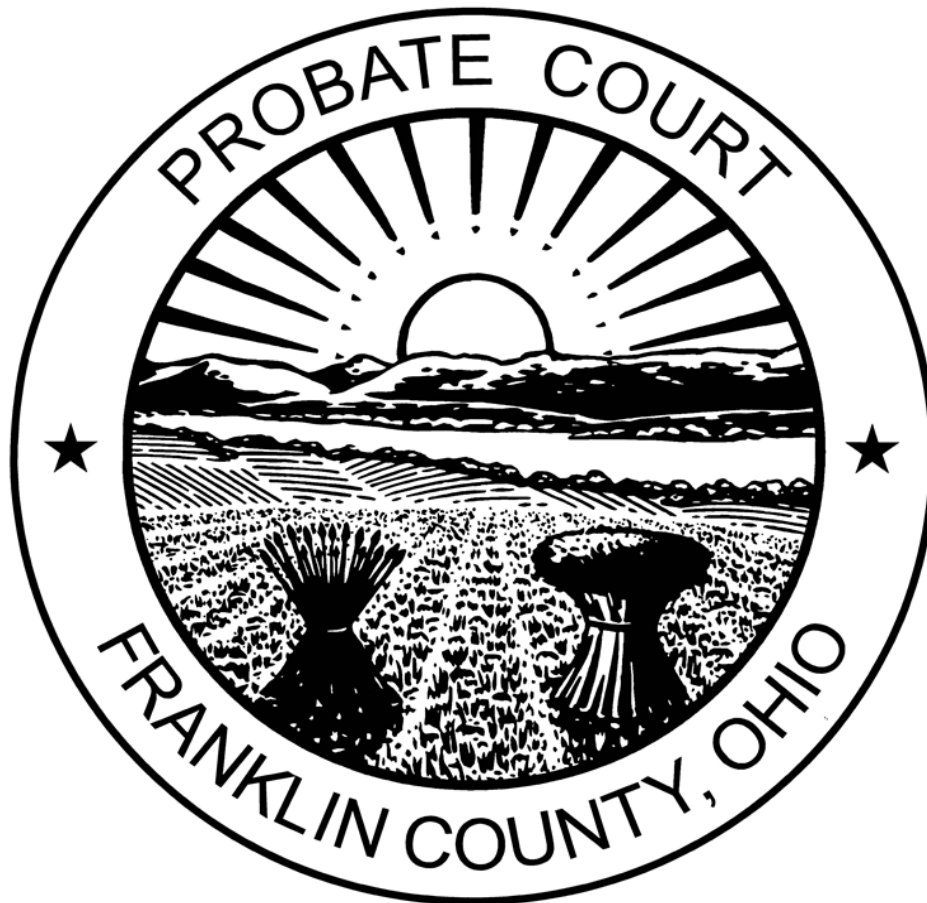


# **FRANKLIN COUNTY PROBATE COURT**

**JEFFREY D. MACKEY, JUDGE**



## **LOCAL RULES OF COURT**

EFFECTIVE JANUARY 1, 2024

# **JUDGE JEFFREY D. MACKEY**

Common Pleas Court of Franklin County, Ohio

## **PROBATE DIVISION LOCAL RULES OF COURT**

Effective January 1, 2024

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

The following rules of the Probate Division of the Franklin County Court of Common Pleas 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**

(A) The provisions of Sup.R. 8 are not applicable to this court's appointments of guardians ad litem ("GALs"), guardians (including conservators), mediators, investigators, psychologists, interpreters, or other experts in a case. Sup.R. 8(A)(1). For purposes of this rule, the court deems the appointment of a special master commissioner to be tantamount to the appointment of an investigator and therefore exempt from the provisions of Sup.R. 8.

(B) Appointments will be made taking into consideration the qualifications, skills, expertise, and caseload of the appointee in addition to the type, complexity, and requirements of the case. For all appointments frequently made by the court, lists of potential appointees are maintained and periodically reviewed to ensure an equitable distribution of appointments.

(C) Attorneys shall only serve as court appointees while registered as active and in good standing with the Supreme Court of Ohio. By accepting an appointment, an attorney affirms that they are competent to provide the necessary services with reasonable diligence and promptness in accordance with Prof.Cond.R. 1.1 and 1.3. By accepting a guardianship appointment, an attorney also agrees to abide by all applicable provisions of Sup.R. 66.01–66.09. Appointed attorneys shall maintain professional liability insurance of at least the minimum amounts set forth in Prof.Cond.R. 1.4(c) and shall provide the court satisfactory evidence of such coverage upon request.

(D) Court appointees will be paid a reasonable fee with consideration given to the factors contained in the Rules of Professional Conduct, the Revised Code, and the Local Rules relating to fees. When compensation is being paid from the indigent guardianship fund, fees shall be determined pursuant to Loc.R. 73.2.



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

### **Loc.R. 9.1 Court Security Plan General**

Pursuant to Sup.R. 9, the court has developed and implemented a court security plan, which shall be confidential and unavailable for public access.

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

**Loc.R. 11.1 Recording of Proceedings**

(A) The court will make a digital recording of proceedings, including conferences, hearings, and trials, as the court's official record. Parties seeking a contemporaneous stenographic record of the proceedings must make their own arrangements, at least twenty-four hours in advance, for a court reporter to attend the proceedings. The requesting party shall pay the costs associated with the stenographic record, unless otherwise ordered.

**(B) Transcripts.**

(1) Any interested person may contact a court reporting service approved by the court to request a transcript of a proceeding. The person seeking the transcript shall pay the costs of transcription and of filing the transcript.

(2) The court will provide the digital recording of the proceeding directly to the court reporter upon its request. The court reporter shall not release the digital recording to any person or entity without prior court approval. The court reporter shall submit the completed transcript directly to the court for filing.

(3) A transcript filed under this rule shall supersede the digital recording as the official record of the court.

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

(D) An interested party may not use the contents of a recorded proceeding in filings or in argument before the court unless a transcript of the entire proceeding is filed as provided in paragraph (B) of this rule.

(E) All digital recordings of proceedings will be maintained by the court for three years from the date of the proceeding. Any interested person seeking to preserve the record beyond that period must arrange to have a transcript filed as provided by paragraph (B) of this rule.

(F) A transcript requested in relation to an objection to a magistrate's decision, a motion to set aside a magistrate's order, or a notice of appeal must be filed within the time limits of these Local Rules, the Rules of Civil Procedure, and/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) Individuals may not copy transcripts from the court's files.

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

### **Loc.R. 16.1 Mediation – General Provisions**

(A) The court will abide by the Uniform Mediation Act as codified in R.C. Chapter 2710. For purposes of these Local Rules:

(1) “Mediation” means any process in which a mediator facilitates communication and negotiation between parties to assist in reaching a voluntary agreement regarding their dispute.

(2) “Mediator” means a person appointed by the court to conduct mediation or other alternative dispute resolution process. Mediators appointed by the court may be court employees or independent contractors.

(B) All contested matters may be mediated. If the parties have legal disputes which are not part of any case before this court, those disputes may be addressed at mediation at the discretion of the parties and the mediator.

(C) The court operates a court-annexed mediation program, which will provide services to parties without a fee. Parties may also seek the services of private mediators outside of the court’s mediation program on such terms and conditions as the participating parties and the mediator mutually agree upon, although private mediations shall be subject to these Local Rules where applicable. Court facilities are not available for private mediation purposes.

(D) **Mediation Referrals.** Once a case is pending, the court may, upon its own motion or the motion of any party, refer disputed issues to the court’s mediation program. Any judicial officer may refer a case to mediation. Parties may not oppose a referral to mediation made on the court’s own motion. A party opposing another party’s motion for mediation must file a written objection within ten days of the motion, explaining the specific reasons for their opposition. The court will issue orders or notices to schedule mediation identifying the time, place, and identity of the mediator. All parties to mediation shall provide an email address to the court mediator.

(E) Mediation sessions may be held until the parties’ disputes 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 may order the parties to participate in, or return to, mediation at any time. At any time, the referring judicial officer may withdraw a case from mediation and return the matter to the regular docket.

(F) The court may issue general, special, administrative, or standing orders to implement the provisions of its mediation rules.

### **Loc.R. 16.2 Mediation – Mandatory Provisions**

(A) **Attendance at Mediation; Authority to Settle.** All parties and persons interested in a case shall attend mediation unless excused by the mediator or the court. Parties may bring their counsel and one additional support person to accompany them and participate in the mediation. Organizational parties shall send a representative with full authority to settle. A party

or attorney may represent the interests of a party who is not present, with the mediator's permission, after obtaining a power of attorney for the absent party authorizing them to compromise the dispute. All those attending mediation agree by their participation to be bound by these Local Rules and may also be required to sign a written mediation agreement. 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.

(B) **Safety.** The mediator, in consultation with court security and other interested parties, shall take 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 (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 is disqualified in any case they have mediated to serve as a consultant, witness, expert, or counsel as to matters directly related to the mediated dispute.

### **Loc.R. 16.3 Mediation Procedures**

(A) **Pre-Mediation and Case Evaluation.** A mediator may communicate with parties and/or their counsel before, during, and after a mediation for any reason, including for further screening, case evaluation, safety, process design, or concluding the case. Communication with the mediator about a case, whether before or after referral, is permissible and is not an improper ex parte communication with the court. The parties and 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, they shall promptly inform the mediator.

(B) **Mediation Conferences and Sessions.**

(1) 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.

(2) 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 and copied to opposing counsel and unrepresented parties, but shall not be filed in court nor made a part of the court's case file.

(3) The efforts of a mediator appointed by the court's mediation program to

resolve a case shall not be construed as giving legal advice.

(4) Ongoing court orders pertaining to discovery or other procedural matters remain in effect during the pendency of mediation, unless otherwise ordered. The mediator may request that the parties bring documents, work product, and/or witnesses, including experts, to the mediation.

(5) By participating in mediation, a non-party participant as defined in R.C. 2710.01(D) submits to the jurisdiction of the court to the extent necessary to enforce this rule.

(C) **Post-Mediation.** Following mediation, the mediator shall file a report setting forth the results of the mediation, which may also identify the date(s) mediation was conducted and the attendees. Within thirty days of the date any agreement is reached, the parties shall file the appropriate journal entries or other papers in accordance with the agreement's terms to conclude the dispute and/or terminate the case. The failure to file the appropriate entries or papers timely may result in the dismissal of the case for want of prosecution. An agreement reached during mediation within court facilities shall be read into the court record before the mediation session concludes.

## **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. 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 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 for the Courts of Ohio. 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 wording and blank lines exactly as they appear in the uniform forms or the court's own forms.

### **Loc.R. 52.2 Form Specification**

The type size for the body of all forms filed in this court shall be twelve-point font.

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

**Loc.R. 53.1 Hours of the Court**

(A) 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, if filed in paper, shall be filed by 4:30 p.m.

(B) On all days on which the probate court is open for business, the court's marriage department shall be open from 8:00 a.m. to 4:30 p.m., except upon sufficient notice to the public on the court's website. No marriage licenses shall be issued after 4:00 p.m.

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

### **Loc.R. 54.1 General Decorum**

(A) This court is charged with dispensing justice, resolving disputes, and protecting the constitutional rights of those who appear before it. Appropriate levels of security should exist to protect the integrity of court procedures, protect the rights of individuals before the 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.

(B) 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.

(C) The court's officers, including its judicial officers, bailiffs, constables, the Franklin County Sheriff, any of their deputies, and any other law enforcement officer involved, 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 54.1. 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 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 transmissions, including but not limited to audio, video, and still image, shall be made in any courtroom or during any court proceeding or mediation without advance permission of the court. No covert electronic recordings shall be made whatsoever in court facilities without approval of the court. No juror, witness, or litigant shall have their image taken in court facilities by any party or member of the public. Cellular telephones and 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 may 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, this court may conduct appropriate secondary screening at its facilities when deemed necessary. Dangerous items or contraband may be temporarily or permanently seized, and involved persons may be barred and/or removed from the courtrooms or facility. At the court's courtroom at Twin Valley Behavioral Healthcare, the probate court may order such security screening as is necessary.

#### **Loc.R. 54.6 Remote Hearings**

(A) In remote hearings, such as those conducted with videoconference software, all participants may be required to appear in a manner such that the judicial officer conducting the hearing is able to both see and hear the participant. All participants and observers shall adhere to standards of attire and conduct equivalent to those expected for hearings conducted in person.

(B) Testimony in remote hearings shall be provided orally, rather than by typing in a chat box. If a hearing participant is unable to hear oral testimony or to be heard for any reason, including a technological limitation or a disability, the hearing may be continued to allow for appropriate accommodations. However, wherever possible, any hearing participant who expects that they may experience difficulty hearing or providing oral testimony should notify the court in advance of the hearing.

**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 files at a time. Withdrawn files may not be removed from the court premises at 373 S. Hight Street, 22<sup>nd</sup> Floor, Columbus, Ohio 43215.

## **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**

(A) When required on a court document, an address must be a complete street address and, if applicable, any post office box number used as a mailing address.

(B) The address of a fiduciary who is not an attorney at law or a peace officer must be the fiduciary's legal residence. A fiduciary who is an attorney at law may use an office address; a fiduciary who is a peace officer may use a business address. All fiduciaries shall include a phone number with their address. All attorneys shall include a phone number, fax number, and email address. All fiduciaries and attorneys shall notify the court within thirty days of any address changes.

(C) Reasonable diligence shall be exercised to obtain the complete street addresses of a decedent's 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 Signatures**

#### **(A) Original Signatures.**

(1) Both hand-signed signatures and electronic signatures verified through a program such as DocuSign shall be considered original signatures on all documents submitted for filing.

(2) A typed signature in the format "/s/Signature" shall be considered an original electronic signature on an e-filed document which is submitted through the signer's individual e-filing account.

(3) Although copies of documents with original signatures will generally be accepted for filing, the court may require the filer to produce or file the original document instead if the legibility or authenticity of the copy comes into question. Attorneys who file copies should retain original signed documents for one year following the closing of the case. In all cases, the person filing a signed document is

responsible for verifying that any signed or copied signature is correct and was issued by the appropriate person.

(4) This Local Rule shall not apply to wills.

(B) Persons who are not an attorney may not sign on behalf of an attorney.

(C) Any document which by law or rule requires the fiduciary's signature must be personally signed by the fiduciary, rather than their attorney.

(D) In all matters where co-fiduciaries have been appointed, the signatures of all fiduciaries are required on all documents, including fiduciary checks.

**Loc.R. 57.6 [Deleted and Reserved]**

**Loc.R. 57.7 Filings with the Probate Court**

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

(B) 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. The court will only accept complete documents for filing.

(C) 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.

(D) 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**

Proposed entries, jury instructions, or other documents may be submitted to the court on a computer disk, flash drive, through the e-filing system, or by email formatted in Microsoft Word or a Word-compatible format.

**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 upon the termination of a guardianship due to the death of the ward, the applicant shall exhibit a certified copy of the decedent's death certificate unless waived by the court for good cause shown. The applicant shall redact the decedent's social security number from any photocopies of a death certificate presented to the court.

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

(B) A reply memorandum or brief shall not exceed seven 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.

(C) A motion for leave to file a memorandum or brief in excess of the page limitations set forth above, setting forth the unusual and extraordinary circumstances which necessitate exceeding the page limitation, shall be made no later than seven days prior to the time for filing the memorandum or brief.

### **Loc.R. 57.13 Certificate of Service**

The certificate of service shall identify by name, address, and representative title of 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 with this court in duplicate, with the name of the acting or visiting judge shown in the caption. The deputy clerk is to be informed at the time of each filing that the matter has been assigned to an acting or visiting judge. This court shall file the original document and submit the duplicate to the clerk, who will provide a copy to the acting or 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; paper copies will not be filed in the tangible file. The imaged documents shall be designated 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 Civ.R. 4.0–4.6.

### **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. 550000A, 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**

#### **(A) Methods of Payment.**

(1) The court will accept cash; money orders; checks, including personal, business, fiduciary, and cashier's checks, as described below; and certain credit cards.

#### **(2) Checks.**

(a) Checks should be made payable to the Franklin County Probate Court and where possible should indicate a case number.

(b) Checks should state or be accompanied by reasonable contact information for the payor, including their name, address, and telephone number. If the payor is a lawyer, their attorney registration number should also be included; otherwise, the payor's driver's license or other identification should be provided.

(c) Checks shall not be accepted when post-dated; dated more than ninety days before receipt by the court; or indorsed to the court as a third party.

(3) Payments made by credit card are subject to a transaction fee.

**(B)** Certain filings in this court will only be accepted when submitted with the following minimum deposit amounts:

(1) For an application for appointment of any estate fiduciary, \$125.00, although the court recommends a deposit of \$250.00;

(2) For any complaint except for a land sale, \$150.00;

(3) For a complaint for a land sale, \$175.00; and

(4) For a subpoena, \$38.00 for in-county service in addition to \$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.

**(C)** In all decedents' estates, civil actions, and 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 in cases with insufficient funds on deposit, the filer shall pay the cost of the filing or tender an additional deposit before the filings will be accepted.

**(D)** *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. 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 months after the appointment of the fiduciary or, if no fiduciary has been appointed, not later than two months after the admission of the will to probate. Proof of service shall consist of 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 or seventeen 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 applicant estate fiduciaries shall personally sign and file the Franklin County Fiduciary's Acceptance (Form 4.0A). A Fiduciary's Acceptance must be filed prior to the issuance of Letters of Authority.

**Loc.R. 60.2 Appointment of Nonresident Fiduciaries**

If not a resident of this state, an applicant to be appointed executor of a decedent's estate or trustee of a testamentary trust must comply with R.C. 2109.21 and must be represented by an attorney licensed and in good standing to practice law in this state. To ensure that all assets remain in this county during their administration, the nonresident applicant must meet one or more of the following criteria:

(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 resident of this state who is bonded or exempt from bond serve as co-fiduciary;

(C) Post bond in compliance with R.C. 2109.04 in an amount set by the court; or

(D) If the decedent's will specifically nominates the non-resident applicant to serve as executor without bond, obtain waivers of bond from all vested beneficiaries. Waivers of bond will only be effective as to executors nominated in the decedent's will.

**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 residence address.

**Loc.R. 60.4 Notice of Hearing on Appointment of Administrator**

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

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

(C) Notice of appointment of an administrator shall be sent via regular mail to all heirs who do not provide a waiver, regardless of their residence, and a certificate of service shall be filed.

### **Loc.R. 60.5 Administering an Estate Without the Assistance of Counsel**

(A) To ensure that letters of authority are issued to a suitable person pursuant to R.C. 2113.05 and R.C. 2113.06(C), any person seeking authority to administer an estate without the assistance of an attorney shall be required to file an application (Form 4.0B), which may be set for hearing.

(B) Pursuant to R.C. 2109.04(A)(1) and (2), and in order to protect both creditors and beneficiaries or heirs, the court rebuttably presumes that the interests of an estate demand that a fiduciary who is serving without counsel be bonded.

### **Loc.R. 60.6 Estates Opened for Litigation Purposes Only**

When an applicant indicates that they seek authority to administer an estate solely for litigation purposes and there are no known probate assets to be administered, the applicant may be appointed to serve without bond without the need to file a motion to dispense with bond. However, any fiduciary so appointed shall be issued limited Letters of Authority which restrict the release of any probate assets to the fiduciary without a specific court order. In such cases, the fiduciary's duty to file an inventory shall be suspended unless otherwise ordered.

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

### **Loc.R. 61.1 Appraisers' Fees**

(A) Appraisers' fees for residential real estate shall be a flat fee of \$400.00. Requests for appraisers' fees above the flat fee shall be made by separate application to the court. If a person required to pay any portion of the fees claims that the fees are excessive or unreasonable, the appointed appraiser bears the burden of proving the reasonableness of the fees.

(B) Where a fiduciary applies for the appointment of an appraiser, the fiduciary shall not pay the appraiser until appointed by the court. Unless otherwise ordered, appraisers' fees shall be paid within one month after the filing of the inventory or sixty days after the completion of the appraisal, whichever occurs first. The proceedings shall not close until the fiduciary has accounted for the payment of the fees. The fiduciary shall be personally liable for appraisers' fees not paid pursuant to this rule.

### **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 months after the closing of the matter.

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

### **Loc.R. 62.1 Presentation of Claims**

(A) All creditors who wish to present a claim against the estate of a decedent to this court in accordance with R.C. 2117.06(A)(1)(b) shall do so by filing a Presentation of Claim Against Decedent's Estate (Form 13.11). Creditors shall be responsible for serving this form and any accompanying documentation of the claim upon the estate fiduciary and/or their counsel of record, and shall file a certificate of service.

(B) As a part of their final account, the estate fiduciary shall confirm that all claims presented against the estate have been allowed or rejected and resolved before the termination of the case.

### **Loc.R. 62.2 Notice of Insolvency Hearing**

Upon motion, and for good cause shown, the court may order a fiduciary to send notice of a hearing for insolvency via regular mail.

## SUP.R. 64 ACCOUNTS

### **Loc.R. 64.1 Fiduciary's Signature**

All accounts must be personally signed by all current fiduciaries and shall contain the full name, current residence address, and telephone number of each current fiduciary. Pursuant to Loc.R. 57.3, a fiduciary who is an attorney at law may use an office address.

### **Loc.R. 64.2 Delinquency in Filing an Account**

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

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

(A) When required by statute or order, original vouchers shall be displayed when filing an account. The court will accept as a voucher a statement from a financial institution specifying the payee, check amount, and date of payment. The court may require the display of adding machine tapes or spreadsheets which reflect receipts, disbursements, and balances.

(B) For solvent decedents' estates where the date of death is prior to January 1, 2002, in lieu of submitting vouchers, the fiduciary may file the account with signed and dated consents from all beneficiaries, acknowledging that each received a copy of the account, waives notice of the hearing on the account, and consents to the filing of the account. The court may accept a combination of vouchers and consents.

### **Loc.R. 64.4 Bond**

An account will not be accepted for filing unless bond, when required, is sufficient to cover twice the sum of the value of the personal property on hand plus one 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 listing of 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 six-month deadline to file a final and distributive account after appointment of the fiduciary may be extended to thirteen months by notice or motion for the reasons enumerated in R.C. 2109.301(B)(1). All subsequent accounts must be filed on an annual basis, unless otherwise ordered. 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 year following the date of the appointment of the fiduciary, and all subsequent accounts shall be filed on an annual basis, unless otherwise ordered.

(C) If all of the assets held by a fiduciary are in custodial depositories pursuant to R.C. 2109.13, the statements filed by the depositories as required by Loc.R. 75.8 will be accepted in lieu of fiduciary accounts.

### **Loc.R. 64.8 Account Numbers**

A fiduciary's account shall disclose the name of the financial institution where each financial asset is held and the last four digits of each account number. It is the responsibility of the filer 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, with the heading "Balance Brought Forward."

(B) All assets acquired or discovered since the last accounting shall be listed under the heading "Receipts." The sum obtained by adding these receipts to the balance brought forward shall be set out and identified as the "Total of Balance Brought Forward and Receipts."

(C) All amounts expended, lost, or disbursed since the last accounting shall be listed under the heading "Disbursements." The difference obtained by subtracting these disbursements from the total of balance brought forward and receipts 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 account shall be separately identified and disclosed.

### **Loc.R. 64.10 Reports of Newly Discovered Assets**

Where newly discovered assets of the decedent could affect the elective rights of the decedent's surviving spouse or the amount of the fiduciary's bond, the fiduciary shall file a report

of newly discovered as soon as reasonably possible, serving the report upon the surviving spouse. In other cases, newly discovered assets may be reported on the fiduciary's next account.

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

### **Loc.R. 65.1 Land Sales**

(A) The Rules of Civil Procedure and Sup.R. 65 shall apply to all land sale actions. A land sale action is not required when the conditions for a sale by consent described in R.C. 2127.011 have been satisfied.

(B) Where a land sale has not concluded within one year from the date of filing, within thirty days following the expiration of the year, the plaintiff shall request that the matter be set for a status conference. A written status report addressing all pending issues and efforts being made to conclude the land sale shall be filed at least seven days prior to the conference. Both the fiduciary and their attorney shall attend the conference, and the fiduciary shall show cause why the court should not order public sale of the real estate or dismiss the action, 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) Any proposed distribution of sale proceeds shall specifically note when the distribution would be insufficient to pay the liens of the county treasurer. No sale whose proceeds would not satisfy the liens of the county treasurer will be approved without a specific acknowledgement from the buyer 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 lienholder purchased from the county treasurer.

(E) **Land Sale Guardians Ad Litem.** A guardian ad litem ("GAL") shall be appointed in a land sale when ordered by the court, and shall always be required for (1) a ward whose guardian of the estate is a plaintiff to the action and (2) any defendant who is a minor. A single GAL may be appointed to represent multiple defendants if the interests of the defendants are similarly situated. The GAL shall be responsible for reviewing the pleadings and filing an answer on behalf of the ward or minor. Compensation for all GALs 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 an order confirming sale and ordering deed and distribution shall file a motion and a proposed entry or order, serving the motion upon all parties who have not defaulted or approved the proposed entry or order. The motion and proposed entry or order shall be filed separately if any party not in default does not approve of the proposed entry or order.

(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 for 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.OS), and a Return of Sale (Un)Sold (eForm 1.OS2) in each land sale action. The proposed contract of sale shall be attached to the Return of Sale Sold.

(J) The court will not entertain a motion to fix the price in a land sale unless a prior Order of Sale and Return of Sale Unsold have been filed and the fiduciary demonstrates a good faith attempt to sell the real estate at the appraised value.

(K) Where the court could properly confirm a sale and order deed and distribution but for the need to review proposed attorney fees and costs, the court may confirm the sale but order that the proposed fees and costs be paid into the IOLTA of counsel for the plaintiff until further determination.

(L) 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 Juvenile Branch and Domestic Relations Division of the Court of Common Pleas have specific safeguards and investigatory provisions regarding the custody of minors, as set forth in R.C. Title 31; no equivalent safeguards or provisions exist for this court.

(1) To protect the interests of all interested parties, particularly the best interests of the minor, a guardianship of the person of a minor may only be established upon the consent of all the minor's legal parents. Consent may be obtained by the legal parents either (a) completing and signing the Waiver of Notice (Form 15.1A) consenting to the guardianship of the minor in the presence of a notary public, with a clear indication of whose signature was notarized, or (b) giving consent in person at the court. 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.

(2) As custody for school purposes is a matter to be heard and determined by the Juvenile Branch or Domestic Relations Division, this court will not establish a guardianship for school purposes only.

(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) 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 minor's home county has specifically granted this court the authority to proceed.

(E) No guardian of the person of a minor may create a power of attorney transferring the guardian's rights and responsibilities under R.C. 3109.52 without specific court authorization.

(F) All requests to expend funds for the health, education, maintenance, or support of a minor from a minor's guardianship estate, a controlled account under R.C. 2111.05, or a wrongful death trust shall include a completed Household Resource Worksheet (Form 15.7).

### **Loc.R. 66.2 Counsel for Guardians of the Estate**

If deemed to be in the best interest of the ward, an unrepresented applicant for guardianship may be required to hire legal counsel before being appointed guardian of the estate. A guardian of the estate may be required to retain the assistance of an attorney until the guardian's first annual account has been approved.

### **Loc.R. 66.3 Release of Funds**

Funds held in a ward's name shall not be released to their guardian without a specific court

order.

#### **Loc.R. 66.4 Deposit of Wills**

The guardian shall obtain all wills executed by the ward and deposit such wills for safekeeping in accordance with R.C. 2107.07.

#### **Loc.R. 66.5 Change of Address**

Guardians shall provide this court written notice (Form 27.3A) of any change of address or phone number for the guardian or the ward within thirty days of the change. 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) In all adult guardianships, a guardian's report shall be filed annually. If there is a guardian of the person, the guardian of the person shall file the annual report simultaneously with a guardian's plan; otherwise, the guardian of the estate shall file the guardian's report.

(B) A guardian's report shall include a recent Statement of Expert Evaluation (Form 17.1A). However, the court may dispense with this requirement upon the guardian's written application (Form 17.1D) if a physician or clinical psychologist states on an annual Statement of Expert Evaluation that it is unlikely, to a reasonable degree of medical certainty, that the ward's mental competence will improve.

#### **Loc.R. 66.7 Termination of Minor Guardianship**

Applications to terminate a guardianship of a minor require notice to all persons designated in R.C. 2111.04 and to any other individuals who received actual notice of the original appointment of the guardian. An interested person may consent to the termination by signing a notarized consent (Form 15.4B), with a clear indication of whose signature was notarized, or by 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. 66.9 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 Guardianship – Qualification for Indigent Status**

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

(B) For purposes of indigent status for payments from the indigent guardianship fund,

a ward or alleged incompetent may be declared to have indigent status upon application with sufficient documentation either (1) that their personal property is worth less than \$2,000.00 and their annual income is less than the U.S. Department of Health and Human Services Poverty Guidelines; or (2) that they qualify for Medicaid and reside in a facility to which all their income is paid. The court may also order indigent status for the ward or alleged incompetent after hearing.

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

(D) 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. See [www.supremecourt.ohio.gov/education/ohio-adult-guardianship-education-program](http://www.supremecourt.ohio.gov/education/ohio-adult-guardianship-education-program).

### **Loc.R. 66.12 Incident Reports**

Any attorney, guardian, or person in a fiduciary relationship with a ward or conservatee of the court who has 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 incident to the court in writing. After review by the chief court investigator, guardianship incident reports will be assigned to an investigator for inquiry and referred for appropriate action. 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 court's website at [probate.franklincountyohio.gov/forms](http://probate.franklincountyohio.gov/forms). Comments and complaints may be submitted in person at the court or via email.

(B) A court investigator shall inquire into the allegations of the comment or complaint, sending a copy of the filed comment or complaint to the guardian for response. After inquiry, the investigator shall recommend appropriate action to the court. Comments and complaints and their final disposition shall be filed of record unless otherwise directed by the court, with notice of the disposition provided to the guardian and the commenting or complaining party.

(C) In any case where the court believes there is probable cause that a procedure outlined in these rules will be detrimental to the ward, this Rule 66.13 may be waived.

### **Loc.R. 66.14 Guardians Having Ten or More Wards**

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

### **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 that it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or adult alleged to be incompetent.

(B) The application requesting an emergency guardianship must be accompanied by a Statement of Expert Evaluation (Form 17.1A) and a Supplement for Emergency Guardian (Form 17.1B). Both documents must be completed by either a medical doctor or a licensed clinical psychologist.

(C) The application for emergency guardianship, statement of expert evaluation, and supplement for emergency guardian must be approved by a judicial officer to be scheduled for hearing. 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. Any changes to a succession plan should be filed immediately; if no changes to a succession plan are made during a calendar year, the guardian shall file a certification to that effect by January 15 of the following year. A succession plan must:

(A) Nominate an interim guardian in the event the guardian is unable to fulfill a guardian's duties. The nominee's written consent to the nomination, along with their name, address, and telephone number, must also be included.

(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.



**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, notice of an application to dispense with the appointment of a guardian shall be served as required in R.C. 2111.04. A brief narrative statement describing the origin of the money designated for the minor 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 an 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 file statements disclosing the year-end balance and all activity of each account annually, between January 1 and February 28 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 (Form 22.0).

### **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 applicants' attorney shall acknowledge responsibility for depositing the settlement funds and providing the financial institution with a copy of the authorizing entry. If the applicants are unrepresented, the attorney for the payor shall acknowledge delivery of the funds to effectuate any release. In either event, the funds shall be deposited within seven days of the issuance of the authorizing entry or seven days after the receipt of funds, whichever is later. The financial institution shall file a Verification of Receipt and Deposit (Form 22.3) within twenty-one days of deposit.

### **Loc.R. 68.4 Structured Settlements**

For purposes of this rule, a structured settlement is defined as a settlement wherein payments are made on a periodic basis.

(A) Where parties involved in claims for injuries to minors or incompetents desire to enter into a structured settlement, the following rules shall apply:

(1) The application shall include a signed statement from an independent professional, such as an actuary, certified public accountant, certified financial planner, chartered life underwriter, chartered financial consultant, or other equivalent professional, which specifies the present value of the settlement and the method of calculating that value.

(2) 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 that the annuity carrier (1) is licensed to write annuities in Ohio and (2) has an A.M. Best Company rating of A++ or A+ (Size Class XV). The annuity carrier must also meet any other requirement the court considers reasonably necessary to ensure that funding to satisfy periodic payments will be provided and maintained.

(B) In order to assist in the court's determination of a payee's best interests pursuant to R.C. 2323.581(A), a written statement disclosing the payee's intended use of transfer proceeds shall be filed prior to hearing on an application to approve a transfer of the payee's structured settlement payment rights.

**Loc.R. 68.5 Application to Settle Claim**

(A) When the net proceeds of a claim for the benefit of a minor would be \$25,000.00 or less, a parent or next friend of the minor may apply for approval to settle the claim. The court will consider whether to dispense with a guardian for the minor's estate under the settlement case number.

(B) When the net proceeds of the claim for the benefit of a minor would be over \$25,000.00, a guardian of the minor's estate must be appointed to settle the claim. The court will consider the approval of the settlement within the guardianship case.

**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 the minor's claim, the court may, at its discretion, appoint a guardian ad litem ("GAL") for the minor. The fee for the GAL 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**

(A) The application to settle a claim for wrongful death and the apportionment of the claim proceeds are two distinct matters which may be set for separate hearings. Notice of the hearing(s) shall be provided to all interested persons, as defined in R.C. 2125.02, who do not waive notice in writing.

(B) The allocation of attorney fees and costs out of a settlement shall be subject to Loc.R. 71.8(C), as may be modified by administrative order.

### **Loc.R. 70.2 Wrongful Death Prototype Trust**

The court has adopted and filed a prototype wrongful death trust under Case No. 424500, available at the court or via e-mail. Attorneys who wish to use the prototype must file an acknowledgment that their trust conforms to the current prototype, specifically noting any changes to the prototype. An attorney who wishes to create their own form of trust must submit the trust draft to the court at least seven 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**

(A) Applications for attorney fees in all cases shall be accompanied by a detailed fee statement itemizing each specific service performed with the date of service, the amount of time expended, the individual performing the service, and the hourly rate charged. Attorneys are expected to be familiar with Prof.Cond.R. 1.5, Sup.R. 66.08, Sup.R. 71, and Sup.R. 73. Fees may be set for hearing regardless of the filing of written consent to fees.

(B) All fees charged by an attorney representing a fiduciary 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 account must identify the source of payment; if no account is to be filed, the payment must be disclosed on a consent to fees signed by the payor. For the purpose of this rule, the term fiduciary includes commissioners and applicants for release from administration.

### **Loc.R. 71.2 Attorney Serving as Fiduciary**

In all matters where an attorney is serving as fiduciary, the attorney-fiduciary shall maintain separate detailed records describing time and services as fiduciary and any time and services as an attorney. These records shall be submitted to the court for review upon request. Prof.Cond.R. 1.5 and applicable case law shall govern fees, notwithstanding statutory allowances. Where an attorney-fiduciary is represented by another attorney in the same firm and a statutory fiduciary fee is taken, there shall be no additional compensation for any fiduciary work performed by counsel for the estate.

### **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 after application. An application for early fees shall be supported by a detailed fee statement as described by Loc.R. 71.1(A), shall specifically state that the fee is being requested in advance of the time specified by Sup.R. 71(B), and shall set forth the reason for requesting early payment. The application shall be accompanied by written consent to the amount and timing of the fees from all persons whose interests are affected by the payment of the fees, including creditors if the estate is insolvent. If consent is not given by all such persons, the matter shall be set for hearing with notice to those who have not consented.

### **Loc.R. 71.4 Notice and Consent for Attorney Fees in Estates**

(A) All applications for attorney fees in a decedent's estate shall be supported by a detailed fee statement as described by Loc.R. 71.1(A). The applicant shall give notice of the hearing on the fees to all persons whose interests are affected by the payment of the fees, including creditors if the estate is insolvent.

(B) If persons entitled to greater than half the assets used to pay attorney fees provide their written consent, attorney fees may be paid without an application upon the filing of the final account, subject to any exceptions to the final account and to court review. When consent is

provided by the trustee of a trust, the court may also require consent from all adult residuary beneficiaries of that trust, which may be presented and reviewed in camera upon request.

#### **Loc.R. 71.5 Notice and Consent for Attorney Fees in Guardianships**

(A) In guardianship administration, attorney fees for services in establishing the guardianship shall only be considered upon the filing of the inventory. The court shall consider additional fees annually upon the filing of each account. All applications for attorney fees in a guardianship shall be supported by a detailed fee statement as described by Loc.R. 71.1(A) and shall include a statement of all court-approved attorney and guardian fees in the case in the last five years.

(B) Notice of a fee application shall be given to the guardian of the estate and the next of kin by ordinary mail. The guardian of the estate may waive notice and consent to the payment of fees. The court may also require that notice of the hearing on the fees be given to other interested persons, including a ward, a former ward, or the estate fiduciary of a deceased ward.

(C) After a guardianship is terminated, the court will consider attorney fees and guardian fees as liens on the ward's assets. Fees approved by the court may be paid out of the assets included in the final guardianship account.

#### **Loc.R. 71.6 Notice and Consent for Attorney Fees in Trusts**

(A) In trust administration, attorney fees for services in establishing the trust shall only be considered upon the filing of the inventory. The court shall consider additional fees annually upon the filing of each account. All applications for attorney fees in trusts shall be supported by a detailed fee statement as described by Loc.R. 71.1(A) and shall include a statement of all court-approved attorney and trustee fees in the case in the last five years.

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

#### **Loc.R. 71.7 Contested Fees**

In all cases, the attorney bears the burden to prove the reasonableness of their fees, as governed by Prof.Cond.R. 1.5. Contested attorney fees should be supported by a detailed fee statement as described by Loc.R. 71.1(A).

#### **Loc.R. 71.8 Contingent Fees**

(A) All fiduciaries must apply for authority to enter into a contingent fee contract. The court may request that the fiduciary support the application with a case plan, time projection, and estimated costs, as available, which will be reviewed in camera. Upon review, the court will either grant preliminary approval or deny the request. Preliminary approval shall be subject to final review when the subject of the contingent fee contract has concluded.

(B) In minor's settlement cases where no guardian has been appointed, an attorney may

request approval of a contingent fee contract under Case No. 418000. Before the settlement may be approved, however, a guardianship must be established or dispensed with under its own case number.

(C) When establishing an estate or guardianship, or when dispensing with the appointment of a fiduciary, for the primary purpose of settling or resolving a claim, the attorney fees associated with the bringing the proceedings before this court shall be assessed as a portion of the contingent fee unless otherwise ordered for good cause shown. The court may allocate the payment of this fee between the contingent fee and the beneficial interests. Any modifications to this rule by administrative order shall be available on the court's website.

### **Loc.R. 71.9 Mental Commitment Objection Hearings**

All applications for attorney fees for mental commitment objections shall include a detailed fee statement as required by Loc.R. 71.1(A). Compensation for appointed counsel for objections to a magistrate's decision in a mental commitment hearing is limited to \$150.00 per hour, up to a maximum amount of \$900.00 per case number. Additional payment may be made upon an application for showing extraordinary services. All fees are subject to review and approval of the probate court.

### **LOC.R. 71.10 Timeliness of Attorney Fees**

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

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

**Loc.R. 73.1 Guardian's Compensation for Non-Indigent Wards**

(A) Fees for services as guardian of the estate shall be approved only after application supported by calculations and documentation. The following fee schedule shall apply, unless extraordinary fees are requested or unless otherwise ordered. As used in the schedule, "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. Extraordinary fee applications shall be set for hearing, unless hearing is waived by the court.

(1) Income/Expenditure Fee.

(a) Excluding income from rental real estate, 4% of the first \$10,000.00 of income received, plus 3% of the balance.

(b) If the guardian manages rental real estate, a fee amounting to 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.

(c) Excluding expenditures pertaining to rental real estate, 4% of the first \$10,000.00 of expenditures, plus 3% of the balance. No fee shall be allowed to the guardian on expenditures pertaining to rental real estate.

(2) Principal Fee. \$3.00 per thousand for the first \$200,000.00 of fair market value, plus \$2.00 per thousand on the balance.

(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, plus \$2.00 per thousand on the balance.

(B) Fees for services as guardian of the person shall be set for hearing, unless waived by the court.

(C) Corporate fiduciaries who are exempt from bond pursuant to R.C. 1111.21 shall be compensated pursuant to their published fee schedule, as long as the fee schedule has been filed under Case No. 368530.

(D) All motions filed by guardians of veterans, including applications for fees, must comply with R.C. 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 months after the date the service was rendered. An application for fees be paid from



the Indigent Guardianship Fund shall be accompanied by a detailed fee statement as required by Loc.R. 71.1(A). 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 other provision for fees, trustees subject to this court's jurisdiction may, upon application, be allowed fees annually for ordinary services in connection with the administration of each separate trust. Trustee fees shall be in accordance with the following schedule, except as otherwise ordered. As used in the schedule, "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.

(1) Income Fee. 6% of the first \$10,000.00 of gross income received during the accounting period, 5% of the next \$10,000.00 of gross income, and 4% of the balance of gross income, chargeable to income.

(2) Principal Fee. \$5.00 per thousand for the first \$200,000.00 of fair market value, \$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.

(3) Principal Distribution Fee. \$5.00 per thousand for the first \$200,000.00 of fair market value of corpus distributed, \$4.00 per thousand of the next \$200,000.00, and \$3.00 per thousand of the balance of corpus distributed.

(B) Corporate fiduciaries who are exempt from bond pursuant to R.C. 1111.21 shall be compensated pursuant to their published fee schedule, as long as the fee schedule has been filed under Case No. 368530. A corporate trustee shall notify all vested trust beneficiaries affected by the payment of fees of any changes in its corporate fee schedule.

(C) Additional fees for extraordinary services or allowances for expenses may be granted after application, which shall be set for hearing unless waived by the court. The application shall be accompanied by a detailed fee statement as described by Loc.R. 71.1(A).

## SUP.R. 75 LOCAL RULES

### **Loc.R. 75.1 Additional Fees**

Fees charged pursuant to R.C. 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 from representation in a matter shall file a motion stating the reasons for withdrawal. The motion shall contain the last known address and telephone number of the client; shall certify that notice of all filing deadlines affecting the client has been given to the client; and shall certify that notice of the request to withdraw has been given to all attorneys, unrepresented parties, and other interested persons. If the client is a fiduciary, the attorney must also notify any bonding agencies involved and file the fiduciary's signed acknowledgement of the withdrawal; if no written acknowledgement is filed, withdrawal shall only be approved after a hearing with notice to the fiduciary.

(B) No attorney shall be permitted to withdraw from a case less than twenty days prior to a trial or dispositive hearing, except under extraordinary circumstances.

(C) Written notice of substitution of counsel must be filed but is not subject to court approval. The substituting attorney shall provide notice to all attorneys, unrepresented parties, and other interested persons.

### **Loc.R. 75.4 Pro Hac Vice**

(A) An attorney who is not licensed to practice law in the state of Ohio, but who is duly licensed and in good standing to practice law in any other state or the District of Columbia, may, at the judge's discretion, be permitted to represent a party in any pending or future litigation in this county after completion of all of the requirements of Gov.Bar R. XII. Any attorney admitted *pro hac vice* shall have local co-counsel who is licensed by the Supreme Court of Ohio.

(B) No scheduled trial or hearing date shall be continued solely because of the unavailability or inconvenience of an out-of-state attorney.

### **Loc.R. 75.5 Paralegals**

In conjunction with Civ.R. 11, a paralegal may not sign any document on behalf of a fiduciary, applicant, or supervising attorney.

### **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. Agents must file a power of attorney from the company prior to executing its bonds.

(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) Where bond is required, bond shall be in an amount at least double the probable value of the personal property, including all income during the accounting period.

(E) Bond documents, including additional bond, will not be considered complete without written approval from a surety company. Although incomplete bond documents will be accepted for filing, Letters of Authority will not be issued based on incomplete bond documents.

(F) A fiduciary shall pay the initial bond premium within sixty days of their appointment and shall pay the premium for additional bond within sixty days of the date the court approves the additional bond. A fiduciary who fails to comply with this rule may be held personally liable for payment and is subject to removal.

### **Loc.R. 75.8 Custodial Deposits in Lieu of Bond**

(A) All custodial deposits of personal property, securities, and monies must comply with R.C. 2109.13.

(B) To be permitted to serve as a custodial depository, an institution must satisfy the court as to its authorization and certification from the state of Ohio. Between January 1 and February 28 of each year, each depository shall file a statement disclosing the year-end balance and all activity for each custodial account. Depositories shall be compensated in accordance with their published fee schedules as filed 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 that the will is placed on deposit at the request of the testator or their guardian and identifying the testator's current address and telephone number.

(B) When a will is held by an attorney to whom the testator's address 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) If 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 original wills with the surviving members of the law firm or use due diligence to return the original 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 may be placed on deposit with the probate court known to be the last resident county of the testator. Further information may be found in the 2016 Board of Professional Conduct Ohio Ethics Guide, "Client File Retention." Questions may be directed to the Office of Disciplinary Counsel at (614) 387-9700 or the Board of Professional Conduct at (614) 387-9370.

(D) A will previously deposited with this court may be withdrawn pursuant to an Authorization to Deliver (Form 2.B). The Authorization to Deliver must be signed by the testator before a notary public and by the person to whom the will should be delivered. The notary public must be independent from the person to whom the will shall be delivered.

#### **Loc.R. 75.10 Wills in Safe Deposit Box**

After payment of a \$16.00 filing fee and assignment of a case number, the attorney for a decedent's estate or a bailiff of this court may be appointed as a commissioner to list the contents of the decedent's safe deposit box and to retrieve the decedent's will and codicils from the box for delivery to the court. If a court bailiff is appointed as the commissioner, an additional fee of \$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 a written waiver which includes 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 Concealment of Assets**

(A) A complaint regarding the concealment of assets pursuant to R.C. 2109.50 shall be filed as a separate civil action, with no other causes of action attached.

(B) The first hearing set in any concealment action may be converted to a status conference.

#### **Loc.R. 75.13 Release of Estates from Administration**

(A) When required, the court shall select and appoint commissioners 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 a certified copy of the decedent's death certificate.

(D) Any applicant to relieve an estate from administration who is 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 pursuant to R.C. 2323.58 et seq. 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 a motion to combine the initial and final conference.

#### **Loc.R. 75.15 Marriage License Applicants**

(A) Pursuant to R.C. 3101.05, any applicant for a marriage license who is a minor must provide proof of having had marriage counseling from a person licensed by the state of Ohio to provide counseling or from clergy prior to applying for the license. Proof of counseling may be in the form of a letter to this court from the counselor on their letterhead.

(B) Proof of the termination of an applicant's 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) In all proceedings where a guardian ad litem ("GAL") is necessary, the court shall select and appoint the GAL. Upon appointment, the GAL shall schedule a meeting with the court to receive the scope of services expected, if not already detailed in their order of appointment.

##### **(B) Compensation.**

(1) In a land sale proceeding, a minimum fee of \$175.00 shall be assessed as compensation for each GAL. A GAL may apply for additional fees by providing a detailed fee statement as required by Loc.R. 71.1(A).

(2) In all other proceedings, the amount of the GAL fee will be determined upon an application accompanied by a detailed fee statement as required by Loc.R. 71.1(A). Some or all of the GAL fee may be assessed as costs.

#### **Loc.R. 75.17 Adoptions**

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

**(B) Counsel.**

(1) Except in adult adoptions and actions pursuant to R.C. 3107.18, all adoption petitioners shall be represented by counsel. If representation is terminated while an adoption is pending, the case will be temporarily stayed to allow the petitioner to seek new counsel. If no attorney enters an appearance on behalf of the petitioner within the time permitted, the case shall be dismissed for want of prosecution.

(2) Any rules and procedures regarding appointed counsel for indigent birth parents will be implemented by special administrative order and will be made available on the court's website, [probate.franklincountyohio.gov](http://probate.franklincountyohio.gov).

**(C) Placement.**

(1) 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.

(2) In private placement adoptions, the petitioner shall file a Preplacement Application and Affidavit (Form 18.PP1) not less than fifteen days prior to placement. A preplacement application may only be approved upon the filing of all necessary paperwork.

(3) After a preplacement application has been approved by the court, a hearing shall be set for placement and the consent of the birth parent(s), to take place not less than seventy-two hours after the birth of the child or after the birth parent(s) have met with an adoption assessor, whichever occurs later.

(4) Prior to the placement hearing, the court may require a statement from the minor's physician as to the medical condition of the minor to be placed.

(5) In all placement hearings where a birth parent of the minor to be adopted is also a minor, the birth parent shall be represented by an attorney. The fees for the birth parent's attorney will be assessed as costs to the petitioner.

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

(7) The petitioner must file an adoption petition no later than ten days after placement is approved. Failure to timely file the petition for adoption may result in the placement being revoked.

**(D) Adoptions Without Placement.**

(1) After a petition to adopt a minor has been filed, in all cases where the minor has not been placed with the petitioner for purposes of adoption pursuant to R.C. 5103.16(A)–(D), an initial status conference/hearing shall be conducted prior to

any hearing on the issues of consent or best interests. The initial status conference/hearing shall at a minimum address service.

(2) Recognizing that due process requires a higher degree of scrutiny for the permanent termination of parental rights than for a temporary and reversible termination of parental rights, temporary custodians shall not be deemed to qualify for an exemption from placement requirements under R.C. 5103.16(E)(1).

(3) Custody and guardianship adoptions will not be finalized until the underlying custody or guardianship order has been in effect for at least six months. If the child has not lived in the home, or the underlying custody or guardianship order has not been in effect, for at least six months prior to the filing of the petition for adoption, the court shall require two separate home visits taking place at least thirty days apart.

(E) **Filing Requirements.** The following filing requirements shall apply to all adoptions, except as otherwise provided.

(1) Minors' birth certificates shall be certified no more than ninety days prior to their filing.

(2) A Custody Affidavit (Form 18.0) must be filed in all proceedings to adopt minors, except in actions pursuant to R.C. 3107.18. The petitioner has an ongoing duty to notify the court, in writing, of any juvenile court, probate court, or parentage actions initiated with a government agency which involve the minor, including but not limited to any actions for custody, visitation, or shared parenting or co-custody agreements, and including any such proceedings that arise after the petition is filed.

(3) Married petitioners must file proof of marriage, such as a marriage abstract, and must be married for at least one year prior to finalization.

(4) The petitioner shall file their home study and all accompanying home study updates in all cases except actions pursuant to R.C. 3107.18 and adult adoptions.

(5) Criminal background checks pursuant to R.C. 2151.86(B)(1) for the petitioner and all adults residing with the petitioner shall be filed in all cases except adult adoptions. Background checks remain valid for one year and must be current on the date the adoption is finalized.

(6) A final petitioner's account which complies with R.C. 3107.055 shall be filed in all cases. A preliminary estimate is not required in stepparent or adult adoptions, or in actions pursuant to R.C. 3107.18. Any fees charged by a private child placing agency shall be disclosed on the petitioner's account.

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



(8) All required documents shall be submitted at least ten days before a finalization hearing, unless otherwise provided by the Revised Code or these Local Rules.

**(F) Notice and Service.**

(1) No waiver of service from a birth parent will be accepted without prior court approval. This rule shall not affect the acceptance or validity of a properly executed Consent to Adoption (Form 18.3).

(2) If the minor to be adopted was born outside the state of Ohio, the petitioner must disclose and satisfy the law of the minor's state of birth concerning notice on putative fathers.

(3) The court shall issue notice to birth parents pursuant to R.C. 3107.11 only upon the petitioner's request for service. Unless otherwise requested, service shall be attempted by restricted certified mail.

(4) Where service by a special process server has been approved, the process server shall complete a return of service that specifically identifies which documents were served; the person served; and the time, date, and location and service. When serving a notice of a hearing, the process server shall also serve a copy of any remote access information for the hearing. No person employed in the same firm or office of counsel of record shall be permitted to serve as a process server.

(5) All requests for service by publication shall be accompanied by an affidavit (Form 19.6) detailing the efforts made to locate the birth parent. The court may, after testimony at hearing, require the petitioner to make further efforts to locate the birth parent for notice purposes. If warranted by the circumstances, the court may require that publication take place in both Franklin County and the birth parent's last known county or counties of residence. The court may, after testimony at hearing, require the petitioner to make further efforts to locate the birth parent to provide notice of the petition.

(6) In all cases where the Indian Child Welfare Act, 25 U.S.C. 1901–1963, applies, 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.

**(G) Contested Adoptions.**

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

(2) Civ.R. 26–34, pertaining to discovery, shall apply in adoption proceedings.

**(H)** An adoption assessor who meets with a birth parent in the course of preparing a

report shall provide the birth parent a copy of the brochure prepared pursuant to R.C. 3107.082 and R.C. 3107.083 and shall file a Certificate of Service by Adoption Assessor (Form 18.10) prior to the first hearing in the case.

(I) In all cases where a public agency has custody of the minor to be adopted, an agency representative shall appear at the finalization hearing.

#### **Loc.R. 75.18 Motion to Set Aside a Magistrate’s Order and Objections to a Magistrate’s Decision**

(A) 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.

(B) 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. Where a transcript is required, a complete transcript shall be requested by the objecting party in accordance with Loc.R. 11.1(B) and shall be filed within thirty days of the filing of the objection. Failure to file a transcript when one is required by Civ.R. 53(D)(3)(b)(iii) may be a basis to dismiss or overrule the objection.

(C) A memorandum contra or reply 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.

(D) Every memorandum in support, memorandum contra, and reply memorandum regarding objections to a magistrate’s decision or a motion to set aside a magistrate’s order shall be subject to the page limitations set forth in Loc.R. 57.12.

#### **Loc.R. 75.19 Confidential Name Change**

(A) An applicant may request that records of a name change be made confidential in accordance with R.C. 2717.11 by submitting a Motion for Confidentiality of Proceeding (Form 21.6), which may be set for hearing. The applicant must set forth why open records of the name change would jeopardize their personal safety, presenting certified copies of police reports, court orders, stalking orders, or other relevant documents.

(B) When the applicant seeks a confidential name change on behalf of a minor, notice of the application must be given to the minor’s parents pursuant to R.C. 2717.14.

#### **Loc.R. 75.20 Finders’ Agreements for Beneficiaries of Unclaimed Funds**

Where a person entitled to recovery of unclaimed funds from a matter before the Franklin County Probate Court (a “beneficiary”), has entered into an agreement with any person that requires the beneficiary to pay a percentage of a dollar amount recovered, such an agreement is called a “finder’s agreement.” Taking notice of the terms and legislative intent of R.C. 169.13, the court will recognize a finder’s agreement only if all of the following conditions are met:

(A) The finder’s agreement is entered into any time at least two years after the

publication of the beneficiary on the Franklin County Auditor's website (the "auditor warrant date"). No finder's agreement entered into within two years of the auditor warrant date will be honored.

(B) The aggregate fee, compensation, commission, or other remuneration agreed upon is subject to the jurisdiction of the court and shall be limited to 10% of the amount recovered, unless the finder or the court requests a hearing pursuant to R.C. 2109.361(B) and (C). The court may conduct a hearing to set and approve the finder's fee in any amount as the court determines is just and equitable.

(C) No finder's agreement shall include a power of attorney for the payment of the unclaimed funds to any person other than the beneficiary.

(D) The finder's agreement shall be in writing with the notarized signature of both the beneficiary and the finder. The finder's agreement shall disclose all of the following:

- (1) The name, address, email address, and telephone number of the beneficiary;
- (2) The dollar amount of the unclaimed funds;
- (3) The amount the beneficiary will receive minus the finder's fee when there is no hearing requested;
- (4) The name and address of the person or entity in possession of the unclaimed funds;
- (5) That the Franklin County Auditor will pay the unclaimed funds directly to the beneficiary; and
- (6) That the person agreeing to locate, deliver, recover, or assist in the recovery of the unclaimed funds is not an employee of this court or the Franklin County Auditor.

#### **Loc.R. 75.21 Applications to Expend Funds**

(A) To the greatest extent possible, applications to expend funds should be filed before the requested expenditure is paid. The fact that an expenditure has already been paid does not guarantee retroactive court approval.

(B) Applicants shall attach proof of requested expenditures, such as bills or cost statements.

(C) Applicants are encouraged to request monthly or yearly budgets when appropriate.

#### **Loc.R. 75.22 Disclaimers**

When an heir or beneficiary disclaims any interest in an estate, the fiduciary shall file the disclaimer with an amended Surviving Spouse, Children, Next of Kin, Legatees and Devises (Form 1.0) which notes the existence and effect of the disclaimer.

## SUP.R. 78 CASE MANAGEMENT

### **Loc.R. 78.1 Case Management Schedule in Civil Actions**

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

(B) 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.

(C) The 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) It is the responsibility of the plaintiff in all civil actions to request service of summons by filing a Request for Issuance of Summons (Form ePC-1.P). The court shall serve the summons and a copy of the complaint, and if requested, an order to serve and an entry setting hearing.

(E) **Status Conferences.** An initial status conference shall be conducted in all civil actions, except land sales, unless otherwise ordered. It is the responsibility of the plaintiff to request a conference within thirty days after the final day for any defendant to answer; however, a defendant may request a status conference if the plaintiff fails to timely file a request. Notice of the conference shall be given to all parties listed in the complaint who have not been defaulted. Counsel and all unrepresented parties shall appear 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, at least sixty days before the pretrial conference;
- (8) A deadline for filing motions in limine, at least seven days before the pretrial conference;

(9) A date for the pretrial conference, at least fourteen days before trial; and

(10) A date for trial, the expected length of trial, and whether trial shall be conducted in person, remotely, or in a hybrid format.

Additional status conferences may be scheduled at the court's discretion. Parties may request a status conference in any case.

(F) **Pretrial Conferences.** A pretrial conference shall be conducted in all civil actions, except land sale cases, unless otherwise ordered. The court may require the parties to file pretrial statements at least seven days prior to the conference, which 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.

Counsel and all unrepresented parties shall appear at the pretrial conference and be prepared to discuss any pending motions, which the court may rule on; as well as any pretrial statements, proposed jury instructions, and interrogatories, as applicable.

(G) Witness lists exchanged between the parties and/or presented to the court shall include 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, a 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.

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

## **Loc.R. 78.2 Discovery**

(A) Counsel are encouraged to participate in discovery conferences 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.** Absent extraordinary circumstances, the discovery cut-off date included in the case management schedule shall be the last date for any party to seek court involvement in the discovery process by way of motion seeking a ruling, order, sanction, or other court action. 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. Any motion for relief sought under Civ.R. 26(C) or Civ.R. 37 concerning any interrogatories, requests for production or inspection, or requests for admissions shall be filed with copies of the portions of the documents which are in dispute.

### **Loc.R. 78.3 Request for Jury Trial in a Civil Action**

Loc.R. 27 of the General Division of the Franklin County Court of Common Pleas, as it relates to juries, shall apply to proceedings in this 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 General Division Loc.R. 9. The first party to make a request for a jury trial shall pay the jury trial deposit directly to the General Division thirty 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 statute or the rules of the Supreme Court of Ohio.

(B) Except with permission from the judicial officer, only one counsel for each adverse party will be permitted to speak on any interlocutory motion or 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 hearing. A non-party witness may not be recalled without permission from the judicial officer.

### **Loc.R. 78.5 Consent to File a Late Answer**

Upon agreement of the plaintiff and defendant, any party may be permitted leave to move or plead in accordance with the Rules of Civil Procedure, provided the total extension of time does not exceed twenty-eight days. The consent shall be evidenced by filing a "Consent to Plead" signed by the necessary counsel or unrepresented parties.

### **Loc.R. 78.6 Notice of Settlement**

(A) When the parties have reached a settlement agreement prior to trial date, or when an action is voluntarily dismissed, the plaintiff's counsel shall immediately notify the 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 within thirty days after representation to the court that the case has been settled, the court 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, unless otherwise provided by statute or rule.

**(A) Submitting Motions.**

(1) All motions shall be accompanied by a supporting memorandum stating their grounds and citing the authorities relied upon.

(2) An opposing party shall serve their response memorandum (memorandum contra) no later than the fourteenth day after the date of service stated on the certificate of service attached to the motion, or the twenty-eighth day in the case of a motion for summary judgement.

(3) The moving party shall serve any reply memorandum no later than the seventh day after the date of service stated on the certificate of service attached to the response memorandum.

(4) Once the response and reply periods have elapsed, 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.

(5) Every memorandum in support, memorandum contra, and reply memorandum regarding a motion shall be subject to the page limitations set forth in Loc.R. 57.12.

(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, the movant shall serve notice of the time and place of the hearing upon other interested parties or their counsel.

**(C) Dispositive Motions.**

(1) 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.

(2) All dispositive motions shall be filed at the earliest practical date in the course of litigation, but no later than the deadline specified in the case schedule.

(3) Summary Judgment. Motions for summary judgment are subject to Civ.R. 56. Pursuant to Civ.R. 56(A), leave is hereby granted in all civil cases to file motions for summary judgment between the time of the filing of the case and the dispositive motion deadline, unless otherwise ordered. Motions for summary judgment shall be served upon all defendants who have not been defaulted and shall be set for non-oral hearing once deemed submitted to the court pursuant to section (A) of this rule.

**(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 defendants are in default of answer, the date service was perfected for each defendant, and the judgment sought; the movant shall also submit a proposed entry granting default judgment. All defendants who have appeared in the case but have failed to move or plead in accordance with Civ.R. 12 shall be served notice of the motion for default judgment at least ten days before judgment is rendered. 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) **Agreed Entries and Proposed Entries.** An agreed entry or a proposed entry shall clearly set forth which parties have and have not agreed to the 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.

### **Loc.R. 78.8 Extended Administration**

(A) All estates will initially be scheduled according to the six-month administration schedule of R.C. 2109.301(B).

(B) In estates which meet the requirements for extended administration stated in R.C. 2109.301(B)(1)(a)–(f), the fiduciary shall file a Notice to Extend Administration (Form 13.10) or an Application to Extend Administration (Form 13.8) to extend the filing deadlines.

(C) Upon the appointment of a successor fiduciary, the estate will be rescheduled for a six-month administration unless the successor fiduciary files a Notice to Extend Administration or an Application to Extend Administration.

### **Loc.R. 78.9 Inventory**

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

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

(C) An inventory will not be accepted for filing unless any required bond is sufficient pursuant to Loc.R. 64.4.

(D) A guardian’s inventory shall include the ward’s projected annual income.

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

(F) All inventories must be personally signed by all current fiduciaries and contain the full name, current residence address, and telephone number of each fiduciary.



(G) An inventory shall disclose the name of the financial institution where each financial asset is held and the last the last four digits of each financial account number. It is the responsibility of the person filing the inventory to redact the remaining digits.

(H) All stocks, bonds, mutual funds, and other assets in investment accounts shall be separately disclosed.

### **Loc.R. 78.10 Trusts**

#### **(A) Establishment of Court-Supervised Trusts.**

(1) Standard-Form Trusts. The court has adopted and filed certain specific prototype trusts under Case No. 424500: a prototype wrongful death trust under R.C. 2125.03, and a prototype minor's trust to age 25 under R.C. 2111.182. These prototypes are available both at the court and on the court's website.

(2) Appointment of Trustee. Notwithstanding any applicable section of the Revised Code, the appointment of a trustee or successor trustee for any court-supervised trust subject to this Rule 78.10 shall be effective only upon court approval.

(3) Bond. Bond shall be posted prior to the appointment of a trustee in accordance with R.C. 2109.04 unless:

(a) All of the assets of the trust are in a custodial account under R.C. 2109.13;

(b) The trustee is exempt from bond under R.C. 1111.21 and/or R.C. 5801.02(C);

(c) The trustee is an attorney and moves to waive bond with a showing that their malpractice insurance also covers malfeasance in a fiduciary capacity; or

(d) The court specifically determines that bond is not needed to protect the interests of the beneficiaries and a written waiver of bond is filed from all beneficiaries.

(4) Required Terms in Court-Supervised Trusts. The terms of any trust established subject to the continuing supervision of this court must specifically address the filing of annual accounts, bond, and court involvement in the appointment of successor trustees.

(5) Special Needs Trusts and Medicaid Trusts. In addition to the requirements set forth above, a special needs trust or a trust described in R.C. 5163.21(F)(1), (2), or (4) approved by this court or funded with court approval must specifically provide that distributions from the trust shall not discharge any duty of support owed to a beneficiary.

**(B) Administration of Trusts.**

(1) Trust Investment Standards. A trustee shall invest pursuant to the Ohio Uniform Prudent Investor Act, R.C. Chapter 5809. The court may, at any time, require a trustee to certify or otherwise demonstrate in writing that the assets of the trust are properly so invested.

(2) Trust Reporting Requirements.

(a) For all court-supervised trusts, a Trustee's Account (Form 25.5A) shall be filed annually as a court accounting. On the second page of Form 25.5A, the trustee shall clearly delineate separate totals for all liquid and illiquid assets comprising the trust corpus. The court may alter or dispense with the requirement for an annual court accounting if all of the assets of the trust are in a custodial account under R.C. 2109.13, or otherwise, upon written request, as the court deems appropriate. A court accounting shall be filed in addition to, and shall not supplant, the trustee's duty to report to the beneficiaries as set forth in R.C. 5808.13.

(b) An account filed for a trust that is not subject to court supervision need not comport with Form 25.5A, and may be in any form that satisfies the requirements of R.C. 5808.13.

(3) Court-Supervised Trust Disbursements. No expenditures may be made from a court-supervised trust without prior court approval.

(a) All requests to expend the funds of a minor beneficiary shall include a completed Household Resource Worksheet (Form 15.7) together with any other substantiating documentation.

(b) Any request to expend the funds of a beneficiary who is at least sixteen years of age and not otherwise disabled will be set for hearing unless submitted with the signed consent of that beneficiary.

(c) Annual Budget. The court will entertain the annual approval of budgeted or anticipated routine expenditures. Unless clearly specified otherwise, any standing authorization for recurring expenditures shall expire no later than the earlier of (i) the due date of the next required court accounting or (ii) one calendar year from the authorization.

(d) Any request for an expenditure that the court deems extraordinary may be set for hearing. An Application to Expend Funds in an amount (or aggregate amount, in the case of a recurring expenditure) that exceeds 10% of the total value of the trust should be accompanied by an asset depletion analysis and/or other written evidence of the anticipated long-term financial impact of the proposed distribution on the trust corpus.

**(C) Court Intervention in Unsupervised Trusts.** With regard to any trust that is not

subject to ongoing court supervision:

(1) Any action brought under R.C. Chapters 5801–5811 is a civil action, subject to the Rules of Civil Procedure, and must be commenced by electronically filing a complaint which addresses jurisdiction, venue, and standing.

(2) A copy of the trust instrument must be submitted to the court for review contemporaneous with the filing of the complaint. If the terms of the trust are not at issue in the complaint, however, a plaintiff may request that the trust instrument be reviewed in camera and omitted from the public record.

(3) A plaintiff requesting an award of sanctions against a trustee shall allege in the complaint a breach of the trustee’s fiduciary duties to warrant those sanctions.

(4) A complaint including any request for a form of declaratory relief shall include as necessary parties: the trustee, all current and qualified beneficiaries, and any other persons who have or claim any interest that would be affected by the declaration.

**Loc.R. 78.11 Sanctions**

Loc.R. 78.11 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 Revised Code and the Rules of Civil Procedure, to impose sanctions on attorneys, parties, or both.

(B) Upon the motion of a party or the court, the judicial officer may impose sanctions for failure to comply with these Local Rules, a case schedule, or the Rules of Civil Procedure.

## **Appendix – Local Rules Revised Effective January 1, 2024**

Loc.R. 8.1, 11.1, 16.1, 16.2, 16.3, 26.1, 26.2, 52.1, 53.1, 54.1, 54.4, 54.5, 54.6 (new rule), 55.1, 57.3, 57.5, 57.7, 57.9, 57.10, 57.12, 57.15, 58.1, 60.1, 60.2, 60.4, 60.5 (new rule), 60.6 (new rule), 61.1, 62.1 (rule deleted and replaced), 64.1, 64.2, 64.3, 64.4 64.5, 64.7, 64.8, 64.9, 64.10 (new rule), 65.1, 66.1, 66.3, 66.4, 66.5, 66.6, 66.7, 66.10, 66.11, 66.12, 66.13, 66.14, 66.16, 66.17, 67.1, 67.2, 67.4, 68.3, 68.4, 68.5, 68.6, 70.1, 70.2, 71.1, 71.2, 71.3, 71.4, 71.5, 71.6, 71.7, 71.8, 71.9, 71.10, 73.1, 73.2, 74.1, 75.1, 75.3, 75.4, 75.5, 75.7, 75.8, 75.9, 75.10, 75.11, 75.12 (rule deleted and replaced), 75.13, 75.15, 75.16, 75.17, 75.18, 75.19, 75.20, 75.21, 75.22 (new rule), 78.1, 78.2, 78.3, 78.4, 78.5, 78.6, 78.7, 78.8, 78.9, 78.10, and 78.11.