the Court:
 - a. When the assets of the estate are held in a custodial depository account (R.C. §2109.13);
 - b. Upon written application and a showing of good cause by the fiduciary that said requirement should be waived. Good cause may include special training, education or experience that would demonstrate the fiduciary's understanding of fiduciary law and obligations.

C. ADOPTIONS

1. The attorney for the petitioner shall be responsible for all required notices in adoption proceedings.
2. If an adoption involves a child born before 1-01-97, the putative father, if applicable, shall be named and the petitioner shall exercise due diligence in providing notice to the putative father in all proceedings. If an adoption involves a child born after 1-01-97, petitioner's counsel shall request a search of the Putative Father's Registry and shall file the response to that request. The Court reserves the right to order additional notice to the putative father as deemed necessary.
3. Except in step-parent adoptions, a lawful placement must occur pursuant to R.C. §§5103.15, 5103.16 or 2111.06, prior to the filing of the Petition for Adoption.
4. In step-parent adoptions where the Domestic Relations Court, Juvenile Court or the Child Support Enforcement Agency has a pending case for child support, petitioner(s) or counsel shall notify said court or agency of the child's adoption to allow the support order to be terminated or reduced to a lump-sum judgment.
5. The petitioner is responsible for obtaining a new birth certificate from the Division of Vital Statistics once the adoption is finalized.
6. All surrogacy adoptions shall be treated as non-relative adoptions. All surrogacy contracts must be pre-approved as part of the pre-placement process. Any application or petition failing to comply with this requirement shall be dismissed.
7. The Court shall provide a list of qualified assessors. Petitioner's counsel shall inform the Court of the assessor so selected.
8. All contested adoptions shall be set for pretrial.
9. For all adoptions finalized out of state on children born in Ohio, where the consent hearing is performed by this court, the petitioners shall file ODHS Forms 1693 and 1616 (Release of Identifying Information and Social Medical History Forms).
10. Home Studies and Assessments, when not hand-delivered to the Court, shall be sent by certified or express mail.

D. EXHIBITS

Attachments to a pleading will remain with the pleading. Exhibits used by a party will be retained separately by either the Court or a court reporter. Any party introducing exhibits, whether introduced into evidence or not, must complete a List of Exhibits (H.C. Form 230.03) in duplicate. After the time for an appeal has expired and all costs have been paid, a party may petition the Court for the return of an original exhibit. Alternatively, the Court may destroy such exhibits pursuant to Sup.R. 26(F).

E. MISCELLANEOUS

1. Attorneys shall not act as sureties in any cause, nor shall they be permitted to become surety on the bond of any fiduciary. The surety or the surety's agent must personally appear to sign the fiduciary's bond.

2. No certified copies of Entries or Letters of Authority will be issued unless all required filings have been made.
3. When the Court determines that a guardian ad litem is necessary or appropriate, the Court shall appoint a suitable and disinterested person as guardian ad litem.
4. Trial Court Jury Use and Management Standards for the Probate Court shall be the same as those rules and regulations used by the Hamilton County Jury Commissioner, as set forth in the Hamilton County Common Pleas Court Local Rules.

Rule 78.1 Case Management In Decedent's Estates, Guardianships and Trusts

- A. The guardian of an estate shall file an account at least once each year.
- B. The fiduciary of every decedent's estate shall file a written Status Report (H.C. Form 113.46 or similar pleading) whenever a partial account, waiver of partial account, or affidavit and entry in lieu of a partial account is filed. If an estate is not fully administered within two years, the matter will be referred to a magistrate to determine whether court intervention is necessary.
- C. A continuance to extend the time for filing an inventory, account, or Guardian's Report shall not be granted unless the fiduciary has signed the application for the continuance.
- D. Upon citation to the attorney of record for a fiduciary who is delinquent in filing an inventory, account, or Guardian's Report, the Court may bar the attorney from opening any new cases in any new proceeding until all delinquent pleadings are filed.
- E. Upon filing exceptions to the inventory or the account, the exceptor shall set said exceptions for a pretrial conference within thirty days. The Court may dispense with the pretrial conference and proceed directly to trial for good cause shown.

Rule 78.2 Case Management and Pre-Trial Procedure For Civil Actions

- A. In order to insure the readiness of civil cases in the Probate Division for scheduling conference, formal pretrial conference and trial, the following procedures shall be in effect:
 1. Within thirty (30) days after service has been perfected on all parties, the Court shall set a scheduling conference for the case.
 2. A scheduling conference shall be conducted in all civil cases except land sale proceedings. A trial date will be set at said conference.
 3. Notice of the scheduling conference shall be given to all counsel of record by mail and/or telephone by the Court not less than fourteen (14) days prior to the

- conference. Any application for continuance of the conference shall be in writing and filed with the Court in a timely manner.
4. The following decisions shall be made at the scheduling conference and all counsel attending must have full authority to enter into a binding pretrial order.
 - a. A definite discovery schedule shall be agreed upon by all parties for the completion of discovery.
 - b. A definite date for exchange for expert witnesses shall be determined.
 - c. A definite date for filing of all motions and pretrial statements which date shall not be later than seven (7) days before the formal pretrial. The date for the formal pretrial shall be set by the Court and shall be held approximately one week prior to the trial.
 5. The following decisions shall be made at the formal pretrial and all counsel attending must have full authority to enter into a binding final pretrial order:
 - a. Briefs on any legal issues shall be submitted.
 - b. Proposed jury instructions shall be submitted.
 - c. Proposed jury interrogatories shall be submitted.
 - d. Clients shall be present or available by telephone.
 - e. No motions shall be heard after the formal pretrial without leave of Court and without good cause being shown in writing.
 6. The trial date shall not be changed nor shall the trial be continued without order of the Court and after the showing of good cause in writing.
 7. All land sales which have not been concluded within nine (9) months from the date of filing shall be set for a status conference. The attorney of record and the fiduciary shall appear and describe the efforts being made to complete the case. A written status report shall be filed at least seven days prior to said status conference.

APPENDIX A-1

PROBATE COURT OF HAMILTON COUNTY, OHIO

JAMES CISSELL, JUDGE

**TRUST OF GUARDIANSHIP OF
ESTATE OF _____**

CASE NO. _____

NOTICE OF HEARING ON APPLICATION FOR ATTORNEY FEES

To the following persons:

Name

Address

Name

Address

Name

Address

An application for allowance of attorney's fees in the within Case has been filed with this Court. Said application requests approval of attorney's fees in the amount of \$_____, extraordinary attorney's fee in the amount of \$_____ and reimbursement of costs advanced in the amount of \$_____. A copy of the attorney's fees statement with a description of services rendered is attached to this notice.

The hearing on the Application will be held on _____ at _____ o'clock ____M. in this Court. The Court is located in Room _____ William Howard Taft Center, 230 E. Ninth Street, Cincinnati, Ohio 45202-2145. You are one of those persons whose interests may be affected by the application, and if you know of any reason why such application should not be granted, you should appear and inform the Court.

[Check if applicable]

- This application is for allowance of attorney fees in a decedent's estate, and the requested fees (are) (are not) within the Court's guideline fee.

Fiduciary/Deputy Clerk

APPENDIX A-2

**PROBATE COURT OF HAMILTON COUNTY, OHIO
JAMES CISSELL, JUDGE**

ESTATE OF _____, DECEASED

CASE NO. _____

CONSENT TO PAYMENT OF PAYMENT OF ATTORNEY FEES

[This form to be used in a decedent's estate when the requested attorney fees are within the Court's guideline fee]

The undersigned, being a residuary beneficiary or other interested person in the above captioned estate, hereby consents to the payment of attorney fees in the amount of \$_____ and costs in the amount of \$_____.

In signing this consent, the undersigned hereby acknowledges:

- (1) The receipt of the attorney's fee statement with a description of services rendered to the estate;
- (2) The fee charged is within the Court's guideline and that said guideline fee has not been represented as a schedule of a minimum or a maximum fee to be charged;
- (3) The Court need not make an independent determination that said services were reasonable, necessary and beneficial to the estate.

APPENDIX A-3

**PROBATE COURT OF HAMILTON COUNTY, OHIO
JAMES CISSELL, JUDGE**

ESTATE OF _____, DECEASED

CASE NO. _____

**WAIVER OF NOTICE OF HEARING ON APPLICATION FOR
ATTORNEY FEES AND CONSENT TO PAYMENT OF
ATTORNEY FEES**

[This form may only be used in a decedent's estate when the requested attorney fees are not within the Court's guideline fee]

The undersigned, being a residuary beneficiary or other interested person in the above captioned estate, hereby waives notice of hearing on application for attorney fees in the amount of \$ _____ and costs in the amount of \$ _____ and consents to the payment of such fees and costs.

In signing this consent, the undersigned hereby acknowledges:

- (1) The receipt of the attorney's fee statement with a description of services rendered to the estate.
- (2) The fee charged is not within the Court's guideline and that said guideline fee has not been represented as a schedule of a minimum or a maximum fee to be charged.

APPENDIX B

GUARDIAN COMPENSATION FORM (RULE 73.1)

BASE OR ANNUAL FEE \$

PLUS
MARKET VALUE FEE:

VALUATION RATE

_____ X _____ =

_____ X _____ =

_____ X _____ - _____

INCOME FEE:

VALUATION RATE

_____ X _____ =

_____ X _____ =

_____ X _____ = _____

EXTRAORDINARY FEES (ITEMIZE AND ATTACH TIME RECORDS)

TOTAL EXTRAORDINARY FEES \$

APPENDIX C

TRUSTEES COMPENSATION FORM (RULE 74.1)

BASE OR ANNUAL FEE \$

PLUS
MARKET VALUE FEE:

VALUATION RATE

_____ X _____ =

_____ X _____ =

_____ X _____ - _____

INCOME FEE:

VALUATION RATE

_____ X _____ =

_____ X _____ =

_____ X _____ = _____

EXTRAORDINARY FEES (ITEMIZE AND ATTACH TIME RECORDS)

TOTAL EXTRAORDINARY FEES

\$

Appendix D

Deposit Structure			
Effective Oct. 1, 2005			
Code	Description	Deposit	Misc
AA	Adult Adoption	\$130.00	
AC	Consent to Interstate Adoption	\$28.00	
AF	Registration of Foreign Birth Record	\$50.00	
AG	Agency Adoption	\$160.00	
AI	Petition For Identifying Information	\$60.00	
AL	Pre-Placement A & E	\$35.00	
AP	Private Adoption	\$160.00	
AR	Readoption (AKA Foreign Readopt)	\$145.00	
AS	Adoption by Step Parent / Relative	\$145.00	
AX	Complaint Determining Birth Registration	\$150.00	
AZ	Surrogacy Agreement	\$47.00	
BC	Birth Correction	\$30.00	
BR	Birth Registration	\$30.00	
CD	Disinterment	\$48.00	
CH	Determination of Heirship	\$125.00	
CI	Civil Case (Unspecified)	\$150.00	
CM	Correction of Marriage Record	\$45.00	
CN	Name Change	\$100.00	
CS	Sales Case	\$125.00	
CT	Transfer Structured Settlement	\$150.00	
CW	Will Contest	\$150.00	
DC	Chiropractor's License	\$5.00	

DG	Designation of Standby Guardian	\$5.00	
DH	Designation of Heir	\$75.00	
DP	Declaration of Paternity	\$30.00	
DR	Authenticated Copies	\$14.00	Plus \$1.00 Per Page
DR	Authenticated Copies With Will	\$24.00	Plus \$1.00 Per Page
DW	Will Deposit	\$15.00	
EA	Full Administration of Estate (Date of Death prior to 1/1/2002)	\$225.00	
EB	Reopen Full Administration	\$70.00	
EC	Certificate of Transfer Over 10 Yrs.	\$45.00	
ED	Admit Will Only	\$55.00	
EE	Estate Tax Return Only	\$28.00	Plus \$1.00 Per Page Over 4 Pgs.
EF	Will For Record Only	\$25.00	
EH	Full Administration-Sole Heir	\$225.00	
EN	Full Administration of Estate (Date of Death on or after 1/1/2002)	\$225.00	
EP	Estate Relieved (Publication Required)	\$135.00	
ER	Estate Relieved (No Publication)	\$98.00	
EX	Wrongful Death Only Estate	\$160.00	
EZ	Summary Release From Administration	\$85.00	
GC	Conservatorship	\$120.00	
GE	Guardianship (Estate Only)	\$210.00	
GI	Guardianship (Person and Estate)	\$210.00	
GP	Guardianship (Person Only)	\$186.00	

MA	Appointment of Successor Custodian	\$30.00	
ME	Minor Guardianship (Estate Only)	\$125.00	
MG	Minor Guardianship (Person and Estate)	\$125.00	
MP	Minor Guardianship (Person Only)	\$101.00	
MS	Minor Settlement (No Guardian)	\$75.00	
MX	Deliver Funds to Minor (No Guardian)	\$43.00	
ML	Marriage License	\$45.00	
TM	Trust (Misc.)	\$105.00	
TS	Trust (Special Needs)	\$105.00	
TT	Trust (Testamentary Trust)	\$105.00	
TW	Trust (Wrongful Death)	\$105.00	
	Accounts	\$32.00	Plus \$1.00 Per Page Over Standard Form