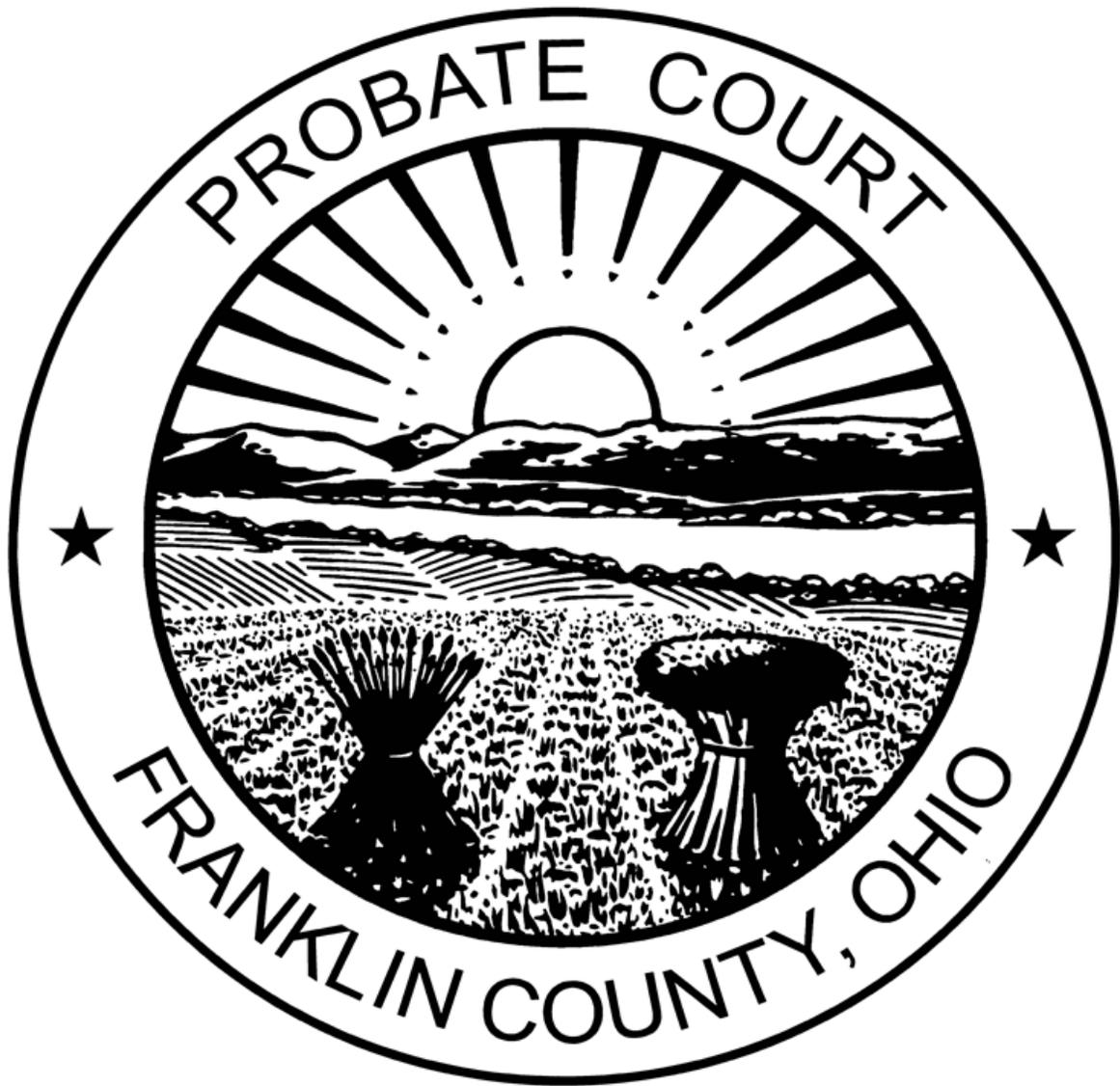


# **FRANKLIN COUNTY PROBATE COURT**

**Robert G. Montgomery, Judge**



## **LOCAL RULES OF COURT**

August 2016

# **JUDGE ROBERT G. MONTGOMERY**

Common Pleas Court of Franklin County, Ohio

## **PROBATE DIVISION**

### **LOCAL RULES OF COURT**

Revised – August, 2016

[probate.franklincountyohio.gov](http://probate.franklincountyohio.gov)

**INTRODUCTION:** The following rules are supplemental to the *Rules of Superintendence for the Courts of Ohio* and must be read in conjunction therewith.

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## **SUP.R. 8 COURT APPOINTMENTS**

### **LOC.R. 8.1 COURT APPOINTMENTS**

Persons appointed by the court to serve as appraisers, fiduciaries, attorneys, magistrates in involuntary psychiatric commitment proceedings, investigators, guardians ad litem, and trustees for suit, shall be selected from lists maintained by the court.

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.

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

The court will review court appointment lists periodically to ensure the equitable distribution of appointments.

## **SUP.R. 9 SECURITY PLAN**

### **LOC.R. 9.1 COURT SECURITY PLAN GENERAL**

The court has developed and implemented a court security plan. The court may issue general, special, administrative, or standing orders to implement the provisions of this rule.

### **LOC.R. 9.2 COURT SECURITY PLAN CONFIDENTIAL**

The court's security plan, security policy and procedures manual, emergency preparedness manual, and continuity of operations manual adopted as part of the security plan, and any related documents, are confidential records and not available for public access. Any other "security record" or "infrastructure record" as defined in [R.C. 149.433](#)

shall also be confidential and not available for public access. Disclosure of all or parts of these confidential records can be made by the judge or the judge's designee for the proper conduct of public business, including, but not limited to: coordinating safety or security with other agencies, to assist other courts or agencies, or for another legitimate purpose.

## **SUP.R. 11 RECORDING OF PROCEEDINGS**

### **LOC.R. 11.1 RECORDING OF PROCEEDINGS**

(A) The court will make a digital recording of proceedings as the official record of the court. Parties who desire to have a contemporaneous stenographic record of the proceedings must make their own arrangements, at least twenty-four (24) hours prior to the scheduled hearing, for a court reporter to appear at the hearing. The requesting party shall pay the costs associated with the stenographic record of the hearing unless otherwise ordered by the court.

(B) Any interested person may request a recording of a hearing be transcribed by a court reporting service approved by the court. The person making the request shall pay the cost of transcription. The court will convey the recording to a court reporting service via a digital recording. A transcript filed with the court under this paragraph shall supersede the digital recording as the official record of the court. The court reporter shall not release the digital recording to a party or interested individual without prior court approval.

(C) The court will allow a person to listen to a recording of a hearing at the court upon request made no less than twenty-four (24) hours in advance.

(D) An interested party will not be allowed to use the contents of a recorded hearing in subsequent pleadings filed with the court or in argument before the court unless

a transcript of the entire hearing is filed with the court as provided in paragraph (B) of this rule.

(E) All digital recorded proceedings will be maintained by the court for three (3) years from the date of the hearing. Any interested person desiring to preserve the record beyond that period must arrange to have the record transcribed as provided by paragraph (B) of this rule and file the transcript in the underlying case.

(F) Upon filing an Objection to a Magistrate’s Decision or a Notice of Appeal, an objector or appellant who is required or desires to file a transcript of a hearing must contact a court reporting service to have the transcript prepared. The person requesting the transcript shall direct the court reporting service to contact this court to obtain a copy of the digital record of hearing. The objector or appellant must file the completed transcript in this court within the time limits of the Local Rules of Court, Rules of Civil Procedure, or the Rules of Appellate Procedure. When the transcript is filed by an appellant, this court will certify the transcript to the Court of Appeals.

(G) All copies of transcripts must come from the court reporter. Individuals may not copy transcripts from the court’s files.

**SUP.R. 16 MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION**

**(“ADR”)**

**LOC.R. 16.1 MEDIATION AND ADR - GENERAL PROVISIONS**

(A) **Mediation and ADR Overview:** Contested matters assigned to the probate judge for adjudication may be mediated. The court will provide various dispute resolution services for parties involved in civil actions or other contested proceedings within the jurisdiction of the court. Dispute resolution services may include: mediation, conciliation,

conflict coaching, elder care coordination, and early neutral evaluation. The court will abide by the Uniform Mediation Act as codified in Ohio Revised Code chapter 2710.

Mediation means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute. For the purposes of this rule, mediator means a person appointed by the court to conduct mediation or other ADR process.

The court will operate a court-annexed mediation program, which this rule applies to. Court annexed mediation services will be provided to the parties without a fee. The court may issue general, special, administrative, or standing orders to implement the provisions of this rule.

All parties to mediation shall provide an e-mail address to the court mediator(s).

**(B) Mediation Referrals:** Once a case is pending, the court on its own motion, or upon the motion of any party, may refer disputed issues to the court's mediation program. A party opposing a motion to refer by another party must file a written objection with the court within 10 days of the motion and explain the specific reasons for the opposition. Parties may not oppose a referral to mediation made on the court's own motion. Any judicial officer may refer a case to mediation. If the parties in the probate court case have other legal disputes between them, those disputes may also be included in the mediation at the discretion of the parties and the mediator, so that the parties can work towards a global settlement of all of their disputes.

The court may order the parties to participate in, or return to mediation at any time. Mediation sessions may be held until the case(s) are resolved in a manner acceptable to the parties, or until the mediator or the court determines that continued mediation would not be

productive. The court will issue a Notice of Mediation Court Order and/or a Journal Entry to schedule mediation identifying the time, place, and identity of the mediator(s).

Parties to disputes pending in probate court may also seek the services of private mediators outside of the court's mediation program on such terms and conditions as are mutually agreed upon by the participating parties and the mediator(s). Private mediations shall be subject to this rule where applicable. Court facilities are not available for private mediation purposes.

(C) **Mediators:** The court shall appoint a director of the mediation program, who shall perform the duties established by the court related to ADR, including mediation. Mediators appointed by the court may be court employees or independent contractors. The court will establish the compensation of mediators. The court will determine the qualifications and background necessary to serve as an appointed mediator. The preferred qualifications shall include, but are not limited to:

- (1) A bachelor's degree, and, if applicable, professional licensure or certification, including in law, mental health, accounting, or another appropriate discipline;
- (2) Five (5) years of experience in mediation or in working with families or other parties in dispute resolution; and
- (3) Completion of basic mediation or ADR training (or equivalent).

## **LOC.R. 16.2 MEDIATION AND ADR – MANDATORY PROVISIONS**

(A) **Attendance at Mediation; Authority to Settle:** All those persons identified in the Order/Notice of Mediation shall attend mediation in person, unless excused by the mediator or the court. Organizational parties shall send a representative with full authority to settle. If a party or counsel intends to represent the interests of a party who is not

present with the permission of the mediator(s), the principal should hold a power of attorney for the absent party authorizing the agent to compromise the dispute(s). Legal parties in a case may bring one or more attorneys and one additional support person to accompany them and participate in the mediation. Additional persons may participate at the discretion of the lead mediator, including non-lawyer professionals employed by counsel, additional support people, court personnel, and/or neutral experts assisting in the mediation. All those attending mediation shall sign a written mediation agreement, or, by participating, agree to be bound by these rules. In the event that the parties and/or their attorneys do not attend or participate in the mediation as ordered, the court may enter appropriate sanctions, including, but not limited to: citing for contempt of court with attendant fine(s) and/or incarceration, ordering the payment of other parties' attorney fees, and court costs.

(B) **Safety:** The court may screen for domestic violence both before and during mediation. Any participant in the mediation, including a mediation party, counsel, or non-party participant, shall promptly notify the mediator(s) and/or the court's bailiff/court security department of any known history of violence by any litigant or non-party participant, plus any concern over potential or actual violence associated with the mediation or its parties. If known, this information shall be provided as soon as possible prior to the mediation. At minimum, prior to or at the commencement of the first mediation session, the mediator(s) shall review the referral and make a basic threat assessment as to the potential for violence, including domestic violence. As part of this threat assessment, the mediator(s) may speak to the parties, their counsel, or other collateral sources, and conduct criminal history checks and other records checks on parties

or participants in the mediation. Based on the assessments, the court's mediation department will provide appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence. These referrals can be made in-person, by telephone, by e-mail, or otherwise. Regarding the mediation, the mediator(s) in consultation with the bailiff/court security department and other interested parties, shall take the appropriate measures to ensure the safety and security of the mediation participants, court personnel, and the public.

**(C) Mediation Prohibitions:** Consistent with the jurisdictional limits of the probate court and the Rules of Superintendence for the Courts of Ohio, mediation is prohibited in the following cases:

- (1) As an alternative to the prosecution or adjudication of domestic violence;
- (2) In determining whether to grant, modify, or terminate a protection order;
- (3) In determining the terms and conditions of a protection order; and
- (4) In determining the penalty for violation of a protection order.

**(D) Privileged Communications:** All mediation communications as defined in the Uniform Mediation Act are privileged. The mediation process shall be considered part of compromise negotiation for the purposes of the Federal Rules of Evidence and the Ohio Rules of Evidence. The mediator(s) is disqualified in the future on any case mediated to serve as a consultant, witness, expert, or counsel on matters directly related to the dispute that was the subject of the mediation.

### **LOC.R. 16.3 MEDIATION PROCEDURES**

**(A) Pre-Mediation and Case Evaluation:** A mediator may communicate with parties individually and/or their counsel before, during, and/or after a mediation for any

reason, including for further screening, case evaluation, safety, process design, and/or concluding the case. Communication with the mediator(s) about a case, whether for evaluating for referral and/or after referral is permissible and is not an improper ex-parte communication with the court. The parties and/or their counsel shall cooperate with the mediator in case evaluation, including completing any written screening instruments. If counsel or any party becomes aware of the identity of a person or entity whose consent is required to resolve the matter, but who has not been joined as a party in the pleadings, he or she shall promptly inform the mediator(s). At any time, the director of the mediation program may withdraw a case from mediation and return the matter(s) to the regular docket.

(B) **Mediation Conferences and Sessions:** Prior to or at the commencement of the mediation, the mediator may, or upon request of a party or participant, shall disclose the mediator's qualifications to mediate. The mediator may direct the parties and/or their counsel to prepare and submit written mediation statements prior to the mediation. Unless otherwise directed by the court, mediation statements should be provided to the mediator(s) and copied to opposing counsel, or directly to pro se parties, but shall not be filed in court, nor made a part of the court's case file. The efforts of a mediator appointed by the court's mediation program to resolve a case shall not be construed as giving legal advice. Ongoing court orders pertaining to discovery or other procedural matters remain in effect during the pendency of mediation, unless otherwise ordered. The mediator(s) may request the parties to bring documents, work product, and/or witnesses to the mediation, including experts, to advance the process. A non-party participant, as defined in [R.C.](#)

[2710.01\(D\)](#), by participating in mediation submits to the jurisdiction of the court to the extent necessary to enforce this rule.

(C) **Post-Mediation:** Following mediation, the mediator shall provide a report to the court of the results of the mediation. The report may include the results of the mediation, the date(s), and the attendees. If an agreement is reached, counsel and/or pro se litigants shall file the appropriate journal entries or other papers in accordance with the terms of the agreement not later than thirty (30) days following mediation or as otherwise directed by the mediator or ordered by the court, to conclude the dispute and/or terminate the case.

## **SUP.R. 26 COURT RECORDS MANAGEMENT AND RETENTION**

### **LOC.R. 26.1 COURT RECORDS MANAGEMENT AND RETENTION**

The court has a Schedule of Records Retention and Disposition filed under Case No. 411839, which will be followed in conjunction with the Rules of Superintendence for the Courts of Ohio.

### **LOC.R. 26.2 DISPOSITION OF EXHIBITS**

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 admitted or proffered shall be given to the stenographer, unless otherwise ordered by the court. If the proceeding is electronically recorded, exhibits may be filed in the court case file.

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. 45 COURT RECORDS – PUBLIC ACCESS**

### **LOC.R. 45.1 OMISSION OF PERSONAL IDENTIFIERS PRIOR TO SUBMISSION OR FILING**

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

## **SUP.R. 51 STANDARD PROBATE FORMS**

### **LOC.R. 51.1 FORM AVAILABILITY**

Forms for use in the Franklin County Probate Court are available at the court and on the court's website: [probate.franklincountyohio.gov](http://probate.franklincountyohio.gov).

## **SUP.R. 52 SPECIFICATIONS FOR PRINTING PROBATE FORMS**

### **LOC.R. 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.

### **LOC.R. 52.2 FORM SPECIFICATIONS**

The type size for the body of all forms filed in this court shall use twelve (12) point fonts.

## **SUP.R. 53 HOURS OF THE COURT**

### **LOC.R. 53.1 HOURS OF THE COURT**

The probate court shall be open for the transaction of business from 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays, or upon sufficient notice to the public

on the court's website. All pleadings requiring a new case number or the payment of court costs shall be filed by 4:30 p.m.

## **SUP.R. 54 CONDUCT IN COURT**

### **LOC.R. 54.1 GENERAL DECORUM**

The Franklin County Probate Court is charged with dispensing justice, resolving disputes, and protecting the constitutional rights of those who appear before the court. Appropriate levels of security should exist in the court to protect the integrity of court procedures, protect the rights of individuals before for court, sustain the decorum and dignity of the court, and assure that court facilities are secure for all those who visit and work there. Any conduct that interferes or tends to interfere with the proper administration of the court's business is prohibited.

No person shall enter or remain in any restricted area without permission of an appropriate court official. Restricted areas include: the chambers of the judicial officers, the bench area in courtrooms, the judges' elevator, conference rooms, the jury room, employee spaces, and any other area designated by signage or order of the court as restricted. Entry into such spaces may constitute criminal trespass and/or contempt of court. The court's officers, including its judicial officers, bailiffs, constables, the Franklin County Sheriff, and any of their deputies, as well as any other involved law enforcement officer, shall enforce the court's orders and rules and may direct persons present in court to behave in a manner which complies with this rule. The court may issue general, special, administrative, or standing orders to implement the provisions of this rule.

## **LOC.R. 54.2 ATTIRE**

All persons entering the court's facilities shall be appropriately dressed. The court may order those not appropriately dressed to leave the court facility until they are appropriately dressed.

## **LOC.R. 54.3 COURTROOM CONDUCT**

Spectators and non-participants in court proceedings shall be seated in the designated areas and conduct themselves in a manner that is not disruptive to the proceedings. Only officers of the court and others authorized by the court are permitted in front of the railing or bar in the courtrooms. There shall be no eating or drinking in courtrooms unless permitted by the court. There shall be no smoking, vaping, use of electronic cigarettes, or use of any form of tobacco in the court.

## **LOC.R. 54.4 ELECTRONICS**

No electronic recordings or transmitting devices, including but not limited to audio, videos, and/or still images, shall be made in any courtrooms or during any court proceedings or mediations without advance permission of the court. No covert electronic recordings shall be made whatsoever in the court's facilities without approval of the court. No juror, witness, or litigant shall have their image taken while in the court's facility by any party or member of the public. Cellular telephones or other electronic devices shall be turned off or silenced during court proceedings. At the discretion of the presiding judicial officer or any assigned court officer, electronic devices can be barred from a courtroom and temporarily impounded for return to the owner.

## **LOC.R. 54.5 SECURITY SCREENING**

Although the Franklin County Sheriff is primarily responsible for security screening in the Franklin County courthouse complex, the probate court may conduct

appropriate secondary screening at its facilities when deemed necessary. Dangerous items or contraband may be temporarily or permanently seized and the involved person(s) may be barred and/or removed from the courtrooms or facility.

At the Franklin County Probate Court's courtroom at Twin Valley Behavioral Healthcare, the probate court may order such security screening as is necessary.

## **SUP.R. 55 EXAMINATION OF PROBATE RECORDS**

### **LOC.R. 55.1 WITHDRAWAL OF FILES**

Each court file withdrawn from the Records Department must be accompanied by a withdrawal card. No person may withdraw more than six (6) files at a time from the Records Department.

Only attorneys, recognized title examiners, and employees of the Franklin County Guardianship Service Board are permitted to remove files from the court. The removal of the file from the court must be approved by a judicial officer.

All files removed from the court must be returned the following business day.

### **LOC.R. 55.2 PHOTOCOPIES**

Copies of any public record may be obtained at the cost of five cents (\$.05) per page.

## **SUP.R. 57 FILINGS AND JUDGMENT ENTRIES**

### **LOC.R. 57.1 FACSIMILE FILINGS**

The court will not accept filings by facsimile transmission or electronic mail, except as provided by special administrative order or local rule.

## **LOC.R. 57.2 COURT FILE**

When necessary, all filings presented to the court must be accompanied by the court file.

## **LOC.R. 57.3 COMPLETE STREET ADDRESS**

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. All fiduciaries shall include a phone number with the address. All attorneys shall include a phone number, fax number, and email with the address. All fiduciaries and attorneys shall notify the court within thirty (30) days of any changes.

Reasonable diligence shall be exercised to obtain the complete street addresses of the surviving spouse, next of kin, legatees, and devisees.

## **LOC.R. 57.4 CASE NUMBER**

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

## **LOC.R. 57.5 ORIGINAL SIGNATURES**

Except as provided by special administrative order, all signatures on filings must be original. In all matters with multiple fiduciaries, the signature of all fiduciaries is required on all documents including fiduciary checks. Persons who are not an attorney may not sign on behalf of an attorney.

## **LOC.R. 57.6 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.

## **LOC.R. 57.7 FILINGS WITH THE PROBATE COURT**

Filings must be on 8-1/2" x 11" paper. The type size for the body of the document shall use twelve (12) point fonts.

Filings should be legible. Filings not legible for any reason, including poor handwriting or poor photocopying may be refused, or if filed, may be stricken.

All filings not in English must be accompanied by a translation completed by a disinterested and qualified translator. Otherwise, filings not in English may be refused, or if filed, may be stricken. The clerk of the court will accept for filing only those documents which are complete.

Please refer to [Sup.R. 80 – 88](#).

## **LOC.R. 57.8 FORWARDING COPIES**

The court will not return file-stamped copies by mail unless submitted with a return, self-addressed, stamped envelope.

## **LOC.R. 57.9 PROPOSED DOCUMENTS**

The parties may, or if the court directs shall, submit proposed entries, jury instructions, or other documents on a computer disk, flash drive, through the e-filing system or by email formatted in Word or a Word compatible format which may be utilized by the court's word processing system.

### **LOC.R. 57.10 DEATH CERTIFICATE TO BE EXHIBITED**

Upon the initial filing of any matter captioned in the name of a deceased individual, or the termination of a guardianship due to the death of the ward, the applicant shall exhibit to the court a certified copy of the decedent's death certificate unless waived by the court for good cause shown.

### **LOC.R. 57.11 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\(D\)](#) shall contain a certificate of service including the names and addresses of all parties and other interested persons required to be served.

### **LOC.R. 57.12 LENGTH OF BRIEFS**

A supporting or opposing memorandum or brief shall not exceed fifteen (15) pages exclusive of any supporting documents. Briefs exceeding fifteen (15) pages will not be accepted for filing without prior leave of court.

A reply memorandum or brief shall not exceed seven (7) pages and shall be restricted to matters in rebuttal. Any reply memorandum or brief which exceeds seven pages shall not be accepted for filing without prior leave of court.

A motion for leave to file a memorandum or brief in excess of the page limitations set forth above shall be made no later than seven (7) days prior to the time for filing the brief and a date-stamped copy shall be provided to the court. Such motion shall set forth the unusual and extraordinary circumstances which necessitate exceeding the page limitation.

### **LOC.R. 57.13 CERTIFICATE OF SERVICE**

The Certificate of Service shall identify by name, address, and representative title all parties served.

### **LOC.R. 57.14 FILINGS FOR MATTERS ASSIGNED TO AN ACTING JUDGE OR A VISITING JUDGE**

All filings in matters assigned to an Acting Judge or Visiting Judge are to be filed in duplicate with a deputy clerk of this court and shall have the name of the Acting Judge or Visiting Judge shown in the caption. The deputy clerk receiving the filing is to be informed at the time of each filing that the matter has been assigned to an Acting Judge or a Visiting Judge. The original filing shall be filed with the clerk of the probate court and the duplicate copy shall be submitted to the Acting Judge or the Visiting Judge.

### **LOC.R. 57.15 ELECTRONIC SERVICE DOCUMENTS – OFFICIAL RECORD**

All documents filed as United States Postal Service Electronic Return Receipts or eNotices shall be filed in the image file only and paper copies of the documents will not be filed in the tangible (hard copy) file. The imaged United States Postal Service Electronic Return Receipt or eNotice electronic documents shall be designated as the official record of the court. Electronic proof of service for certified or express mail sent by the court pursuant to the electronic return receipt program shall be deemed in compliance with the service requirements of [Civ.R. 73 and Civil Rules 4.0 through 4.6](#).

### **LOC.R. 57.16 ELECTRONIC FILING OF COURT DOCUMENTS**

The court will only accept certain case types by electronic filing. These filings are to be in compliance with the most recent administrative order filed in this court under Case

No. 550000-A. The most recent administrative order is available on the court's website at [probate.franklincountyohio.gov](http://probate.franklincountyohio.gov).

## **SUP.R. 58 DEPOSIT FOR COURT COSTS**

### **LOC.R. 58.1 DEPOSITS**

The court will accept cash, money orders, cashier's checks, attorney checks, title company or trust company checks, and certain credit cards. Payments made by credit card are subject to a transaction fee. The court will not accept fiduciary or personal checks.

(A) Filing an application for appointment of any estate fiduciary shall require a minimum deposit of one hundred twenty-five dollars (\$125.00), however, the court recommends a deposit of two hundred fifty dollars (\$250.00);

(B) Filing any complaint, except for the presentation of a claim or a land sale, shall require a minimum deposit of one hundred fifty dollars (\$150.00);

(C) Filing a complaint for a land sale shall require a minimum deposit of one hundred seventy five dollars (\$175.00);

(D) Filing a presentation of a claim against an estate with the court pursuant to [R.C. 2117.06\(A\)\(2\)](#) shall require the filing of a civil action and a minimum deposit of one hundred dollars (\$100.00); and,

(E) Filing a subpoena shall require a minimum deposit of thirty-eight dollars (\$38.00) for in county service and twelve dollars (\$12.00) for the witness fee. The court may require additional deposits. If a witness is located outside of Franklin County, Ohio, then the requesting party shall include a check for witness mileage fees made payable to the witness.

(F) In all cases of decedents' estates, civil actions, and any other matters requiring a deposit, the fiduciary or plaintiff shall be required to maintain a positive balance in the

deposit account. If filings are presented to the court in cases with insufficient funds on deposit, the individual responsible for the filing shall pay the cost of the filing or tender an additional deposit before the filings will be accepted.

(G) *The Daily Reporter*, published by The Daily Reporter, Inc., is designated as the law journal in which the calendar of the court, including such proceedings and notices as required by law or designated by the judge, is published. These publication charges shall be charged as costs.

### **LOC.R. 58.2 WITNESS FEES**

Witness fees must be requested by the end of the next business day following the conclusion of the hearing. If not requested timely, the fee is waived. All unused portions of the subpoena deposit will be refunded to the depositor.

### **LOC.R. 58.3 FILING TRANSCRIPTS, EXHIBITS, OR RECORDS**

The filing fee required by [R.C. 2101.16\(A\)\(57\)](#) shall be paid at the time of filing the transcript, exhibits, or records.

## **SUP.R. 59 WILLS**

### **LOC.R. 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 [R.C. 2107.19\(A\)\(4\)](#) shall file a Certificate of Service of Notice of Probate Of Will ([Form 2.4](#)) not later than two (2) months after the appointment of the fiduciary or, if no fiduciary has been appointed, not later than two (2) months after the admission of the will to probate. Proof of service shall consist of waivers, notice of the probate of the will, original certified mail return receipt cards, or other official proof of receipt as provided under [Civ.R.](#)

[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**

**LOC.R. 60.1 FIDUCIARY'S ACCEPTANCE**

All executors and administrators shall personally sign and file the Fiduciary's Acceptance ([Form 4.0A](#)) prior to the issuance of the Letters of Authority.

**LOC.R. 60.2 APPOINTMENT OF NONRESIDENT FIDUCIARIES**

An applicant to be appointed fiduciary of a decedent's estate, or trust, who is not a resident of this state, must be in compliance with [R.C. 2109.21](#) and use as the attorney of record an attorney licensed to practice law in this state. To assure the assets remain in Franklin 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:

(A) Place a substantial amount of the decedent's personal assets in a custodial depository in this county, pursuant to [R.C. 2109.13](#);

(B) Have a co-fiduciary who is a resident of this state; or

(C) The out-of-state fiduciary posts a bond in compliance with [R.C. 2109.04](#) in an amount as determined by this court.

**LOC.R. 60.3 IDENTIFICATION WITH PHOTOGRAPH REQUIRED**

Applicants for Authority to Administer a Decedent's Estate, who are not represented by an attorney, shall exhibit to the court government issued picture identification and proof of a current address.

## **LOC.R. 60.4 NOTICE OF HEARING ON APPOINTMENT OF ADMINISTRATOR**

If there is no known surviving spouse or next of kin residing in the state of Ohio, then notice of appointment of administrator shall be given to all heirs pursuant to the Ohio Rules of Civil Procedure, regardless of their residence.

If there is no known surviving spouse or next of kin residing in the state of Ohio, then notice of appointment of administrator with will annexed shall be given to all vested beneficiaries regardless of their residence pursuant to the Ohio Rules of Civil Procedure.

Notice of appointment of an administrator shall be sent via regular mail to all heirs who do not provide a waiver, regardless of residency. A certificate of service shall be filed after the appointment of administrator is made.

## **SUP.R. 61 APPRAISERS**

### **LOC.R. 61.1 APPRAISERS' FEES**

Appraisers' fees for residential real estate shall be a flat fee of \$400.00.

Requests for appraisers' fees above the \$400.00 flat fee shall be made by separate application to the court. If the party or other person required to pay all or a portion of the fees claims that the fees are excessive or unreasonable, the burden of proving the reasonableness of the fees is on the appointed appraiser.

Appraisers' fees shall be paid within one (1) month after the filing of the inventory or sixty (60) days after the completion of the appraisal, whichever occurs first 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 shall be personally liable for the payment of the appraisers' fees.

## **LOC.R. 61.2 APPRAISER SELF-DEALING**

No appraiser appointed by this court may directly or indirectly purchase or negotiate the purchase, sale, trade, or management of property the appraiser has appraised within twelve (12) months after the appointment or twelve (12) months after the closing of the matter.

## **SUP.R. 62 CLAIMS AGAINST ESTATE**

### **LOC.R. 62.1 DEPOSIT**

Any claim against an estate filed with the court pursuant to [R.C. 2117.06\(A\)\(1\)\(b\)](#) shall be in the form of a complaint, filed as a civil action, and heard not on its merits, but on whether the claim is accepted or rejected. A deposit of one hundred dollars (\$100.00) is required.

## **SUP.R. 64 ACCOUNTS**

### **LOC.R. 64.1 FIDUCIARY'S SIGNATURE**

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

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

### **LOC.R. 64.2 DELINQUENCY IN FILING AN ACCOUNT**

No expenditure, sale, distribution, or fee will be approved while the fiduciary is delinquent in filing an account.

Pursuant to [Sup.R. 78\(d\)](#), the court may issue a citation to the attorney of record for a fiduciary who is delinquent in the filing of an inventory, account, or guardian's report to show cause why the attorney should not be barred from being appointed in any new

proceeding before the court or serving as attorney of record in any new estate, guardianship, or trust until all of the delinquent pleadings are filed.

### **LOC.R. 64.3 VOUCHERS**

When required by statute or court order, original vouchers are to be displayed when filing accounts. The court will accept as a voucher a statement from a financial institution specifying the payee, check amount, and date of payment.

For decedents' estates where the date of death is prior to January 1, 2002, and the estate is solvent, in lieu of submitting vouchers, the fiduciary may file with the account, a waiver and consent from all the beneficiaries acknowledging each received a copy of the account, waives notice of the hearing on the account, and consents to the filing of the account. The signature of each beneficiary must be dated.

The court may accept a combination of vouchers and consents. In lieu of receiving waivers and consents from all the beneficiaries, vouchers from specific and pecuniary beneficiaries may be submitted with consents from all remaining beneficiaries.

Upon request of the court, adding machine tapes shall be provided which reflect receipts, disbursements, and balances.

### **LOC.R. 64.4 BOND**

An account will not be accepted for filing unless the bond, when required, is sufficient to cover twice the sum of the value of the personal property assets on hand plus one (1) year's projected income.

## **LOC.R. 64.5 EVIDENCE OF ASSETS**

The court requires that all assets be exhibited at the time of filing a partial account. The assets remaining in a fiduciary's hands shall disclose the fair market value of the assets as of the last day covered by the account.

## **LOC.R. 64.6 PAYMENT OF DEBTS**

The fiduciary in a decedent's estate shall pay and disclose in the estate account all valid debts unless otherwise determined by law.

## **LOC.R. 64.7 TIME FOR FILING**

(A) For decedents' estates, the final and distributive account due within six (6) months after appointment of the fiduciary may be extended by Notice or Motion to thirteen (13) months for the reasons enumerated in [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 no later than one (1) year 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) If all of the assets of a fiduciary described in [R.C. 2109.30](#) are in custodial depositories pursuant to [R.C. 2109.13](#), the statements filed by the custodial depositories with the court as required by Loc.R. 75.8 will be accepted by the court in lieu of fiduciary accounts.

## **LOC.R. 64.8 ACCOUNT NUMBERS**

All financial asset account numbers listed in a fiduciary's account pursuant to [R.C. 2109.30](#) shall disclose only the last four (4) digits of each account number. It is the

responsibility of the person filing the account to redact the remaining digits of each account number.

### **LOC.R. 64.9 ACCOUNT FORMAT**

(A) Each account shall begin with the ending balance of the next preceding accounting document (including the inventory). Said beginning balance shall be captioned “Balance Brought Forward:...”

(B) To said “Balance Brought Forward:” shall be added to all assets acquired or discovered since the last accounting, which shall be listed under the heading, “Receipts:...” The total resulting from said addition shall be set out and identified as the “Total of Balance Brought Forward and Receipts:...”

(C) From the “Total of Balance Brought Forward and Receipts:” shall be deducted from all amounts expended, lost or disbursed since the last accounting which amounts shall be listed under the heading “Disbursements: . . .” The balance obtained by this deduction shall be set out and identified as the “Ending Balance: . . .”

(D) All “Receipts” and “Disbursements” shall be accompanied by a description sufficient to eliminate the necessity for speculation as to the origin of the asset or the propriety of the disbursement.

(E) All stocks, bonds, mutual funds, and other assets in an investment, IRA, 401K, 403(B), or 457 accounts shall be separately disclosed.

## **SUP.R. 65 LAND SALES – R.C. CHAPTER 2127**

### **LOC.R. 65.1 LAND SALES**

(A) The Ohio Civil Rules of Procedure shall apply to all land sale actions. Superintendence Rule 65 shall apply to all land sale actions.

(B) All land sales not concluded within one (1) year from the date of filing shall be set for status conference by plaintiff's counsel within thirty (30) days following the expiration of the one (1) year.

- (1) The fiduciary and attorney shall attend the status conference.
- (2) A written status report shall be submitted to the court at least seven (7) days prior to the status conference. The status report shall address all pending issues and efforts being made to conclude the land sale.
- (3) The fiduciary shall show cause why the court should not order public sale of the real estate, or why the action should not be dismissed thereby allowing any lienholder to file a foreclosure action in the General Division.

(C) The treasurer of the county in which the real estate is located shall be named as a party in all land sale actions.

(D) Counsel shall notify the court if the proposed distribution of the proceeds of the sale is not sufficient to pay the liens of the county treasurer. No sale shall be approved if the liens of the county treasurer are not satisfied from the proceeds of the sale without a specific acknowledgement from the buyer that the buyer understands that the treasurer's lien shall remain on the property after sale. For purposes of this rule, the lien must be owed to the county treasurer and not owed to a separate lien holder purchased from the county treasurer.

(E) **Guardian Ad Litem.** A guardian ad litem shall be appointed in a land sale for each of the following individuals, or upon order of the court:

- (1) A ward under guardianship when the guardian of the estate is a plaintiff to the land sale action; and

(2) Any defendant who is a minor.

A single guardian ad litem may be appointed to represent multiple defendants if the interests of the defendants are similarly situated. A guardian ad litem in a land sale shall be responsible for reviewing the pleadings and filing an answer on behalf of the ward or minor. Compensation for all guardian ad litem(s) in land sale actions shall be pursuant to Loc.R. 75.16.

(F) Land sales are subject to Loc.R. 78.7 concerning motions and entries. A party seeking an entry finding sale necessary or a party seeking an order confirming sale and ordering deed and distribution shall file a motion, and shall serve the motion upon all parties who have not been defaulted, or who have not signed the proposed entry/order. A proposed judgment entry finding sale necessary and a proposed order confirming sale and ordering deed and distribution shall be submitted to the court by the movant.

(G) Evidence of title dated after the filing of the complaint shall be filed in all land sale actions, in accordance with [Sup.R. 65](#).

(H) Any additional bond ordered in a land sale action shall be filed in the underlying estate or guardianship and evidenced by the memorandum of bond ([eForm 4.2A](#)) no later than the day prior to the closing.

(I) Counsel for the plaintiff shall prepare and file a Proposed Order of Sale (including the property description) ([eForm 1.0S](#)), and a Return of Sale (un)Sold ([eForm 1.0S2](#)) in each land sale action. The proposed contract of sale shall be attached to the Return of Sale Sold.

(J) A motion to fix the price in a land sale shall not be considered by the court unless a prior Order of Sale and Return of Sale Unsold has been filed and the fiduciary demonstrates a bona fide attempt to sell the real estate at the appraised value.

(K) Counsel for the plaintiff shall be responsible for submitting a proposed entry approving the report of distribution, which shall close the land sale action upon the payment of all costs.

## **SUP.R. 66 GUARDIANSHIPS**

### **LOC.R. 66.1 GUARDIANSHIP OF MINORS**

(A) A certified copy of the minor's birth certificate must be filed with the guardian's application.

(B) 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 of the Common Pleas Court.

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

(D) The Juvenile and Domestic Relations Divisions of the Common Pleas Court have specific safeguards and investigatory provisions regarding custody of minors as set forth in [Title 31 of the Ohio Revised Code](#). To protect the interest of all individuals involved and to ensure the best interest of the minor is met, a guardianship of the person of a minor may only be established in the probate court upon the consent of all the minor's legal parents. In cases where consent cannot be obtained or a legal parent cannot be located, no guardian of the person for a minor will be appointed in the probate court.

(E) Consent to a minor guardianship may be obtained by the legal parents completing and signing the waiver of notice ([Form 15.1A](#)) consenting to the guardianship of the minor in the presence of a notary public (the notary public shall make it clear whose signature the notary is notarizing) or the legal parents giving consent in person in the court.

(F) Minors who do not have legal status for U.S. immigration purposes are not considered by this court to be residents or have legal settlement as set forth in [R.C. 2111.02\(A\)](#).

(G) Minors are deemed to have the residence of their custodial parent(s). An application for the guardianship of a minor shall be filed in the minor's county of residence, unless the home county has specifically granted this court the authority to proceed.

(H) No guardian of the person of a minor may create a power of attorney pursuant to [R.C. 3109.52](#) transferring the guardian's rights and responsibilities without specific authority of the court.

(I) All requests to expend funds for the health, education, maintenance, and support of a minor from a guardianship of a minor, controlled account under [R.C. 2111.05](#), or wrongful death trust shall include a completed household resource worksheet ([Form 15.7](#)).

## **LOC.R. 66.2 SAFE DEPOSIT BOX**

Before making an appointment with the county auditor to audit a ward's safe deposit box(es), the guardian shall deposit ten dollars (\$10.00) with the probate court cashier for each box identified. The contents of the ward's safe deposit box are not to be released without a specific court order.

### **LOC.R. 66.3 RELEASE OF FUNDS**

Funds in the name of the ward shall not be released to the guardian without a specific court order.

### **LOC.R. 66.4 DEPOSIT OF WILLS**

The guardian shall obtain all wills executed by the ward and all such wills shall be deposited with the court and placed in safekeeping in accordance with [R.C. 2107.07](#).

### **LOC.R. 66.5 CHANGE OF ADDRESS**

A guardian appointed by this court shall inform the court as to any change of address or phone number of the guardian or the ward. This notification must be made in writing within thirty (30) days of the change ([Form 17.0H](#)). Failure to timely notify the court under this rule may result in the guardian being removed.

### **LOC.R. 66.6 GUARDIAN'S REPORT AND GUARDIAN'S PLAN**

A guardian's report and guardian's plan shall be filed annually and simultaneously in all adult guardianships by the guardian of the person. In cases where a guardian of the estate exists and no guardian of the person, the guardian of the estate shall file the annual guardian's report. The guardian's report shall include a statement of expert evaluation unless dispensed with as set forth below.

When a physician or clinical psychologist states on an Annual Statement of Expert Evaluation, that with a reasonable degree of medical certainty it is unlikely the ward's mental competence will improve, upon application by the guardian the court may dispense with the filing of Statements of Expert Evaluation when filing subsequent Annual Guardian's Reports. ([Form 17.1D](#))

## **LOC.R. 66.7 TERMINATION**

Applications to terminate a guardianship of a minor require notice to all persons designated in [R.C. 2111.04](#) and any other individuals who received actual notice of the original appointment of the guardian. An interested individual may consent to the termination by signing a notarized consent to the termination ([Form 15.4B](#)) (the notary public shall make it clear whose signature the notary is notarizing) or appearing before the court with valid government issued picture identification. An application to terminate which is not accompanied by all necessary consents shall be set for hearing.

## **LOC.R. 66.8 NOTICE FOR GUARDIANSHIP OF ADULTS**

In addition to those entitled to notice of the hearing on the application for the appointment of a guardian of an adult under [R.C. 2111.04](#), the applicant shall disclose to the court the names and addresses of all adult children of the proposed ward. The court shall serve the adult persons named on the form with notice of the time and date of the hearing, unless the notice is waived. The guardian shall serve all known heirs, regardless of residence, if residence is known, notice of the appointment by ordinary mail no later than two weeks after the appointment. A certificate of service for the notice of appointment shall be filed with the probate court no later than three months after the appointment.

## **LOC.R. 66.9 BACKGROUND INVESTIGATIONS**

All applicants for guardianship, with the exception of attorneys in good standing licensed by the Supreme Court of Ohio, state agencies, and the Franklin County Guardianship Service Board, shall complete a BCI criminal record background check prior to the hearing on the application. Applicants who have not been residents of Ohio for five

years and applicants who do not live in Ohio shall complete an FBI background check prior to the hearing on the application.

### **LOC.R. 66.10 GUARDIANSHIPS – QUALIFICATION FOR INDIGENT STATUS**

All fees shall be paid at the time of filing. An adult ward or alleged incompetent is rebuttably presumed to be not indigent.

For purposes of indigent status for payments from the indigent guardianship fund, upon application with sufficient documentation, a ward or alleged incompetent may be declared to have indigent status if their personal property is less than \$2,000.00 and their annual income is less than the U.S. Department of Health and Human Services Poverty Guidelines ([aspe.hhs.gov/poverty-guidelines](https://aspe.hhs.gov/poverty-guidelines)), or if after a hearing, the court orders indigent status for the ward or alleged incompetent.

Once a ward is deemed indigent, court costs are waived, counsel fees are waived, and independent expert fees are waived.

An adult ward or an alleged incompetent with a special needs trust does not qualify for indigent status.

### **LOC.R. 66.11 GUARDIANSHIP TRAINING COURSE**

All guardians shall comply with [Sup.R. 66](#) as promulgated by the Supreme Court of Ohio. (See [The Supreme Court of Ohio Adult Guardianship Training Information and Registration](#)).

### **LOC.R. 66.12 INCIDENT REPORTS**

(A) Any attorney, guardian, or person in a fiduciary relationship with a ward or conservatee of the court having reasonable cause to believe that the ward or conservatee is

being abused, neglected, or exploited, or is in a condition which is the result of recent abuse, neglect, or exploitation shall immediately report the matter in writing to the court.

(B) Incident reports concerning a guardianship will be reviewed by the chief court investigator.

(C) A court investigator shall inquire into the alleged incident(s) and refer the matter for appropriate action.

(D) All incident reports will be filed in the guardianship case file upon final disposition unless otherwise directed by the court.

### **LOC.R. 66.13 GUARDIANSHIP COMMENTS AND COMPLAINTS**

(A) The [Guardianship Complaint Form](#) is available on the Franklin County Probate Court's website at: [probate.franklincountyohio.gov/forms](http://probate.franklincountyohio.gov/forms). Comments and Complaints may be submitted on-line using the electronic Guardianship Complaint Form, or in person at the Franklin County Probate Court.

(B) A court investigator shall inquire into the allegations of the comment or complaint and recommend appropriate action to the court.

(C) A court investigator will send a copy of a filed comment or complaint to the court appointed guardian for response.

(D) The guardian and the commenting party or the complaining party will be given notice of the disposition of comment or complaint.

(E) Comments and complaints will be filed in the guardianship case along with a copy of the final disposition unless otherwise directed by the court.

(F) In any case where the court believes there is probable cause that a procedure outlined in these rules will be detrimental to the ward, the rule may be waived.

#### **LOC.R. 66.14 GUARDIANS HAVING TEN OR MORE WARDS**

A roster of guardians having ten (10) or more adult incompetent wards will be maintained by the court under Case No. 572380. The roster will be updated on or after January 1st of each year. Each guardian on the roster shall file their fee schedule annually by the 15th day of January. The fee schedule shall differentiate between fees for guardian of the person work and fees for legal work.

#### **LOC.R. 66.15 EXPEDITED HEARINGS**

A guardianship hearing may be expedited if specific facts are alleged showing a reasonable certainty that expedited action is needed to prevent injury to the person or estate of an alleged incompetent or to assure proper care and treatment of an alleged incompetent.

#### **LOC.R. 66.16 EMERGENCY GUARDIANSHIP**

(A) The court will consider an emergency guardianship only upon a clear and convincing showing that an emergency exists, and it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or adult incompetent person.

(B) The application requesting an emergency guardianship must be accompanied by a statement of expert evaluation ([Form 17.1A](#)), along with a supplement for emergency guardian ([Form 17.1B](#)). Both documents must be completed by either a medical doctor or licensed clinical psychologist.

(C) The application for emergency guardianship along with the statement of expert evaluation and the supplement for emergency guardian must be approved by a magistrate or the judge of this court to be scheduled for hearing.

(D) The hearing will be conducted in compliance with [R.C. 2111.02](#) and [Civ.R. 53](#).

## **LOC.R. 66.17 GUARDIANSHIP SUCCESSION PLANS**

All guardians with ten or more wards must file a succession plan with the court annually by the 15th day of January. The succession plan must:

(A) Nominate an interim guardian in the event the guardian is unable to fulfill the duties of a guardian. The nominee must consent to the nomination in writing, and the consent must be filed with the court, along with the name, address, and telephone number of the nominee.

(B) Disclose the physical location of all guardianship records, and the name, address, and telephone number of a person who may allow access to the records.

(C) Disclose the location of a list of all user identifications and passwords required to access electronic guardianship records, including, but not limited to banking records and other financial records.

(D) Be updated immediately if the succession plans changes. All guardians with ten or more wards whose succession plans have not changed shall file a certificate to that effect with the court annually on or before January 15th of each year after the filing of the first succession plan.

## **SUP. R. 67 ESTATES OF MINORS**

### **LOC.R. 67.1 DISPENSE WITH GUARDIANSHIP**

If the estate of a minor is \$25,000.00 or less, an application to dispense with the appointment of a guardian shall follow the notice required in [R.C. 2111.04](#). A brief narrative statement describing where the money designated for the minor originated shall be included with the application.

## **LOC.R. 67.2 BIRTH CERTIFICATE**

A certified copy of the minor's birth certificate must be presented to the court upon the filing of the application to dispense with guardianship.

## **LOC.R. 67.3 ATTORNEY RESPONSIBILITY**

The attorney representing the interests of the payor in a minor's settlement action shall not represent the minor in any way before the court, but may assume the duties imposed by [Sup.R. 67\(C\)](#).

## **LOC.R. 67.4 ANNUAL STATEMENTS**

All institutions holding controlled accounts under [R.C. 2111.05](#) shall annually file statements with the court disclosing the year-end balance and all activity of each account. The statements shall be filed between January 1st and February 28th of each year.

## **SUP.R. 68 SETTLEMENT OF INJURY CLAIMS OF MINORS**

### **LOC.R. 68.1 BIRTH CERTIFICATE**

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.

### **LOC.R. 68.2 VENUE**

The court will consider a minor's settlement application only when the minor currently resides in Franklin County with some degree of permanency greater than a visit lasting a few days or weeks.

### **LOC.R. 68.3 DEPOSIT OF PROCEEDS**

Pursuant to [Sup.R. 67\(C\)](#), the attorney representing the applicants in the matter shall acknowledge responsibility for depositing the funds and providing the financial institution with a copy of the entry. If there is no attorney representing the applicants, the

attorney for the payor shall acknowledge delivery of the funds to complete the delivery of consideration to effectuate the release. The attorney shall deposit said funds within seven (7) days of the issuance of the entry or seven (7) days after the receipt of funds, whichever is later. The Verification of Receipt and Deposit ([Form 22.3](#)) shall be filed by the financial institution within twenty-one (21) days of deposit.

#### **LOC.R. 68.4 STRUCTURED SETTLEMENTS**

In the event that 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 rules 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; and
- (2) The annuity carrier shall have an A.M. Best Company rating of A++ or A+ (Size Class XV).

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

## **LOC.R. 68.5 APPLICATION TO SETTLE CLAIM**

When the net proceeds of a claim for the benefit of a minor is twenty-five thousand dollars (\$25,000.00) or less, an application may be filed with the court to consider the approval of a settlement of a claim by a parent or other next friend of the minor. The court will consider whether to dispense with the appointment of a guardian for the estate of the minor under the same case number.

When the net proceeds of the claim for the benefit of a minor are over twenty-five thousand dollars (\$25,000.00), an application shall be filed for the appointment of a guardian for the estate of that minor. The court will consider the approval of the settlement of that claim under the guardianship case number.

## **LOC.R. 68.6 SETTLEMENT OF MINOR'S CLAIM WITHOUT LEGAL REPRESENTATION FOR THE MINOR**

When a minor is not represented by an attorney in the settlement of a minor's claim, the court may, at its discretion, appoint a guardian ad litem for the minor.

The fee for the guardian ad litem will be determined pursuant to Loc.R. 75.16.

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

### **LOC.R. 70.1 SETTLEMENT OF CLAIMS**

The application to settle a claim for wrongful death and the apportionment of the proceeds are two distinct matters for which the court may require separate hearings. Notice of the hearing(s) shall be provided to all wrongful death beneficiaries and survival beneficiaries who do not sign a waiver, as identified in [R.C. 2125.02](#) and [In re Estate of Payne, 2005-Ohio-2391](#).

## **LOC.R. 70.2 WRONGFUL DEATH PROTOTYPE TRUST**

The court has adopted and filed a [prototype wrongful death trust](#) under Case No. 424500, which is available at the court and on the court's website: [probate.franklincountyohio.gov/search/general-case-index.cfm](http://probate.franklincountyohio.gov/search/general-case-index.cfm). Attorneys who wish to use the prototype must file an acknowledgment that the trust conforms to the current prototype. Any changes to the prototype shall be specifically noted. An attorney who wishes to create his or her own form of trust must submit the form of trust to the court at least seven (7) days prior to the hearing on the wrongful death settlement.

## **LOC.R. 70.3 WRONGFUL DEATH TRUST WITH MULTIPLE BENEFICIARIES**

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

## **SUP.R. 71 COUNSEL FEES**

### **LOC.R. 71.1 ATTORNEY FEES**

All fees charged by an attorney representing a fiduciary in matters before this court, including but not limited to work on decedents' estates, guardianships, and trusts, must be disclosed on the fiduciary's account, regardless of the source of payment. If the source of payment is other than the fiduciary, the source of payment must be identified on the account. For the purpose of this rule, the term fiduciary includes commissioners and applicants for release from administration. If no account is to be filed, the payment must be disclosed on a consent to fees signed by the payor of the fees.

Attorneys are expected to be familiar with [Prof.Cond.R. 1.5](#), [Sup.R. 66.08](#), [Sup.R. 71](#), and [Sup.R. 73](#). Upon review of the records, the court may set the fees for hearing, regardless of the submission of consent(s) to fees.

## **LOC.R. 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 attorney is the attorney of record, separate detailed records shall be maintained describing time and services as fiduciary and as attorney, which record shall, upon request, be submitted to the court for review. [Prof.Cond.R. 1.5](#) and applicable case law shall govern fees, notwithstanding statutory allowances. Upon review of the records, the court may set the fees for hearing, regardless of the submission of consent(s) to fees.

## **LOC.R. 71.3 EARLY PAYMENT OF ATTORNEY FEES**

Attorney fees for the administration of decedents' estates 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 being required in advance of the time permitted by [Sup.R. 71\(B\)](#) and shall set forth the reason for requesting the early payment of fees. The application shall be accompanied by a consent as to the amount and the timing of the fees by all persons whose interests are affected by the payment of the fees, including creditors. If consent is not given by one hundred percent (100%) of those persons whose interests are affected by the payment of the fees, the matter shall be set for hearing with notice to all non-consenting affected persons.

## **LOC.R. 71.4 NOTICE AND CONSENT FOR ATTORNEY FEES IN ESTATES**

Applications for attorney fees in estates shall be accompanied by a detailed fee statement including the itemization and date of service performed, time expended, identification of the individual performing the services, and the hourly rate. The applicant

shall give notice of the hearing on the fees to one-hundred percent (100%) of the persons whose interests are affected by the payment of the fees, including creditors if the estate is insolvent. Attorney fees may be paid upon the preparation of the final account, without application and entry, if persons entitled to greater than fifty percent (50%) of the assets used for the payment of the fees file their written consent to the fees, subject to any exceptions to the final account by non-consenting beneficiaries or creditors.

### **LOC.R. 71.5 NOTICE AND CONSENT FOR ATTORNEY FEES IN GUARDIANSHIPS**

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 by 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 detailed fee statement including the itemization and date of service performed, time expended, identification of the individual performing the services, and the hourly rate; and shall include a statement of all attorney and guardian fees approved by the court in that guardianship in the last five (5) years.

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.

The court may require notice of the hearing on the fees be given to other interested persons, including the estate fiduciary of a deceased ward.

## **LOC.R. 71.6 NOTICE AND CONSENT FOR ATTORNEY FEES IN TRUSTS**

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 for attorney fees in trusts shall be accompanied by a detailed fee statement including the itemization and date of service performed, time expended, identification of the individual performing services, and the hourly rate; and shall include a statement of all attorney and trustee fees in that trust in the last five (5) years.

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.

## **LOC.R. 71.7 CONTESTED FEES**

The burden is upon the attorney to prove the reasonableness of the fee as governed by [Prof.Cond.R. 1.5](#). A detailed fee statement shall be required which includes the itemization and date of service performed, time expended, identification of the individual performing the services, and the hourly rate.

## **LOC.R. 71.8 CONTINGENT FEES**

All fiduciaries shall make written application to the court for authority to enter into a contingent fee contract. The court may request the application be accompanied by a case plan, time projection, and estimated costs, as available, which will be reviewed *in camera*. Upon review, the court will either give preliminary approval or deny the request.

Preliminary approval shall be subject to final review at the conclusion of the matter that is the subject of the contingent fee contract.

In minor settlement cases where no guardian has been appointed, the attorney shall make the above application, under Case No. 418000. Before settlement may be approved, a guardianship must be established or dispensed with under its own case number.

### **LOC.R. 71.9 MENTAL COMMITMENT OBJECTION HEARINGS**

Compensation for appointed counsel for objections to a magistrate's decision in a mental commitment hearing is limited to one-hundred fifty dollars (\$150.00) per hour up to the maximum amount of nine hundred dollars (\$900.00) per case number. Applications for attorney fees shall be accompanied by a detailed fee statement including the itemization and date of service performed, time expended, identification of the individual performing the services, and the hourly rate. Fees are subject to review and approval of the probate court.

Additional payment may be made for extraordinary cases upon application by the attorney showing extraordinary services.

### **LOC.R. 71.10 TIMELINESS OF COUNSEL FEES**

Unless otherwise approved by the court, all applications for counsel fees, with the exception of a decedent's estate, shall be submitted within twenty-five (25) months of the date of service.

## **SUP.R. 73 GUARDIAN'S COMPENSATION**

### **LOC.R. 73.1 GUARDIAN'S COMPENSATION**

(A) Guardian's compensation for services as guardian of the estate shall be computed annually upon application and entry and shall be supported by calculations and

documentation. The following fee schedule shall apply unless extraordinary fees are requested. Extraordinary fee applications shall be set for hearing unless hearing is waived by the court.

- (1) Income/Expenditure Fee. Excluding income from rental real estate, four percent (4%) of the first \$10,000.00 of income received, plus three percent (3%) of the balance in excess of \$10,000.00, and four percent (4%) of the first \$10,000.00 of expenditures except expenditures pertaining to rental real estate, plus three percent (3%) of the balance in excess of such \$10,000.00. If the guardian manages rental real estate, a fee amounting to ten percent (10%) of gross rental real estate income may be allowed. If the guardian receives net income from rental real estate actively managed by others, then the guardian shall treat such net income as ordinary income. No fee shall be allowed to the guardian on expenditures pertaining to rental real estate. As used in this rule, “income” shall mean the sum of income as defined in the Ohio Principal and Income Act, including pension benefits and net gains from the sale of principal. Assets held by the ward at the date of appointment are deemed to be principal and not income.
- (2) Principal Fee. \$3.00 per thousand for the first \$200,000.00 of fair market value, and \$2.00 per thousand on the balance of the corpus, unless otherwise ordered.
- (3) Principal Distribution Fee. \$3.00 per thousand for the first \$200,000.00 of fair market value of corpus distributed upon the termination of the guardianship, and \$2.00 per thousand on the balance of the corpus

distributed upon the termination of the guardianship, unless otherwise ordered.

(B) Compensation for services as guardian of the person only shall be set for hearing unless the hearing is waived by the court.

(C) Compensation for corporate fiduciaries who are exempt from bond pursuant to [R.C. 1111.21](#) shall be compensated pursuant to their published fee schedule if the fee schedule is filed in this court under Case No. 368530.

(D) All motions, including applications for compensation, by guardians of veterans must comply with Ohio [Revised Code Chapter 5905](#) and all other rules and regulations of the Department of Veterans Affairs.

**LOC.R. 73.2 TIMELINESS FOR PAYMENTS FROM THE INDIGENT GUARDIANSHIP FUND**

All services charged to the Indigent Guardianship Fund must be billed to the court within twenty-five (25) months from the date the service was rendered. An application for payment from the Indigent Guardianship Fund shall be accompanied by a detailed fee statement including the itemization and date of service performed, time expended, identification of the individual performing the services, and the hourly rate. Payment will be made in accordance with the court's written policy.

**SUP.R. 74 TRUSTEE'S COMPENSATION**

**LOC.R. 74.1 TRUSTEE'S COMPENSATION**

(A) Except where the instrument creating the trust makes provision for compensation, trustees subject to this court's jurisdiction may, upon application and entry, be allowed compensation annually for ordinary services in connection with the administration of each separate trust in accordance with the following schedule.

- (1) Income Fee. Six percent (6%) of the gross income received during the accounting period not exceeding \$10,000.00 of gross income, five percent (5%) of the next \$10,000.00 of gross income, and four percent (4%) of such gross income exceeding \$20,000.00, chargeable to income unless otherwise ordered. As used in this rule, “income” shall mean the sum of income as defined in [The Ohio Principal and Income Act](#) including pension benefits and net gains from the sale of principal accrued during the trust administration. Assets held by the trustee at the date of appointment are deemed to be principal and not income.
- (2) Principal Fee. \$5.00 per thousand for the first \$200,000.00 of fair market value, and \$4.00 per thousand on the next \$200,000.00, and \$3.00 per thousand on the balance of the corpus, chargeable to the principal, unless otherwise ordered.
- (3) Principal Distribution Fee. \$5.00 per thousand for the first \$200,000.00 of fair market value of corpus distributed, and \$4.00 per thousand of the next \$200,000.00, and \$3.00 per thousand of the corpus distributed, unless otherwise ordered.

(B) Compensation for corporate fiduciaries who are exempt from bond pursuant to [R.C. 1111.21](#) may be compensated in accordance with their published fee schedule if the fee schedule is filed in this court under Case No. 368530. Vested trust beneficiaries affected by the payment of fees shall be notified by the trustee of any changes in its corporate fee schedule.

(C) Additional compensation for extraordinary services or allowances for expenses may be granted on application and entry, which shall be set for hearing unless waived by the court. An application for extraordinary services shall be accompanied by a detailed fee statement including the itemization and date of service performed, time expended, identification of the individual performing the services, and the hourly rate.

## **SUP.R. 75 LOCAL RULES**

### **LOC.R. 75.1 ADDITIONAL FEES**

Fees charged pursuant to Ohio [Revised Code Chapter 2101](#) shall be set by administrative order.

### **LOC.R. 75.2 PHOTOGRAPHIC IDENTIFICATION**

Applicants appearing before this court for any matter may be required to exhibit a government issued picture identification and proof of a current address.

### **LOC.R. 75.3 WITHDRAWAL 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 after 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 less 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 must be in writing and filed with the court, but does not require approval of the court. Notice shall be given to all attorneys, unrepresented parties, and interested persons.

#### **LOC.R. 75.4 PRO HAC VICE**

(A) An attorney not licensed to practice law in the state of Ohio, but who is duly licensed to practice law in any other state or the District of Columbia, may, at the discretion of the probate judge, be permitted to represent a party or parties in any litigation pending or to be filed in this county after completion of all of the requirements of [Gov.Bar.R. XII](#).

(B) The continuance of any scheduled trial or hearing date shall not be permitted solely because of the unavailability or inconvenience of the out-of-state attorney.

(C) An attorney admitted *pro hac vice* shall have local co-counsel who is licensed by the Supreme Court of Ohio.

#### **LOC.R. 75.5 REGISTRATION OF PARALEGALS**

(A) Paralegals performing services in matters before this court must be registered with the court under Case No. 461100. The court recognizes two (2) categories of paralegals: “employee paralegals,” paralegals employed exclusively by and performing services for one law firm as an employee of that firm; and “independent paralegals,”

paralegals operating as freelance/independent contract paralegals or offering services to more than one law firm. Registration shall be on the forms prescribed by the court.

(1) Employee paralegals need only be registered once, identifying the law firm and stating the paralegal services will be supervised by the attorney(s) of that law firm. An attorney from the firm and the paralegal shall sign the registration certifying that the paralegal is qualified through education, training, or work experience to assist an attorney in matters which will be filed in this court and that an attorney from the law firm will supervise and be responsible for all services of the paralegal. In fee statements filed with the court, services of the paralegal must be itemized separately from services performed by an attorney. The law firm shall notify the court when the paralegal registered with the court leaves the exclusive employment of the law firm.

(2) Independent paralegals shall be registered for each case in which the independent paralegal is performing services, identifying the case name, case number, and supervising attorney. The supervising attorney and the independent paralegal shall sign the registration certifying that the independent paralegal is qualified through education, training, or work experience to assist the supervising attorney in matters that will be filed in this court and, as supervising attorney, he or she will supervise and be responsible for all services of the independent paralegal. In fee statements filed with the court, services of the independent paralegal must be itemized separately from services performed by an attorney. Attorney fees reported

in the account shall include a disclosure of the independent paralegal fees on the Receipts and Disbursements form.

(B) In conjunction with [Civ.R. 11](#), a paralegal may not sign any document for the fiduciary, applicant, or supervising attorney.

(C) For purposes of this rule, the court acknowledges the definition of “paralegal” adopted by the Columbus Bar Association. Registration with the court does not constitute certification by the court as to the qualifications of the paralegal.

(D) Failure to comply with this rule may result in the disallowance of the fees and such other action as the court may deem appropriate.

#### **LOC.R. 75.6 PROFESSIONAL LIABILITY INSURANCE**

All attorneys representing fiduciaries or applicants to be appointed fiduciaries shall notify the court in writing if they do not maintain professional liability insurance. This requirement is in addition to notifying their clients pursuant to [Prof.Cond.R. 1.4\(c\)](#).

#### **LOC.R. 75.7 SURETY BONDS**

(A) A surety company, prior to executing a fiduciary bond, must register with the court and file proof that the company is authorized to do business within this state. The court will maintain a separate case file for each company to register the company and its agents. Agents must file a power of attorney from the company prior to executing bonds for that company.

(B) Attorneys shall not act as sureties in any case, nor shall they be permitted to become sureties on the bond of any fiduciary.

(C) The court will not accept personal sureties.

(D) Bond required by law or court order shall be in an amount not less than double the probable value of the personal estate including all sources of income during the accounting period.

(E) The original bond must be approved in writing by a bonding agency prior to the issuance of Letters of Authority in all matters where a bond is required. Additional bonds must be approved by a bonding agency in writing before being approved by the court.

(F) The bond premium shall be paid by the fiduciary within sixty (60) days of date of appointment. The premium for additional bond shall be paid by the fiduciary within sixty (60) days from the date the additional bond was approved by the court. Should payment not be made pursuant to this rule, the fiduciary may be held personally liable for its payment and is subject to removal.

#### **LOC.R. 75.8 CUSTODIAL DEPOSITS IN LIEU OF BOND**

All custodial deposits of personal property, securities, and monies must comply with [R.C. 2109.13](#). All institutions desiring to be a depository must satisfy the court of their authorization and certification by the State of Ohio.

All custodial depositories shall annually file statements with the court disclosing the year-end balance and all activity of each account. The statements shall be filed between January 1st and February 28th of each year.

Compensation for custodial depositories shall be in accordance with their published fee schedule if the fee schedule is filed in this court under Case No. 368530.

#### **LOC.R. 75.9 WILLS DEPOSITED FOR SAFEKEEPING**

(A) Any person placing a will on deposit in this court shall sign an Application to Place Will on Deposit ([Form 2.D](#)) acknowledging the will is placed on deposit at the

request of the testator or guardian of the testator and identify the testator's current address and telephone number.

(B) When a will is held by an attorney, and the address of the testator becomes unknown, that attorney must use reasonable diligence to locate the testator to sign the Application to Place Will on Deposit ([Form 2.D](#)), before the will can be deposited with this court. If the testator cannot be located after a diligent search, the will may be placed on deposit with the probate court known to be the last resident county of the testator.

(C) When an attorney dies, becomes disabled, or otherwise ceases to practice law, then that attorney or the person who is handling that attorney's affairs, may leave any wills with the surviving members of the law firm or use due diligence to return the will to the testator. If there are no surviving members of the law firm and if the testator cannot be located after a diligent search, the will shall be placed on deposit with the probate court known to be the last resident county of the testator.

(D) A will previously deposited with this court may be withdrawn pursuant to an Authorization to Deliver. The Authorization to Deliver ([Form 2.B](#)) must be signed by the testator, and the person to whom the will should be delivered, before a notary public. The notary public must be independent from the person to whom the will shall be delivered. The Will Withdrawal form must also include a signature of the person to whom the will shall be delivered.

#### **LOC.R. 75.10 WILLS IN SAFE DEPOSIT BOX**

The court will appoint the attorney for a decedent's estate or a bailiff of this court as a commissioner to list the contents of the box and retrieve the decedent's will and codicils from the decedent's safe deposit box for delivery to the court. A filing fee of

sixteen dollars (\$16.00) must be paid and a case number assigned prior to the appointment of the commissioner. If the court bailiff is appointed as the commissioner, an additional fee of twenty dollars (\$20.00) will be assessed.

#### **LOC.R. 75.11 SURVIVING SPOUSE WAIVER OF SERVICE OF THE CITATION TO ELECT**

A surviving spouse may waive the service of the citation required under [R.C. 2106.01\(A\)](#) by filing in the probate court a written waiver of the citation. The waiver shall include an acknowledgement of receipt of the description of the general rights of the surviving spouse required by [R.C. 2106.02\(B\)](#).

#### **LOC.R. 75.12 OHIO ESTATE TAX RETURN**

In cases where the decedent died before January 1, 2013 in which an Ohio estate tax return is not otherwise required to be filed, an [Ohio Estate Tax Form 22](#) shall be filed as described in [R.C. 5731.21](#), where the value of the gross estate of the decedent, as defined in division (A) of [R.C. 5731.01](#), includes any interest in real estate, and the decedent has been deceased for less than ten years.

#### **LOC.R. 75.13 RELEASE OF ESTATES FROM ADMINISTRATION**

(A) The court shall select and appoint commissioners, when required, in estates released from administration. A commissioner shall be a resident of the state of Ohio.

(B) The court may waive a noticed hearing in those instances where it appears no beneficiaries or creditors will be prejudiced.

(C) Upon the filing of an Application to Relieve Estate from Administration ([Form 5.0](#)), the applicant shall exhibit to the court a certified copy of the decedent's death certificate.

(D) Any applicant to Relieve an Estate from Administration, not represented by an attorney shall present to the court government issued picture identification and proof of current address.

**LOC.R. 75.14 TRANSFER OF STRUCTURED SETTLEMENTS**

All applications for approval of the transfer of structured settlements shall be set for status conference no less than one week before the evidentiary hearing. The proposed transferor shall appear at the hearing. A statement of the assets, income, living expenses, debts, and other financial obligations of the proposed transferor as well as a detailed statement as to how the proceeds will be used by the proposed transferor shall be filed before the status conference. The status conference may be waived upon submission of the court's affidavit in lieu of the status conference.

**LOC.R. 75.15 MARRIAGE LICENSE APPLICANTS**

Pursuant to [R.C. 3101.05](#), any applicant for a marriage license who is a minor must provide proof of having had marriage counseling prior to applying for the license. The counseling can be provided by clergy or a person licensed by the State of Ohio to provide counseling. Proof of counseling may be in the form of a letter to this court from the person who provided the counseling on his or her letterhead.

Proof of the termination of the most recent prior marriage shall be exhibited by death certificate or certified court order. Any application to correct marriage records shall be acknowledged by both applicants in court, or, by one applicant before a notary public and the other applicant before the court. Applications to correct marriage records requesting the addition of prior terminated marriages shall be set for evidentiary hearing.

## **LOC.R. 75.16 GUARDIAN AD LITEM**

(A) When necessary in a land sale proceeding, the court shall select and appoint each guardian ad litem. A minimum fee of one hundred and seventy-five dollars (\$175.00) shall be assessed as compensation for each guardian ad litem appointed. In the event that circumstances warrant the payment of additional guardian ad litem fees, an application shall be filed with the court for the court's review and decision. The application for additional fees shall be accompanied by a detailed fee statement, including the itemization and date of service performed, time expended, identification of the individual performing the services, and the hourly rate.

(B) In all other proceedings the court shall select and appoint each guardian ad litem. Upon appointment as guardian ad litem, if not detailed in the order of appointment, the guardian ad litem shall schedule a meeting with the court to receive the scope of services expected of them in the proceedings. The amount of the guardian ad litem fee will be determined upon an application filed with the court which shall be accompanied by a detailed fee statement including the itemization and date of service performed, time expended, identification of the individual performing the services, and the hourly rate. Some of the guardian ad litem fee, or the entire guardian ad litem fee, may be assessed as costs in the proceedings.

## **LOC.R. 75.17 ADOPTIONS**

(A) In private placement adoptions, a pre-placement application in a form prescribed by the court shall be filed by the proposed adopting parents not less than fifteen (15) days prior to placement. A pre-placement application may only be approved upon the filing of all necessary paperwork.

(B) Once the applications have been approved by the court, a hearing shall be held not less than seventy-two (72) hours after the birth of the child or after the parent(s) have met with the adoption assessor, whichever occurs later, for the placement and consent by the parents. Prior to the placement hearing, the court may require a statement from the child's physician as to the medical condition of the child to be placed. If the placement is approved, the adoption petition must be filed no later than ten (10) days after placement. Failure to timely file the petition for adoption may result in the placement being revoked.

(C) In all placement hearings where a birth parent of a child to be adopted is a minor, that 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.

(D) All parents executing private placement documents in court must present government issued photo identification.

(E) When the petitioner is the guardian of the minor to be adopted, the court shall require that the guardianship be a permanent guardianship for the purposes of adoption. Recognizing due process requires a higher degree of scrutiny for the permanent termination of parental rights compared to a temporary and reversible termination of parental rights, any guardianship application to be used to commence an adoption pursuant to [R.C. 5103.16](#) shall specifically state in the application its intended use. At the appointment hearing, the applicant must present sufficient evidence to show that the parents have consented to the permanent guardianship or that due diligence has been exercised in attempting to locate and serve the parents. Notice to the parent(s) shall clearly state that the proposed guardianship is for the purpose of adoption and that parental rights may be permanently terminated.

(F) 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.

(G) Criminal background checks pursuant to [R.C. 2151.86](#) and petitioner's accounts shall be filed in all cases. Background checks remain valid for one year and must be current on the date of finalization.

(H) In all adoptions, married petitioner(s) must file proof of marriage, such as a marriage abstract, and must be married for not less than one (1) year prior to the final approval of the adoption.

(I) All adoption assessors who meet with the birth parent(s) in the course of preparing a report for an adoption proceeding in the court, shall provide the birth parent(s) with a copy of the brochure prepared pursuant to [R.C. 3107.082](#) and [R.C. 3107.083](#).

The assessor shall file a Certificate of Service by Adoption Assessor ([Form 18.10](#)) prior to the first hearing in the adoption proceeding concerning the child of the birth parent(s) who received the brochure.

(J) A private child placing agency shall be deemed to be located at the principal office or principal location in Ohio most recently disclosed by the agency to the Ohio Secretary of State. All private agencies must file a copy of their current license issued by the Ohio Secretary of State in each case.

(K) A final petitioner's accounting which complies with [R.C. 3107.055](#) shall be filed in all adoption proceedings. All private child placing agencies shall include an itemization of the fees charged. A preliminary estimate is not required to be filed in stepparent or adult adoptions, or in an action pursuant to [R.C. 3107.18](#).

(L) If the minor to be adopted was born outside the State of Ohio, the law of the state of birth concerning notice on putative fathers must be disclosed and satisfied.

(M) A custody affidavit ([Form 16.1A](#)) must be filed in all proceedings to adopt minors, except in an action pursuant to [R.C. 3107.18](#).

(N) In all custody/guardianship adoptions, if the child has not lived in the home for six months prior to the filing of the petition for adoption, or if the petition for adoption is filed less than six months after the custody or guardianship order was issued, the court shall require two separate home visits with the adoption assessor. The two separate visits must be at least thirty days apart.

(O) Petitioners shall file their home study and all accompanying home study updates in all adoption cases, except for an action pursuant to [R.C. 3107.18](#).

(P) Notice to birth parents pursuant to [R.C. 3107.11](#) shall be issued by the court. The petitioner(s) shall file a request for service. Service shall be attempted by restricted certified mail or by other such means as the court may allow. All requests for service by publication shall be accompanied by an affidavit detailing the efforts made to locate the birth parent(s). The court reserves the right, after testimony at the hearing, to require the petitioner(s) to make further efforts to locate the birth parent(s) to provide notice of the petition.

(Q) In all cases where [The Indian Child Welfare Act, 25 U.S.C. §§ 1901 – 1963](#), applies, including any case where a birth parent indicates Native American history on the social and medical history or in any other document, the most recent Regulations for State Courts and Agencies in Indian Child Custody Proceedings, as published in the Federal Register, shall govern all tribal notification requirements.

(R) All petitioners shall notify the court, in writing, of any juvenile court, probate court, or parentage actions initiated with a government agency involving the minor to be adopted. This includes any actions for custody, visitation, and shared parenting or co-custody agreements. Petitioners shall have the ongoing duty to notify the court of proceedings that arise after the petition is filed.

(S) Prior to a hearing on an application for an interlocutory order of adoption, the petitioners must file the minor's birth certificate, comply with all notice/consent requirements for the birth parents—including filing the putative father registry check where applicable—and must provide the court with at least two months of home visit reports from the adoption assessor.

(T) All contested adoptions shall be set for a scheduling conference. If an individual entitled to notice of the adoption appears for the hearing, the hearing shall be converted to a scheduling conference.

(U) The [Ohio Rules of Civil Procedure rules 26-34](#), pertaining to discovery, shall apply in adoption proceedings.

(V) Any person listed on the petition for adoption as a parent shall receive notice of the adoption proceedings.

(W) All required documents shall be submitted to the court at least ten (10) days before the finalization hearing, unless otherwise provided for under the Ohio Revised Code or the local rules.

## **LOC.R. 75.18 MOTION TO SET ASIDE A MAGISTRATE’S ORDER AND OBJECTIONS TO A MAGISTRATE’S DECISION**

Any motion to set aside a magistrate’s order shall comply with [Civ.R. 53\(D\)\(2\)\(b\)](#). A memorandum in support, stating with particularity the basis for the motion to set aside, shall accompany the motion.

Any objection to a magistrate’s decision shall comply with [Civ.R. 53\(D\)\(3\)\(b\)](#). A memorandum in support, stating with particularity the basis for the objections, shall accompany the objection. If required, the transcript shall be filed within thirty (30) days of the filing of the objection. The objecting party shall request a transcript in accordance with Loc.R. 11.1(B). Failure to file a transcript when one is required by [Civ.R. 53\(D\)\(3\)\(b\)\(iii\)](#) may be a basis for dismissal of the objection.

Memorandum contra and replies to a motion to set aside a magistrate’s order or objection to a magistrate’s decision may be filed in accordance with Loc.R. 78.7.

## **SUP.R. 78 CASE MANAGEMENT**

### **LOC.R. 78.1 CASE MANAGEMENT SCHEDULE IN CIVIL ACTIONS**

(A) All civil actions shall be subject to the administrative order. The most recent version of the administrative order is filed in Case No. 550000-A, and may also be viewed on the court’s website at [probate.franklincountyohio.gov](http://probate.franklincountyohio.gov).

(B) A request for issuance of summons ([Form ePc-1.P](#)) shall be filed by the plaintiff in all civil actions. It is the responsibility of the filer to request service of summons. When the court issues service of summons upon each defendant in a civil action pursuant to [Civ.R. 4](#), the court will only include the summons, a copy of the complaint, and when requested, an order to serve and an entry setting hearing.

(C) [The Ohio Rules of Civil Procedure](#), including but not limited to those rules pertaining to service, discovery, and dispositive motions, shall apply to all civil actions, unless inapplicable by statute or rule.

(D) A status conference and pre-trial conference shall be conducted in all civil actions, except land sales and creditor's claims, unless otherwise ordered by the court. Parties may request a status conference in any case.

(E) In all cases except for land sales, the plaintiff—either pro se or through counsel—shall request a status conference within thirty (30) days after the final answer day for any defendant. A defendant may request a status conference if the plaintiff fails to timely file a request. Notice of the status conference shall be given to all parties listed in the complaint who have not been defaulted.

(F) **Status Conferences.** A representative counsel for each party, and all unrepresented parties, shall appear at the status conference, and be prepared to discuss the following:

- (1) Joinder of additional parties;
- (2) Issues concerning jurisdiction and venue;
- (3) Service of process;
- (4) The possibility of settlement and mediation;
- (5) A discovery schedule;
- (6) A date for the exchange of witness lists, and expert reports when applicable;
- (7) A deadline for the filing of all dispositive motions;
- (8) A deadline for filing motions in limine;
- (9) A date for the pre-trial conference;

- (10) The expected length of trial; and
- (11) A date for trial.

The dispositive motions deadline shall be at least sixty (60) days prior to the pre-trial conference. All motions in limine shall be submitted at least seven (7) days prior to the pre-trial conference. The pre-trial conference shall be at least fourteen (14) days prior to the trial.

(G) Additional status conferences may be scheduled at the court's discretion.

(H) **Pre-trial Conferences.** Counsel and parties shall appear at the pre-trial conference. All counsel shall have full authority to enter into binding orders. Unless otherwise ordered by the court, the following matters shall be addressed at the pre-trial conference:

- (1) The court may rule on any pending motion; and
- (2) The following shall be submitted at least seven (7) days prior to the pre-trial conference:
  - a) Pre-trial statements; and
  - b) Proposed jury instructions and interrogatories, as applicable.

(I) A pre-trial statement shall contain the following:

- (1) Identification of all the parties and counsel;
- (2) The factual and legal issues to be addressed at trial and the party's position on those issues, including any significant evidentiary questions;
- (3) A list of all witnesses expected to testify;
- (4) A list of all exhibits expected to be offered into evidence; and
- (5) A statement of the status of settlement negotiations.

(J) Witness lists exchanged between the parties and/or presented to the court are to provide the name, address, and telephone number of each person intended to be called as a witness. The disclosure of expert witnesses shall include a brief description of the expert's qualifications, summary of the expert's opinions and the basis or theory of that opinion. Failure to disclose a witness may result in the witness not being permitted to testify.

(K) Upon order of the court for good cause shown, a trial date may be continued.

(L) All special statutory proceedings, including but not limited to actions filed pursuant to [R.C. 2107.71](#) (will contests); [R.C. 2109.50](#) (concealment of assets); [R.C. Chapter 2121](#) (presumption of death); [R.C. Chapter 2123](#) (determination of heirship); and [R.C. Chapter 2127](#) (land sales); shall be filed separately and with no other causes of action accompanying the pleading.

## **LOC.R. 78.2 DISCOVERY**

(A) Counsel are encouraged to participate in discovery conferences with opposing counsel and may freely exchange discoverable information and documents upon informal requests. Counsel shall make reasonable efforts to resolve all discovery disputes by agreement prior to filing motions with the court.

(B) **Discovery Cut-Off.** The discovery cut-off date included in the case management schedule shall be the last date for any party to seek the involvement of the court in the discovery process, by way of motion seeking a ruling, order, sanction, or other court action, absent extraordinary circumstances. Voluntary, mutually agreed-upon discovery, including depositions, may continue after the discovery cut-off date in a manner that does not delay any other event on the case schedule.

(C) Notices of taking deposition under [Civ.R. 30](#), interrogatories under [Civ.R. 33](#), requests for production or inspection under [Civ.R. 34](#), and requests for admissions under [Civ.R. 36](#) shall be served upon other counsel or parties in accordance with these rules, but shall not be filed with the court. If relief is sought under [Civ.R. 26\(C\)](#) or [Civ.R. 37](#) concerning any interrogatories, requests for production or inspection, and requests for admissions, copies of the portions of the documents which are in dispute shall be filed with the court contemporaneously with any motion filed under [Civ.R. 26\(C\)](#) or [Civ.R. 37](#).

### **LOC.R. 78.3 REQUEST FOR JURY TRIAL IN A CIVIL ACTION**

The [Franklin County Common Pleas Court, General Division, Rule 27](#), as it relates to juries, shall apply to proceedings in the Probate Division, except to the extent that by its nature it would be clearly inapplicable.

The cost for the jury shall be in accordance with the [Franklin County Common Pleas Court, General Division, Rule 9](#). The first party requesting the jury trial shall pay the jury trial deposit directly to the Franklin County Common Pleas Court, General Division, thirty (30) days prior to the trial. Failure to timely pay the deposit within the time allotted shall constitute a waiver of jury.

### **LOC.R. 78.4 TRIAL AND HEARING PROCEDURE**

(A) Trial procedures in civil actions shall be in accordance with statutes or rules of the Supreme Court of Ohio.

(B) Except with permission by the judicial officer, only one counsel for each adverse party will be permitted to speak on any interlocutory motion, or upon any question arising in the trial or hearing of a case, and only one counsel for each adverse party will be

permitted to examine the same witness in any trial or proceeding before the court. A non-party witness may not be recalled without permission of the judicial officer.

#### **LOC.R. 78.5 CONSENT TO FILE A LATE ANSWER**

By agreement between the plaintiff and defendant, any party may be permitted leave to move or plead in accordance with the Ohio Civil Rules, provided the total extension of time does not exceed twenty-eight (28) days. The consent shall be evidenced by a “Consent to Plead” signed by the necessary counsel or unrepresented parties and filed with the clerk of the court.

#### **LOC.R. 78.6 NOTICE OF SETTLEMENT**

(A) Whenever the parties have reached a settlement agreement prior to the trial date, or when an action is voluntarily dismissed, it shall be the duty of counsel for the plaintiff to immediately notify the trial court by telephone or electronic transmission, particularly if there are any pending motions.

(B) Counsel shall promptly submit an entry of dismissal to the court following the settlement of any case. If counsel fails to present such an entry, the court, within thirty (30) days after representation to the court that the case has been settled, may order the case dismissed for want of prosecution.

#### **LOC.R. 78.7 MOTIONS AND PROPOSED ENTRIES**

This Local Rule 78.7 shall apply to all cases coming before the court, unless otherwise provided for by statute or rule.

(A) All motions filed in this court shall be accompanied by a memorandum stating the grounds and citing the authorities relied upon. Opposing counsel or a party shall serve the response memorandum (memorandum contra) on or before the fourteenth (14th) day

after the date of service as set forth on the certificate of service attached to the motion. The moving party shall serve any reply memorandum on or before the seventh (7th) day after the date of service as set forth on the certificate of service attached to the response memorandum. On the twenty-eighth (28th) day after the motion is filed, the motion shall be deemed submitted to the court unless a prior written request for an oral hearing has been filed and approved by the court.

(B) Motions for temporary restraining orders, preliminary injunctions, or similar urgent equitable remedies, applications and motions relating to administrative matters, and appointments shall be submitted to the court in a timely manner. The court may require notice to interested individuals prior to ruling upon the motion. The court may set the matter for an oral hearing on an expedited basis. When required, notice of the time and place of the hearing shall be served upon any adverse party or their counsel by the movant.

(C) All motions which seek to determine the merits of any claim or defense as to any or all parties, including but not limited to summary judgment, judgment on the pleadings, and motions to dismiss, shall be considered dispositive motions. A voluntary dismissal under [Civ.R. 41\(A\)](#) is not a dispositive motion. All dispositive motions shall be filed no later than the date specified in the case schedule. Pursuant to [Civ.R. 56\(A\)](#), leave is hereby granted in all civil cases to file summary judgment motions between the time of the filing of the case and the dispositive motion date, unless otherwise ordered by the court. All dispositive motions shall be filed at the earliest practical date in the course of litigation.

(D) **Default Judgment.** In all civil actions, a party entitled to judgment by default may apply for judgment in accordance with [Civ.R. 55](#). All motions for default judgment

shall clearly state which defendant(s) are in default of answer and the judgment sought. The movant shall include the date service was perfected for each defendant. All defendants who have made an appearance in the case, but failed to move or plead in accordance with [Civ.R. 12](#), shall be served notice of the motion for default judgment at least ten (10) days prior to judgment being rendered. The movant shall provide a proposed entry granting default judgment to the court. The court may set a hearing on a motion for default judgment and require the movant to present evidence in support of their position.

(E) Motions for summary judgment are subject to [Civ.R. 56](#). Motions for summary judgment shall be served upon all defendants who have not been defaulted. Motions for summary judgment shall be set for non-oral hearing on the twenty-eighth (28th) day following the filing of the motion for summary judgment.

(F) **Agreed Entries.** Agreed judgment entries submitted to the court shall clearly set forth which parties have agreed to the entry and identify the parties who have not agreed to the entry.

(G) **Proposed Entries.** Proposed judgment entries shall clearly set forth which parties have agreed to the proposed entry. Whenever a signature line for counsel or an unrepresented party is noted as being “Submitted, No Response” the movant shall indicate the date that the proposed entry was submitted and the method used to submit the proposed entry.

(H) A supporting or opposing memorandum or brief shall not exceed fifteen (15) pages exclusive of any supporting documents. Briefs exceeding fifteen (15) pages will not be accepted for filing without prior leave of court.

(I) A reply memorandum or brief shall not exceed seven (7) pages and shall be restricted to matters in rebuttal. Any reply memorandum or brief which exceeds seven pages shall not be accepted for filing without prior leave of court.

(J) A motion for leave to file a memorandum or brief in excess of the page limitations set forth by Local Rule shall be made no later than seven (7) days prior to the time for filing the brief and a date-stamped copy shall be provided to the court. Such motion shall set forth the unusual and extraordinary circumstances which necessitate exceeding the page limitation.

### **LOC.R. 78.8 EXTENDED ADMINISTRATION**

All estates will initially be scheduled according to the six-month administration schedule of [R.C. 2109.301\(B\)](#). In those estates meeting the requirements for extended administration stated in [R.C. 2109.301\(B\)\(1\)\(a\)-\(f\)](#), the administrator or executor shall file a notice or application ([Form 13.8](#) or [Form 13.10](#)) to extend the filing deadlines.

Upon the appointment of a successor fiduciary, the estate will be rescheduled for a six-month administration unless the successor administrator or executor files a notice or Application to Extend Administration ([Form 13.8](#) or [Form 13.10](#)).

### **LOC.R. 78.9 INVENTORY**

(A) In lieu of the appraiser signing the estate inventory, the fiduciary may attach to the inventory the original appraisal(s) containing the signature of the appraiser(s), or the valuation obtained from the county auditor's office or website of the county where the real property is located.

(B) The inventory shall contain the address, legal description, and parcel number of the interest in the real estate of the decedent or ward.

(C) The inventory will not be accepted for filing unless the bond, when required, is sufficient pursuant to Loc.R. 64.4. A guardian's inventory shall include the projected annual income of the ward.

(D) The court will not approve the distribution, sale, or expenditure of any estate or guardianship assets prior to the filing of the inventory.

(E) All fiduciaries must sign the inventory when multiple fiduciaries have been appointed.

(F) All financial asset account numbers in an inventory shall disclose only the last four (4) digits of each account number. It is the responsibility of the person filing the inventory to redact the remaining digits of each account number.

(G) All stocks, bonds, mutual funds, and other assets in an investment account shall be separately disclosed.

#### **LOC.R. 78.10 SPECIAL NEEDS TRUSTS AND MEDICAID TRUSTS**

All special needs trusts and all trusts described in [R.C. 5163.21\(F\)\(1\),\(2\), and \(4\)](#) approved by this court, or funded with court approval, must have the following terms:

(A) No expenditures may be made without prior court approval.

(B) Bond shall be posted unless all of the assets of the trust are in a custodial account under [R.C. 2109.13](#), or the trustee is exempt from bond under [R.C. 1111.21](#).

(C) Annual accounts shall be filed unless all of the assets of the trust are in a custodial account under [R.C. 2109.13](#).

(D) Distributions from the trust shall not discharge any duty of support owed to a beneficiary.

## **LOC.R. 78.11 SANCTIONS**

Loc.R. 78.11, Sanctions, applies to all cases.

(A) For purposes of these local rules, the judicial officer shall have the power, coextensive with the inherent powers of the court and the enumerated powers in the [Ohio Revised Code](#) and the [Ohio Rules of Civil Procedure](#), to impose sanctions on attorneys, parties, or both.

(B) Upon the motion of a party or sua sponte, the judicial officer may impose sanctions for failure to comply with the local rules and/or a case schedule and/or the [Civil Rules](#).