

IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION

FILED
DAVID B BENDER

JAN 19 2018

IN RE: LOCAL RULES OF COURT

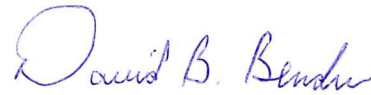
PROBATE-JUVENILE JUDGE
FAYETTE COUNTY, OHIO

ENTRY ESTABLISHING LOCAL RULES OF COURT

It is ORDERED that the following amended Local Rules of Practice are established to supplement the Rules of Superintendence for the Court of Common Pleas, Probate Division, as amended, and are effective on January 1, 2018.

It is FURTHER ORDERED that these rules, having been submitted to the Fayette County Bar Association for comment, are adopted, and shall be filed with The Supreme Court of Ohio.

ENTER THIS 19TH DAY OF JANUARY, 2018.



DAVID B. BENDER, JUDGE

FAYETTE COUNTY, OHIO

LOCAL RULES OF THE PROBATE COURT

DAVID B. BENDER, JUDGE

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LOCAL RULES OF THE PROBATE COURT
FAYETTE COUNTY, OHIO

RULE 1. STANDARD PROBATE FORMS

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

RULE 2. INFORMATION IN STANDARD FORM 1.0

Standard Form 1.0 shall be filled out in such a manner as to clearly indicate the existence or non-existence of a surviving spouse AND to indicate specifically the relationship of the heir or legatee to the testator. All names of devisees and legatees and next of kin shall be set forth as the name appears in the will and also their present name, if different therefrom.

RULE 3. FORMS AND PLEADINGS

The Court retains the authority to accept handwritten forms or pleadings.

RULE 4. HOURS OF THE COURT

- A. The Probate Court and its offices shall be open for the transaction of business from 8:00 a.m. to 4:00 p.m. daily except Saturday, Sunday, legal holidays and Court holidays, or at other times as may be provided by order of the Judge from time to time, or for special cases as the interest of justice may require.
- B. Court sessions shall be held at the Fayette County Courthouse in such manner as shall be ordered by the Judge; sessions may be held at such other places in this County as may be provided by order of the Judge from time to time or for special cases as the interest of justice may require.
- C. Sessions may be adjourned from time to time as the justice of the case may require and for the Court to have an opportunity to obtain additional evidence or testimony.

RULE 5. CONDUCT IN THE COURT

- A. Proper decorum in the Court is necessary to the administration of the Court's functions; and conduct which interferes, or tends to interfere, with the proper administration of justice or the Court's business is prohibited.
- B. No radio or television transmission, telephone voice recording device, other than a device used by a Court reporter making a record in a proceeding, or the making or taking of pictures shall be permitted without the expressed consent of the Court in advance and pursuant to Sup. R. 11.
- C. Any long distance telephone calls made from the Probate Court shall be made in a manner other than a direct call. Collect calls are acceptable.

- D. All electronic devices, including cellular phones and pagers, shall be turned off before entering the courtroom.

RULE 6. EXAMINATION OF PROBATE FILES, RECORDS, PAPERS AND OTHER DOCUMENTS

- A. On the premises inspection of files, records, papers and documents shall be as follows:
 - 1) The general records of the Court shall be subject to inspection or shall be open to inspection by all members of the public during the regular office hours of the Court.
 - 2) Files of adoptions, mental illness, and Ohio Estate tax returns are confidential. Access to those files may be authorized by the Judge. In order to obtain the Judge's authorization, the person seeking inspection of the Court's confidential records must first apply to the Court and receive its approval. Such inspections shall be in the presence of the Deputy Clerk.
 - 3) Home Investigation reports are considered confidential information and shall not be made public. When a Court Investigator files a Home Investigation report with the Court, a file stamped copy of the Investigator's report shall be disseminated by the Probate Clerk to the attorneys of record in that case. If a party to the case is representing themselves *pro se*, then that party shall also receive a copy. The Probate Clerk shall indicate the parties being served by way of certificate of service. The Court PROHIBITS that said distributed copies be reproduced further in any way, or be further distributed to anyone other than to the counsel and *pro se* parties of record.
 - 4) Guardian ad Litem reports are considered confidential information and shall not be made public. When a Guardian ad Litem files a Guardian ad Litem (GAL) report with the Court, the GAL shall provide an adequate number of copies to serve a file stamped copy of the GAL report upon each attorney of record in that case. If a party to the case is representing themselves *pro se*, then that party shall also receive a copy. The GAL shall indicate the parties being served by way of certificate of service. The Court PROHIBITS that said distributed copies be reproduced further in any way, or further distributed to anyone other than to the counsel and *pro se* parties of record.
- B. Copies of public records shall be provided at the cost of \$.15 per page by paper medium, unless otherwise specified by statute. Copies provided by the Court's archivist will be \$1.00 per page. If a request is received that copies be sent by regular U.S. Mail, such copies will be mailed only if the cost of the copies, postage, and any other mailing expenses are prepaid (O.R.C. §149.43). Requests by e-mail will be accepted, but no copies will be mailed unless the costs are pre-paid.
- C. The Court digitally records all of its proceedings. A copy of a recording of a court hearing on compact disc may be obtained by contacting the Court. The cost of recording of a court hearing by way of compact disc is set at \$.60. In order to maintain the integrity of the Court's computer system, the use of outside media from sources other than the Court, to-wit: flash drives or compact discs, for recording purposes will be prohibited.
- D. Certified copies of a marriage license are \$2.00.

- E. When a transcript of a proceeding is filed in the trial case, it becomes part of the record. If the case type is one that is not excluded by statute as a public record, copies of said transcript will be provided upon request at the cost of \$.15 per page.

RULE 7. ATTORNEYS OF RECORD

The application for the appointment of a fiduciary shall contain the name, address, Supreme Court of Ohio Registration number, and telephone number of the attorney, if any, representing the fiduciary. If such attorney shall resign, the attorney and the fiduciary shall notify the Court, and the fiduciary shall submit the information required for the successor attorney. Such information shall be in writing. In any instance where an attorney files an application to withdraw as counsel representing fiduciary, it will be necessary that the matter be set for hearing and that the fiduciary be notified and be present at the hearing, unless notice and hearing is dispensed with the Court.

RULE 8. ATTORNEY'S APPROVAL ON ENTRIES SUBMITTED

Each journal entry presented to this Court for filing for and on behalf of any fiduciary, acting by virtue of an appointment by this Court, shall have endorsed thereon the approval of the attorney at law designated by such fiduciary to represent him in matters relating to the trust, in the following form:

Approved:

Attorney for Fiduciary (# SC registration number)
Address
Phone number
Email Address

Such endorsement shall constitute a representation to the Court that the same was prepared by and/or examined by the attorney. If such attorney's endorsement is lacking, the same shall be refused and denied filing in this Court.

RULE 9. SUMMONS, NOTICES, AND MOTIONS

- A. The Ohio Rules of Civil Procedure shall apply except as otherwise provided by statute.
- B. The Court reserves the right to hear a handwritten or typed letter motion filed by a party to the action.
- C. See Rule 11J regarding filing of any motions by way of electronic transmission.
- D. Fayette County Form 1.0A, Notice of Change of Address, is offered when it is necessary to notify the court of a change of address in an estate for a fiduciary, pursuant to Rules of Superintendence 57(C). (See attached Appendix B-2)
- E. See Standard Forms 27.3 and 27.3B, Notice of Application for Change of Address and Entry, to notify the court of a change of address for a guardian or ward, pursuant to Rules of Superintendence 66.08E.

RULE 10. HEARINGS AND CONTINUANCES

- A. It is the Court's practice for the Assignment Commissioner or a Deputy Clerk to schedule all hearings by contact with the attorney of record or his / her office to check with his / her calendar. Therefore, once notice is sent, the Court presumes that the scheduled date and time have been accepted and approved by the attorney or his / her staff. Any attorney requesting a continuance on the grounds of the Court's alleged failure to notify him / her must overcome this presumption.
- B. Requests for continuances will be made in accordance with Supreme Court of Ohio Superintendence Rule 41.
- C. Motions for continuance shall be submitted in writing with the proper caption and case number, as far in advance of hearing dates as practicable. If the grounds for the request is a conflicting assignment in another court, the attorney shall attach to the motion a time stamped copy of the notice of that conflicting assignment pursuant to Superintendence Rule 41(B).
- D. No continuances, except on the Court's own motion, shall be granted in the absence of proof of reasonable notice to or consent by counsel for the adverse party, if represented by counsel, and, if not, by the adverse party. Failure after such notice to object to a continuance within a reasonable time, shall be deemed as consent thereto.
- E. A judgment entry shall be submitted with a motion for continuance leaving the time and date of hearing blank for the Court to set a new date. Unless otherwise directed, it will be the responsibility of the attorney obtaining the continuance to notify all other counsel, unrepresented parties, and their own witnesses of the continuance. If the continuance is pursuant to the Court's own motion, each attorney will be responsible for notifying their own clients and witnesses, unless otherwise directed.
- F. If a hearing is not to proceed at the time designated, the Court must be notified of that fact. Upon unexcused failure to appear, the Court may proceed to hear the matter upon the evidence submitted.
- G. No case will be continued on the day of hearing except for good cause shown.
- H. Submission of a matter upon briefs without oral hearing may be authorized by the Judge.

RULE 11. FILINGS AND ENTRIES

- A. Once filed, no documents shall be corrected or amended. If incorrect, an amended document must be filed with the Court, except by leave of the Court. This includes making sure that all appropriate boxes on the probate forms are checked.
- B. All documents filed in the Probate Court shall contain the name, address and Supreme Court registration number, telephone number, and email address of the individual counsel representing the fiduciary and, in the absence of counsel, the name, address and telephone number of the fiduciary. Any document not containing the above requirements may be refused for filing by the Court.

- C. Failure of the fiduciary to notify the Court of his/her current address shall be grounds for his/her removal.
- D. Papers containing partially or wholly illegible signatures of counsel, parties or officers administering oaths may be refused for filing, or, if filed, be stricken from the files, unless the typewritten or printed name of the person whose signature it purports to be appears below it.
- E. Unless the Court otherwise directs, counsel for the party in whose favor a verdict or opinion is rendered shall, within seven (7) days thereafter, prepare the proper judgment entry and submit the original to the Court and send a copy to counsel for the opposite party. Counsel for the opposing party shall have seven (7) days to object to the Court after the receipt thereof.
- F. Upon failure to comply with this Rule 11(E), one of the following shall occur: (a) the matter may be dismissed; (b) the Court may prepare and file the appropriate entry and charge the costs of the same to the responsible party; (c) or the Court may take other actions it deems necessary.
- G. Parties filing documents are responsible for redacting Social Security Numbers, except in the instance when a Social Security Number is required in a Decision, Entry, or Order which addresses a child support issue. In that instance, the required Social Security Number shall not appear on the document itself, but shall appear on the Court's form, "Cover Page" (see Appendix A). Said form shall be filled out, attached, and incorporated by reference to the original Decision Entry, or Order, and submitted to the Court. The Court will attach a copy of the original form to the Child Support Enforcement Agency's copy of the journalized Decision, Entry, or Order for child support establishment, modification, or enforcement purposes. All other copies of the Decision, Entry, or Order shall not include the Cover Page. The original Cover Page shall be maintained by the Court as a confidential record, not for public view.
- H. Parties shall use Standard Form 45(D) - Confidential Disclosure of Personal Identifiers Form when personal identifiers are omitted from a case document submitted to or filed with the Court, pursuant to Sup. R. 45(D). This form shall be used when omitting personal identifiers including social security numbers and financial account numbers, except an obligor's social security number and date of birth provided for a child support order pursuant to Local Rule 11 (G) above, when the Cover Page form should be used. Any Confidential Disclosure of Personal Identifiers Form filed in a case shall be maintained by the Court as a confidential record, not for public view.
- I. Duties of any fiduciary that are required by law, and other such additional duties as the Court orders, shall be acknowledged by the filing of Fiduciary's Acceptance (see Appendix B-1) prior to Letters of Appointment being issued by the Court.
- J. Filing by Facsimile Transmission:

Filings will be accepted by the Court by way of facsimile transmission to the Fayette County Probate/Juvenile Court at (740) 333-3598, and subject to the following conditions:

1. Documents will be accepted in this manner on a **very limited** basis as the Court expects filings by facsimile, to be made only due to an unforeseen or emergency circumstance, in the form of a motion together with a memorandum of support and certificate of service (ie. for

continuance or dismissal), or to file investigative reports in a timely manner. All other filings are encouraged to be filed in person or by ordinary U.S. Mail or overnight mail.

2. A fax transmission will be file stamped on the date of its receipt during the normal business hours of the Court, Monday through Friday between 8:00 AM and 4:00 PM. Any filings received after 4:00 PM will be file stamped for the following day. Any filings received on a weekend or holiday will be filed stamped on the following business day. Facsimile filings shall not exceed five (5) pages in length, exclusive of the cover page.
3. The following documents **WILL NOT** be accepted as filed by way of facsimile transmission: new or amended complaints, cases being opened or re-opened, exhibits (except that in support of a motion), discovery, wills, documents which must be filed under oath, or any filings that require a filing fee or deposit.
4. It is the practice of this Court that any document filed by fax shall be accepted as a temporary original filing. The Deputy Clerk will file stamp and docket the facsimile copy as being a faxed copy, and proceed accordingly. No later than one (1) week after the fax filing, the person submitting that fax filing must provide the original copy bearing the original signature(s) to the Court. The Clerk will then file stamp the original relating back to the date upon which the facsimile copy was filed. Both the facsimile and original will be kept together within the Court file.
5. As recommended by the Rules of Superintendence, the person filing a document by fax shall provide therewith a cover page containing the following information: (See Appendix R)
 - (I) the name of the court;
 - (II) the title of the case;
 - (III) the case number;
 - (IV) the assigned judge;
 - (V) the title of the document being filed (e.g. Plaintiff Smith's Response to Defendants' Motion to Dismiss) ;
 - (VI) the date of transmission;
 - (VII) the transmitting fax number;
 - (VIII) an indication of the number of pages included in the transmission, including the cover page;
 - (IX) if the case number has not been assigned, state that fact on the cover page;
 - (X) the name, address, telephone number, fax number, Supreme Court registration number if applicable, and e-mail address of the person filing the fax document.
6. If a document is received by the Probate Court without the cover page information listed above, the Clerk may, at his/her discretion:
 - (I) enter the document in the Case Docket and file the document; or,
 - (II) deposit the document in a file of failed faxed documents with a notation of the reason for the failure; in this instance, the document shall not be considered filed with the Clerk.
 - (a) each clerk will maintain a separate file for failed faxes which is applicable to their caseload assignment.
7. The risks of transmitting a document by fax to the Probate/Juvenile Court shall be borne entirely by the sending party. Anyone using fax filing is urged to verify receipt of such filing

by the clerk. The Clerk may, but is not required to, inform the sending party of a failed fax filing.

8. Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the Court shall order the filing stricken.
9. The Court reserves the right to make exceptions on a case by case basis. The person requesting an exception shall inquire of the Court and state the reason prior to sending a document by facsimile.
10. Absolutely no filings will be accepted by the Probate/Juvenile Court by way of email, text, or any other computer or electrical transmission. No exceptions.

RULE 12. COURT COSTS

- A. The business of this Court shall be conducted on a cash basis by way of cash, money order, certified bank check, or attorney business checks. Costs are payable at the time of the initial filing; and thereafter, costs are payable to date at the time the account or certificate of termination is filed in an estate.
- B. In an adoption, costs shall be payable at the time of the initial filing. Any balance of costs due shall be paid when the final order of adoption is filed. The standard fee for the home assessment is included in the initial filing fee. Any additional fees / expenses, will be charged to the total costs. If a pre-finalization assessment is required, the additional assessor's fee will be added to the standard deposit and paid at the time of filing.
- C. In a guardianship or trust, costs shall be payable at the time of the initial filing. The costs paid at the time of the filing of a guardianship include the investigator's fees. Additional costs are due when filing the account in a guardianship or trust, upon the filing of a Guardian's Report, and/or upon the termination of the trust or guardianship.
- D. When an assessor / investigator must travel out of the county in the course of the home assessment / investigation, the amount of mileage calculated leaving from and returning to the courthouse at the rate/mile determined by the county shall be estimated and added to the standard deposit at the time of the initial filing in an adoption or guardianship.
- E. In a civil proceeding from an estate or guardianship, costs shall be payable at the time of the initial filing and any additional costs shall be due upon its termination.
- F. In all other proceedings, costs will be payable as determined by the Court. A list of the deposits and fees required is attached as Appendix C.
- G. The fee for dispute resolution as authorized by O.R.C. Sections 2101.163(A), (B), and (C) shall be Ten and 00/100 Dollars (\$10.00) per case filed, and Two Dollars (\$2.00) per marriage license application.
- H. All other costs not specified by this rule will be assessed by the Probate Court pursuant to O.R.C. Section 2101.16.

I. In the interest of economy for the taxpayers of Fayette County, any money held on deposit with this Court in an amount less than Five Dollars (\$5.00) shall be paid into the County General Fund rather than refunded by check to the depositor.

RULE 13. NOTICE OF PROBATE OF WILL (See O.R.C. §2107.19)

- A. Notice of admission of a will to probate shall be given within two (2) weeks of the admission to probate to comply with O.R.C. Section 2107.19.
- 1) A copy of the will shall be included in the notice to the legatees and devisees named in the will.
- B. The certificate shall be filed by the fiduciary, applicant for admission of the will to probate, applicant for release from administration, any other interested person, or the attorney.
- C. Notice shall be made according to Civil Rule 73(E).
- 1) Personal service
- 2) Residential service
- 3) Certified mail service (PREFERRED BY THE COURT)
- 4) Ordinary mail service if certified mail returned service returned "Refused" or "Unclaimed"
- 5) Notice by publication for three (3) consecutive weeks. The Court will need proof of publication.
- D. Notice shall be issued to the following:
- 1) Surviving spouse of the testator;
- 2) Legatees & devisees named in the will and;
- 3) All persons who would be entitled to inherit from the testator under O.R.C. Section 2105 if he/she had died intestate.
- E. Will contest deadline - Three (3) months after the filing of the certificate of notice.
- F. Fiduciary or his / her attorney MUST provide proof of service.
- G. The Court will continue to check the certificate of notice to be sure we have all of the notices or waivers that are required.
- H. Any will submitted to the Court shall be accompanied by Standard Probate Form 1.0 Surviving Spouse, Next of Kin, Legatees and Devisees. If additional next of kin are discovered, an amended Form 1.0 shall be filed with the Court.
- I. A will must be filed with the Court but need not be probated if there are no probate assets pursuant to O.R.C. Sections 2941.22, 2107.09 and 2107.10 (see Appendix E).

RULE 14. APPLICATION FOR LETTERS OF ADMINISTRATION

- A. Any person who files an Application for Letters of Administration shall also file with the Court the Fiduciary's Acceptance in accordance with O.R.C. §2109.02 (see Appendix B-1).

RULE 15. APPOINTMENT AND COMPENSATION OF APPRAISERS IN ESTATES AND LAND SALE PROCEEDINGS

- A. Fees for appraisals shall be computed on the full value of the property appraised and may be included in whole or in part in the estate tax returns.
- B. The Court will maintain a list of persons who the Court has pre-approved as suitable and disinterested appraisers. A person who is a resident of, or owns property or a business in Fayette County, may make application to have his/her name added to the list or the application may be proposed on his/her behalf. Such application should set forth his/her qualifications. If the Court determines that they are qualified, their names may be added to said list at such times as the Court periodically updates its list. Quality appraisal work is essential to the proper handling of the decedent's estates and the Court is determined to maintain current a list of active appraisers who are of the highest quality in the appraisal of the real estate in the various areas of the county and the appraisal of personal property, in whom the Court has the confidence to perform this important task. In any proceeding in which the fiduciary or attorney desires an appraiser for that one proceeding only, who is not on the approved list, the attorney or fiduciary may make application, which may be in letter form, for the appointment of such person in that proceeding only. Such application should set forth the reasons for such appointment and the qualifications of the proposed appraiser.

RULE 16. INVENTORY AND APPRAISAL / ESTATE TAX RETURNS

- A. All inventories filed with the Court shall be set for hearing. All inventories must contain a statement whether or not, insofar as it can be ascertained, the filing of an Ohio estate tax return will be required (O.R.C. §2115.09).
 - 1) If all waivers are filed with the inventory, and it is complete and correct, it will be set for a "No Show" hearing and approved on the next day the Court is in session. The attorney will not be required to attend.
 - 2) If all waivers are not filed with the inventory, or if it is incomplete or incorrect, a hearing will be set on the last Wednesday within the thirty (30) day time-frame.
 - 3) In the event the attorney anticipates that he/she will not be filing all of the waivers by the hearing date; or correcting or completing the inventory; then he/she shall send notice of the hearing to all the required parties.
- B. When an estate contains real estate, the Court may require counsel to examine record title to the real estate from the time it was acquired by the decedent. The attorney shall file a certification as to the condition of the title.
- C. Household goods of a total value of less than \$6,000.00 and motor vehicles whose value is listed in motor vehicle publications generally recognized as being reliable, will be considered assets the value of which is readily ascertainable and which need not be appraised.
- D. The name, address, and phone number of the appraiser shall be typed or printed on the return of any appraisal. The appraiser shall sign the certificate of appraiser located at the bottom of the Inventory and Appraisal form. If more than one appraiser is used, a separate certificate shall be

signed by each appraiser as to the items he/she appraised. Each appraisal must reflect an original signature.

- E. The inventory shall indicate whether each item listed was appraised by the appraiser or given a value amount by the fiduciary.
- F. An estate tax return must be filed in each estate along with the Certificate of Estate Tax Payment and Real Property Disclosure for dates of death on or after November 8, 1990 (Estate Tax Form 22). Part 1 of Estate Tax Form 22 must still be completed and filed when no Ohio estate return is required. Part 2 of this form should only be filed if an estate tax return is required.
- G. A tax may be levied against every person dying on or after July 1, 1968, and before January 1, 2013, who at the time of death was a resident of the state of Ohio. A person shall not be required to file an Ohio estate tax return if the decedent was a resident of this state and the value of the decedent's gross estate was twenty-five thousand dollars (\$25,000.00) or less in the case of a decedent dying on or after July 1, 1968, but before January 1, 2001; two hundred thousand dollars (\$200,000.00) or less in the case of a decedent dying on or after January 1, 2001, but before January 1, 2002; or three hundred thirty-eight thousand three hundred thirty-three dollars (\$338,333.00) or less in the case of a decedent dying on or after January 1, 2002. No Ohio estate tax return is required to be filed for estates of decedents whose date of death was on or after January 1, 2013. (See O.R.C. Sections 5731.02 and 5731.21)
- H. The Court will not release any real estate for transfer until after the estate tax return has been filed, if required, without written request and approval of the Court. In the event the real estate is located in more than one municipal corporation or township, the Court will need to know the tax valuation in each municipality or township. The Court will not release for transfer any property, real or personal, until after an inventory has been filed and approved.

RULE 17. CLAIMS FILED WITH THE COURT

- A. In any estate where a claim has been filed with the Court pursuant to O.R.C. §2117.06, the fiduciary shall file with the Court a copy of any rejection of claim. No estate shall be closed until ALL claims filed with the Court have been resolved.
- B. Whenever the Court requires a hearing on claims or the fiduciary requests a hearing on claims pursuant to O.R.C. §2117.17, the fiduciary shall file a schedule of all claims against the estate with the Court. The schedule of claims shall be filed with the fiduciary's application for hearing or within ten (10) days after the court notifies the fiduciary of a *sua sponte* hearing.

RULE 18. INSOLVENCY CLAIM

- A. When there are presented to an executor or administrator valid claims in excess of amounts of assets in his hands, he shall report in writing to the Court that the estate is insolvent, setting forth the facts relating to such insolvency.
- B. When an estate is insolvent, the executor, administrator or commissioner shall make and return to the Court a schedule of all claims against the estate he represents which have then been presented to him. When an estate is insolvent or when a claim has been rejected, then such schedule shall state the name and address of the claimant as it appears on his claim, the amount

claimed, the date of presentation of the claim, the class into which it falls for payment, the security held therefore, the date of maturity, if not yet due, whether allowed or rejected by the executor or administrator, and the date of such allowance or rejection.

- C. Upon filing the schedule of claims in accordance with O.R.C. §2117.25, and Rule 11, the executor or administrator shall, by applications and entry, set for hearing both the determination of insolvency and his application for an order in connection therewith (O.R.C. §2117.15)

RULE 19. FAMILY ALLOWANCE CLAIM

The application for the apportionment of a family allowance pursuant to O.R.C. §2106.13 shall be prepared and filed on the standard probate forms as provided by the Court. Any hearing on this application for family allowance shall be set for hearing with proper notice to all interested parties.

RULE 20. CERTIFICATES OF TRANSFER

- A. A certificate of transfer of real estate within an estate must have the description of the real estate approved by the Auditor of the County in which the real estate is located prior to filing with the Court. Any certificate which has not been approved by the Auditor will not be approved for transfer by the Court.
- B. All certificates of transfer shall indicate what share of the decedent's interest each beneficiary is receiving.

RULE 21. APPLICATION TO SELL PERSONAL PROPERTY

In addition to the requirements of the Ohio Revised Code, a Judgment Entry and Order of Sale shall include an adequate description of the property to be sold and shall provide that the sale has been at the best price obtainable in the current market or at a price fixed by the Court. Except for good cause shown, an Order of Sale shall not be granted prior to the approval of the inventory or inventory and appraisal. No sale shall be confirmed until an affidavit is filed as required by O.R.C. Sections 2109.45 and 2113.42.

RULE 22. ACCOUNTS AND REPORTS OF DISTRIBUTION

- A. The statutory time for the filing of an account shall be adhered to and notices and citations may be issued when filings are late, unless an application for extension of time for filing has been granted. (See Rule 26 herein).
- B. Each fiduciary's account shall be supported by vouchers. The vouchers shall be referenced to the account by number and description of the disbursement. Upon specific motion by the attorney or fiduciary stating that the cost of providing vouchers from a financial institution is prohibitive, the Court may waive this requirement. The motion must state the name of the financial institution and the cost of the vouchers. If the motion is granted, the Court will accept an account statement in lieu of these vouchers. Receipts signed by beneficiaries, and any vouchers not in the possession of a financial institution are still required.

- 1) Vouchers are not required in an estate with an attorney, except for vouchers of disbursements to minors or incompetents. Vouchers are still required in all guardianship and trust cases, with or without an attorney; and in estates with no attorney.
- C. The account shall also set forth at the end thereof:
- 1) A recapitulation of cash receipts, disbursements and bank deposits, representing cash on hand at the end of the accounting period.
 - 2) A statement of personal property on hand, other than cash, at the end of the accounting period, including a statement of any changes in the property during the period covered by the account.
 - 3) A statement identifying all real estate owned by the ward or real estate to which the fiduciary holds legal title for, or on behalf of, the ward or beneficiary.
 - 4) A statement of compensation paid to the fiduciary and his counsel.
- D. If land has been sold by the fiduciary during the accounting period, the account shall show the gross amount of the proceeds of sale and the distribution thereof, with the settlement statement or receipts of the land sale expenditures attached thereto.
- E. Guardian Accounts for more than one ward shall show each ward's proportionate share of the credits and debits, and shall separately state each ward's property at the end of the accounting period.
- F. Receipts for distributive shares signed by persons holding a power of attorney may be accepted, provided such power of attorney is recorded in the State of Ohio and a photocopy of the recorded power is attached to the account.
- G. All guardianship accounts shall be filed according to the statutory time period, except as otherwise ordered by the Court.
- H. Exhibiting Assets:
- 1) The Court may require that all assets be exhibited at the time of filing a partial account.
 - 2) Cash balances may be verified by exhibiting a bank statement, passbook, or a current certificate from the financial institution in which the funds are deposited certifying the amount of funds on deposit to the credit of the fiduciary. Assets held in a safe deposit box of a fiduciary, or by a surety company on current inventory thereof, shall be certified by the manager of the safe deposit box department of the financial institution leasing the safe deposit box or by a qualified officer of the surety company if the assets are held by a surety. If the assets are held by a bank, trust company, brokerage firm, or other financial institution, such exhibition shall be made by way of Bank Certificate (attached as Appendix D) as to the assets so held.
- I. A final and distributive account shall not be approved until all court costs have been paid.

- J. Report of Distribution, Fayette County Form 5.9 (see Appendix D-1), shall be filed in all Release from Administration cases, except for summary releases.
- K. Standard Probate Form 13.3, Entry Settling Account and Discharging Fiduciary, shall be filed with all accounts, whether partial or final, in all Estate, Guardianship and/or Trust cases.

RULE 23. CORPORATE FIDUCIARIES

Corporate fiduciaries MUST complete and file Form 13.0 with every account showing the recapitulation amounts of the account being filed.

RULE 24. ACCEPTABLE VOUCHERS

- A. Acceptable vouchers are: "paid" bills, cancelled checks with the endorsement of the beneficiary on the back, receipts signed by the beneficiary, or copies of checks provided by a bank. A copy of the cashier's check or money order is not an acceptable voucher. No copies of vouchers shall be accepted unless upon written application to the Court.
- B. Account vouchers will be returned after Form 13.3 has been signed and approved. The clerk will place the vouchers in the submitting attorney's box in the Clerk's Office unless space does not permit, in which case a notice will be placed in the box that the vouchers are available to be retrieved. The vouchers will be returned by mail only if a self-addressed envelope with adequate postage has been provided for that purpose. The Court will retain the vouchers for thirty (30) days after the available date, and if not retrieved within that time, they will be discarded.

RULE 25. TAX DETERMINATION

- A. Where there has been a Federal Estate Tax determination, the closing letter shall be filed as soon as is practicable.

RULE 26. DELINQUENT ACCOUNTS

- A. Once a month the Court will try to provide a reminder to the attorney which lists the inventories and accounts which are due or will be due in the next month.
- B. A notice will be sent to the attorney and the fiduciary for overdue inventories and accounts approximately (1) month after the due date.
- C. When the inventory or account is two (2) months overdue, a hearing will be set with a citation issued to the attorney and fiduciary requiring an appearance by both to show why no filing has been made with the Court. In the event the inventory or account are completed or corrected prior to the hearing date, the hearing will be canceled.
- D. If it is anticipated that an Inventory, Account, Appraisal, Report of Distribution, or Certificate of Termination will not be filed on time, an "Application to Extend Time" must be filed with the Court prior to the due date (see Fayette County form Appendix F). The Court may, at its discretion, set said application for hearing before the Court.

- E. If a final distributive account cannot be completed within the requisite six (6) months after the date of death, an Application to Extend Administration, Standard Form 13.8, must be filed. If the extension is granted, and the account is not filed by the extended date, no notice will be given, but a citation will be issued.
- F. In the event an inventory or account is filed that is either incomplete or incorrect, a hearing will be set within one (1) month from the date of filing. In the case of an account that is set for hearing, the attorney must notify all appropriate parties to appear for said hearing, and show cause why the account has not been filed or the assets exhibited. In the event the inventory or account are completed or corrected prior to the hearing date, the hearing will be canceled. Proof of service must be filed with the Court.

RULE 27. NOTICE ON ACCOUNTS

- A. With all estate accounts, a Certificate of Service of Notice of Hearing (Standard Form 2.4) on the account IS REQUIRED to be filed with the account. The Court does not require that you file the waivers / notices of hearing, except pursuant to Sections B and C of this rule. However, if you wish for them to be part of the Court file, these filings will be accepted. The attorneys / fiduciaries are strongly encouraged to get the waivers or send notices by certified mail in order to protect the real estate and achieve finality in the estate. If the Certificate of Service of Notice of hearing is not filed with the Court by the initial hearing date, the account will be set for a full hearing.
- B. In an intestate estate, the attorney or fiduciary must send notice of the hearing on the final account to all heirs by certified mail. Proof of service must be filed with the Court.
- C. In a testate estate, notice of the hearing on the final account must be sent by certified mail to all residuary beneficiaries and/or to those to whom specific bequests were made, but were not distributed for any reason, including insolvency or delivery prior to the death of the decedent. Proof of service must be filed with the Court.
- D. The fiduciary in ALL charitable trusts will file an account biannually by February 15th of each even numbered year unless otherwise ordered by the Court.
 - 1) The Probate Court will set aside a hearing date for all charitable trust accounts to be reviewed by the Court. The hearings on all trusts will be heard on the same date in mid-May, biannually of each even numbered year, and will be open to the public. The Probate Court will publish the notice of said trust hearing date in the local newspaper one time and bear the costs of said publishing.
- E. No notices will be required on any guardianship account unless otherwise directed by the Court.
- F. The Court will schedule a hearing on all accounts on or about, but no earlier than, thirty (30) days after the date of filing. In the event that all necessary parties have filed a waiver of the account, then a “no-show” hearing will be set wherein the parties will not be required to appear.

RULE 28. CERTIFICATE OF TERMINATION

No partial or final accounting is required to be filed if the sole beneficiary or heir is also the sole fiduciary. The fiduciary shall be discharged and the estate completed after filing a certificate of termination with the Court within thirty (30) days after completing the administration of the estate, pursuant to O.R.C. §2109.301(B)(2).

RULE 29. LAND SALES (O.R.C. §2127)

- A. In cases involving public sale, the complainant shall, prior to the issuance of an order of sale, file with the Court evidence of title showing the record condition of the title to the premises described in the complaint, prepared and extended by a reasonable abstract or title company or an attorney's certificate to a date subsequent to the date in which the complaint was filed. Said evidence of the title shall cover a period of time equal to or exceeding forty (40) years.
- B. In all cases where a public sale is authorized, complainant shall post a sign in a conspicuous place on the premises to be sold stating that the property will be sold at public sale and giving the time and place thereof. The complainant shall also give notice to all defendants of the time and place of sale at least three (3) weeks prior to the date of sale in the method provided by Civil Rule 4.1. Prior to the sale, the complainant shall file an affidavit stating: (1) that a sign was placed on the property; (2) that the required notice was given to the defendants at least three (3) weeks prior to the date of sale; and (3) that the notice conformed to Civil Rule 4.1.
- C. When an order of private sale is requested, except those cases where the consent of all necessary parties to the proceedings has been filed or cases involving the sale of fractional interests, the complainant shall be required, by affidavit or testimony under oath, to establish: (1) whether or not the sale has been the subject of prior negotiations; (2) the amount offered for the sale of the property; (3) the appraised value in the land sale proceedings; (4) the identity of the prospective purchaser and counsel, if any; (5) whether or not the proposed transaction will be, or has already been, placed in escrow; and (6) the identity of the escrow agent.
- D. The Court may, at its discretion, appoint a disinterested person, answerable to the Court, who shall investigate the circumstances surrounding the proposed transaction, view the property, ascertain whether the proposed sale is justified, and report his findings in writing. The report shall be a part of the record. The compensation for the person performing these services shall be fixed by the Court, according to the circumstances of each case, and shall be taxed as costs.
- E. In all land sale proceedings involving the sale of real estate owned by the ward under guardianship, service of process on the ward is required and may not be waived.

RULE 30. GUARDIANSHIPS

- A. For applications to probate court for the appointment of a guardian:
 - 1. All applications shall be captioned in the name of the proposed ward.
 - 2. All applicants are required to submit the following:
 - a. A criminal BCI background check through the Fayette County Sheriff's Office. Cost of said background check will be reimbursed by the Indigent Guardianship Fund with receipt for the background check being provided to the court.

(see Appendices J and K, respectively). Said Affidavit of Indigency shall also be filed for the purpose of Court appointment of an attorney to represent an indigent ward, when requested by the ward. Fayette County Form Entry Appointing Counsel shall also be completed and presented to the Court for signature (see attached Appendix L).

- K. In regard to a filing for emergency guardianship, the applicant shall use Fayette County forms, "Application for Appointment of Emergency Guardian or Issuance of Emergency Order", "Affidavit in Support of Application for Emergency Guardianship", "Judgment Entry - Appointment of Emergency Guardian For Alleged Incompetent Person", "Letters of Emergency Guardianship", and "Notice to Serve" (see Appendices M through P, respectively). The "Application for Appointment of Emergency Guardian or Issuance of Emergency Order" shall state in detail, the particular circumstances which constitute the medical or financial emergency. Standard Forms 17.1 Statement of Expert Evaluation and 17.1A Supplement for Emergency Guardianship of Person are also required and must include detailed particular circumstances which constitute the emergency, if the basis thereof is medical. The Court may require additional filings on a case by case basis. If a regular incompetent guardianship is filed after the emergency guardianship is either granted or denied, the Court may require an additional Statement of Expert Evaluation.
- L. When a guardianship should terminate due to a minor ward reaching the age of majority, or upon the death of an incompetent or minor ward, the guardian shall file an Application to Terminate the Guardianship with attached Entry (Standard Form 27.9).
- M. In addition to Standard Probate Form 15.9-Oath of Guardian, the guardian of an adult ward shall also file the Fayette County form, Addendum to Oath of Guardian (Appendix Q).
- N. If the guardian is appointed to monitor ten (10) or more wards in the State of Ohio, then the guardian is required to submit to the court an annual fee schedule that differentiates guardianship services fees from legal or other direct services (see Sup. Rule 66.05(B)(3)).
- O. Comments or Complaints Regarding Guardian Performance:

The Court will address any comments or complaints in regard to the performance of a guardian. Said comments or complaints may be presented to the court by way of the deputy probate clerk whom shall process in the following manner (*Pursuant to Sup. R. 66.03 effective 06/01/2015*):

The deputy probate clerk shall:

- 1) Accept a comment or complaint in writing, file stamp and docket said comment or complaint;
 - a. A filing must be type written, reference the correct case caption and case number, the name/address/phone number of the complainant, and provide a detailed account specific to the concerns regarding the guardian. Complainant is encouraged to attach supporting documentation to the comment or complaint.
- 2) Provide a copy of said filing to the guardian who is subject of the comment or complaint either in person or by way of ordinary U.S. mail;
- 3) Present the court's file together with the original complaint to the Judge for consideration and further action;

- 4) Prepare an entry regarding the Judge's opinion or plan of action, OR set the matter for hearing before the Court, as per the Judge's direction;
- 5) Notify both the person making the comment or complaint, and the guardian, of the disposition of the comment or complaint, or with a notice of hearing if necessary.
 - a. The original file-stamped comment and complaint will be kept in the guardianship file, and a copy will be kept under a separate file containing all complaints, and maintained by the probate clerk.
- 6) The Court will not accept an oral, telephonic, emailed or anonymous complaint.

RULE 31. ESTATES OF MINORS & PROPOSED INCOMPETENTS OF TWENTY-FIVE THOUSAND DOLLARS OR LESS

- A. An application relating to a minor shall be submitted by the parent or parents or by the person having custody of the minor and shall be captioned in the name of the minor.
- B. A parent who is not the applicant as well as a minor fourteen (14) years of age or over, shall consent in writing to the application. If either or both parents are deceased, or their whereabouts unknown, such fact shall be noted in the application. If parents are divorced or separated, and custody has been awarded to the applicant, the application shall so state.
- C. Only one application shall be filed on behalf of all minors of the same parents. The application shall indicate the amount of money or property which each minor is entitled to and to whom such money or property shall be paid or delivered.
- D. The Court will keep separate files for each child.
- E. All filings subsequent to the application will need to be made in duplicate form (or more if there are more than two children).
- F. The Court will only require one deposit made for the applications and all further costs incurred will be charged to only one case.
- G. Applications on behalf of incompetents will not be entertained until such time as a Statement of Expert Evaluation has been completed by a physician.
- H. If no guardian has been appointed for either the receipt of an estate of a minor or the receipt of a settlement for injury to a minor, the attorney representing the interests of the minor shall prepare an entry: (1) ordering the deposit of the funds in a Fayette County federally insured financial institution in the name of the minor; (2) impounding both the principal and interest; and (3) releasing the funds to the minor at the age of majority or upon further order of the Court. The entry shall be presented at the time the entry dispensing with appointment of a guardian or approving settlement is approved. The attorney shall further be responsible for depositing the funds and for providing the financial institution with a copy of the entry, both within seven (7) days of the entry's approval. The attorney shall obtain a receipt from the institution and deposit it with the Court, forthwith.
 1. The Court will hold a hearing on all applications filed for the appointment of a guardian.

RULE 32. SETTLEMENT OF CLAIMS FOR INJURIES TO MINORS (O.R.C. §2111.18)

- A. In an application by a guardian for approval of a settlement of an action for personal injuries to his ward, irrespective of amount, the parent or parents of such ward, if any, shall be entitled to notice of the hearing of such application, pursuant to the Civil Rules. The notice may be waived in writing.
- B. The application shall be accompanied by a current statement of the examining physician in respect to the injuries sustained, the extent of recovery thereof, and the physician's prognosis.
- C. The Court will hold a hearing on all applications for minor's settlement claims.
- D. The presence of the injured minor and parent may be required at the hearing on all applications.
- E. The application shall state what additional consideration, if any, is being paid to persons other than the minor.
- F. The application shall state what arrangement, if any, has been made with respect to counsel fees, which fees shall be subject to review by the Court.
- G. A recommended distribution of the gross proceeds shall be filed with the Court.

RULE 33. SETTLEMENT OF CLAIMS FOR INJURIES TO MINORS UNDER TWENTY-FIVE THOUSAND DOLLARS

- A. Applications involving the payment of Twenty-Five Thousand Dollars (\$25,000.00) or less shall be by the parent or parents or by the person having custody of the minor, and shall be captioned in the name of the minor. If either or both parents are deceased, or their whereabouts unknown, such facts shall be noted in the caption. If the parents are divorced or separated, and custody has been awarded to the applicant, the application shall so state. A parent, who is not the applicant, as well as the minor if fourteen (14) years of age or over, must consent to the application in writing.
- B. The application shall be accompanied by a current statement of the examining physician in respect to the injuries sustained, the extent of recovery thereof, and the physician's prognosis.
- C. The Court shall hold a hearing on all applications involving minor's settlement claims.
- D. The presence of the injured minor and the parent may be required at the hearing on all applications.
- E. The application shall state what additional consideration, if any, is being paid to persons other than the minor.
- F. The application shall state what arrangements if any, have been made with respect to counsel fees, which fees shall be subject to review by the Court.
- G. A recommended distribution of the gross proceeds shall be filed with the Court.
- H. The net proceeds payable to the minor shall be deposited as outlined by law.

RULE 34. SETTLEMENT OF CLAIMS FOR WRONGFUL DEATH

- A. Application for approval of settlement of a claim for wrongful death shall contain a statement of facts, including the amount to be received in settlement of the claim and the amount, if any, to be received in the settlement of the right of action for conscious pain and suffering. The statement shall include the proposed allocation of the compensation to be received in settlement of the action for wrongful death.
- B. Unless waived by all interested parties, the application and proposed allocation shall be set for hearing and written notice shall be given to all interested parties.
- C. The application shall state what arrangements have been made with respect to counsel fees, which fees shall be subject to review by the Court.
- D. Guardians ad Litem may be required for minor beneficiaries.

RULE 35. COUNSEL FEES IN CONNECTION WITH SETTLEMENT OF CLAIMS FOR WRONGFUL DEATH, CONSCIOUS PAIN AND SUFFERING CLAIMS FOR PERSONAL INJURIES TO PERSONS UNDER GUARDIANSHIP, AND SETTLEMENT OF CLAIMS FOR PERSONAL INJURIES TO MINORS, UNDER O.R.C. §2118.18.

When representation is on a contingent fee basis, an application or authority to enter into the agreement shall be filed with the Court for approval. After approval, a signed copy of the agreement shall be filed with the Court.

RULE 36. COUNSEL FEES

- A. Attorney fees relative to all matters shall be governed by Rule 1.5 of the Ohio Rules of Professional Conduct (see Appendix S).
- B. Attorney fees for the administration of estates shall not be paid until the final account is prepared for filing unless otherwise approved by the Court upon application and for good cause shown.
- C. Attorney fees may be allowed if there is a written application which sets forth the amount requested and will be awarded only after proper hearing.
- D. The Court may set a hearing on any application for allowance of attorney fees regardless of the fact that consent of the beneficiaries have been given.
- E. When the fiduciary or his firm is also the attorney for the estate and the fiduciary's commission is being claimed, the Court shall set a hearing on the application for allowance of attorney fees; unless shown otherwise, the Court shall allow all of one fee (fiduciary or attorney) and one-half of the other. (See Appendix T, Fee Computation Sheet, reflecting statutory fiduciary fee calculation).
- F. Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing the accounts required by O.R.C. §2109.30.

- G. If a hearing is scheduled on an application for the allowance of attorney fees, notice shall be given to all parties affected by the payment of fees, unless otherwise ordered by the Court. The burden is upon the attorney to introduce into the record sufficient evidence of the services rendered to justify the reasonableness of the fees requested.
- H. An application shall be filed for the allowance of counsel fees for services rendered to a guardian, trustee, or other fiduciary. The application may be filed by the fiduciary or attorney. The application shall set forth a statement of the services rendered and amount claimed in conformity with Paragraph A of this rule. All services rendered shall be broken down to show specifically who provided the services (ie: attorney, paralegal, secretary, etc.).
- I. The Court does not have, nor is there recognized, any minimum or maximum fees which will automatically be approved by the Court. Prior to a fiduciary entering into a contingent fee contract with an attorney for services, an application for authority to enter into the agreement shall be filed with the Court for approval. After approval, a signed copy of any such contract shall be filed with the Court.
- J. Attorney fees for services to a decedent's estate will be approved by the Court when it appears to the Court that the fee has been determined by the standards set forth in Rule 1.5 of the Ohio Rules of Professional Conduct (see Appendix S).
- K. All fees charged by an attorney representing a fiduciary in matters before this Court, including but not limited to work on decedents' estates, guardianships and trusts, must be disclosed on the fiduciary's account, regardless of the source of payment. If the source of payment is other than the fiduciary, the source of payment must be identified on the account. For the purpose of this rule, fiduciary includes commissioners and applicants for release from administration. If no account is to be filed, the payment must be disclosed on a consent to fees signed by the payor of the fees. Attorneys are expected to be familiar with Prof. Cond. Rule 1.5 that governs the reasonableness of fees. Upon review of the records, the Court may set the fees for hearing, regardless of the submission of consent(s) to fees.
- L. In guardianships and trusts other than Living Trusts, because of the wide variation of services typically required, the Court expects that the attorney fees will be determined by application and entry.
- M. Whenever an application for determination of fees is filed, such application shall set forth, in reasonable detail, the services provided. The Court will consider the normal factors for determining an attorney fee and the application should address those factors.
- N. Hearings upon applications for attorney fees shall be at the discretion of the Court or at the written request of any interested party.
- O. A minimum fee of \$250.00 may be charged for the preparation of the Federal Tax Form 1041.

RULE 37. EXECUTOR'S AND ADMINISTRATOR'S COMMISSION

- A. Where there is a claim for extraordinary services, an application shall be filed setting forth an itemized statement of the services rendered. The Court may require the application to be set for

hearing with notice given to parties affected by the payment of fees in accordance with Civil Rule 4.1.

- B. Except for good cause shown, commissions will not be allowed if there is a delinquency in the filing of an account.
- C. The commissions of co-executors or co-administrators in the aggregate shall not exceed the commissions which would have been allowed to one executor or administrator acting alone except where the instrument under which the co-executors serve provides otherwise.
- D. Where counsel fees of extraordinary nature have been awarded for services to the estate which normally would have been performed by the executor or administrator, the said executor's or administrator's fee shall be reduced by the amount awarded to counsel for those services rendered, unless, for good cause shown, the Court finds that such a ruling would be unfair.
- E. When the fiduciary or his firm is also the attorney for the estate and the fiduciary's commission is being claimed, the Court shall set a hearing on the application for allowance of attorney fees. Unless shown, otherwise, the Court shall allow all of one fee (fiduciary or attorney) and one-half of the other.

RULE 38. GUARDIAN'S COMPENSATION

- A. Reasonable compensation for services will be allowed by the Court based upon the time spent on the guardianship. As a guide, the Court would consider a request of 5% of the annual income of the assets of the guardianship. If a request of more than 5% is made, time records shall be submitted to the Court with the request for fees.
- B. Guardian's fees and attorney's fees in a guardianship case, shall be an equitable charge on the guardianship assets.

RULE 39. TRUSTEE'S COMPENSATION

Reasonable compensation for services will be allowed by the Court based upon the time spent executing the trust. As a guide, the Court would consider a request of 5% of the annual income of the assets of the trust. If a request of more than five percent (5%) is made, time records shall be submitted to the Court with the request for fees.

RULE 40. RELIEVING ESTATE FROM ADMINISTRATION

- A. When an application to relieve an estate from administration has been filed, at least five (5) day notice in writing of the hearing on the application shall be given to the surviving spouse and the heirs at law unless said notices are waived or found unnecessary. Three (3) week notice shall also be given to all interested parties by publication, unless waived or found unnecessary.
 - 1) In cases of estates entitled to be relieved from administration, where there is a will, such will shall be presented for probate. If the entire estate will be consumed in the payment of debts, costs and applicable statutory allowances, or if the will distributes the net of Descent and Distribution, and there is no real estate involved, then the will may be filed only and need not be admitted to probate. If the will is admitted to probate, an

application for an order relieving the estate from administration may be filed in lieu of the appointment of the executor named in the will. If probate of the will is denied, an application for an order relieving the estate from administration may be granted and distribution made under the laws of intestate succession. Where no heirs are known to the applicant, the Court shall set the application for hearing not less than three (3) weeks from the dates of such filing and shall require publication.

- 2) Where administration of the estate has commenced, the entry relieving the estate from administration shall contain the words: "The filing of a final account is dispensed with and the fiduciary and surety, if any, are hereby discharged."

- B. Commissioners' compensation shall be set by the Court on a case by case basis upon application to the Court.

RULE 41. FAYETTE COUNTY SHORT FORM RELEASE FROM ADMINISTRATION

- A. When the value of a decedent's assets are One Thousand Dollars (\$1,000.00) or less and there is no surviving spouse; or Six Thousand Dollars (\$6,000.00) or less with a surviving spouse or surviving minor child(ren), a Short Form Release may be filed with the Court.
- B. The types of assets may include only bank accounts, titled vehicles, and small amount of household goods. They may not include stocks and/or bonds, or household goods of sufficient amount to sell at private or public sale.
- C. Required filings are: Application For Short Form Release and Order, (see Appendices T-1, T-2); Last Will and Testament (if decedent died testate); Standard Probate Form 1.0; and, either a copy of a paid funeral bill or a signed agreement of the funeral home to accept later payment. A Report of Distribution (see Appendix D-1) is required if all of the assets are not to be distributed to the surviving spouse, who is also the applicant.
- D. The order will not be signed until all of these forms are filed, complete and correct.
- E. Costs for the Short Form Release are \$73.00, and are due upon filing.
- F. This procedure is intended to be a speedy, uncomplicated process to assist the public in those situations where a full estate or release from administration are not needed. However, the Court reserves the right to require additional filings or set hearings if it deems they are necessary to assure proper collection of assets, payment of obligations, and distribution of the decedent's assets. This procedure is not meant to replace the statutory Summary Release From Administration, but is intended for situations that do not necessarily meet the criteria of the Summary Release From Administration.

RULE 42. CASE MANAGEMENT AND PRETRIAL PROCEDURE

- A. For the purpose of insuring the readiness of civil cases, the Probate Division may require pretrial hearings.
- B. At the pretrial, decisions shall be made and all counsel attending must have full authority to enter into a binding final pretrial order;

- 1) The Court will rule on all pretrial motions.
- 2) Briefs on all legal issues shall be submitted.
- 3) Proposed jury instructions shall be submitted.
- 4) Proposed jury interrogatories shall be submitted.
- 5) Clients shall be present.
- 6) No motions shall be heard after the final pretrial without leave of Court and without good cause being shown.

C. The trial date shall not be changed nor shall the trial be continued without Order of the Court and after showing of good cause.

D. LAND SALES

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

- 1) The following decisions shall be made at the pretrial conference and all counsel attending must have full authority and enter into a binding pretrial order.
 - a. The attorney of record and fiduciary must attend the pretrial conference.
 - b. A written status report shall be filed with the Court no later than seven (7) days prior to the pretrial conference.
 - c. The status report shall address the issues as to the efforts being made to sell the real estate and when the case will be closed.

E. DECEDENT'S ESTATES

- 1) The statutory time for filing of an account (O.R.C. Section 2109.301) shall be adhered to and the citation procedure shall be utilized if necessary to gain compliance.
- 2) All decedent's estates, which are current as to filed accounts, that remain open after a period of one (1) year and nine (9) months shall be subject to a status conference. The fiduciary and the attorney shall be present and a written status report shall be submitted to the Court at the time of the status conference.

F. GUARDIANSHIPS

- 1) Adequate statutory provisions (O.R.C. Section 2109.302) exist to control timeliness of filings, however, each case shall be reviewed bi-annually when the account is filed.

G. TRUSTS

- 1) Adequate statutory provisions (O.R.C. Section 2109.303) exist to control timeliness of filings, however, each case shall be reviewed bi-annually when the account is filed. (See Rule 27D)

RULE 43. ADOPTIONS

- A. All hearings regarding pre-adoption placement of children, or an Interlocutory Order shall be set before the Court. Hearings are required on all Final Decrees of Adoption, except those cases in which an Interlocutory Order has been issued, unless otherwise ordered by the Court. Said hearings shall be set before the Probate Judge.
- B. Hearings regarding pre-adoption placement of children are required prior to the filing of all Petitions for Adoption except in step-parent adoptions, adoptions by natural grandparents, and placements made by agencies authorized by law. An Affidavit in Compliance shall be required to be filed on all adoptions involving minors (See Appendix Z per O.R.C. §3109.27).
- C. The Court requires consent to the adoption be signed and filed by the natural parent who is married to the petitioner in a step-parent adoption.
- D. In all adoptions, married petitioners must be married for not less than one (1) year prior to finalization. The Petition must be filed in a timely manner, so that the final hearing, following the Court's normal scheduling procedure, will not occur before the petitioners have been married for one (1) year. If the petitioners request an Interlocutory Order of Adoption prior to the one (1) year anniversary of the marriage, a Pre-Finalization assessment must be done, at the expense of the petitioner(s), even in step-parent adoptions.
- E. All adoption assessment reports shall be filed using ODHS Form 1698.
- F. A full accounting of all disbursements made in connection with the adoption must be filed with the Court before the petition is heard in all adoptions, except for step-parent adoptions.
- G. Due to the complexity of the statutory requirements in an adoption, and in order to fully protect the underlying purpose of adoption, to-wit: permanence for the child, the Court will not accept pro se filings, and requires that the petitioner be represented by counsel.

RULE 44. JURY MANAGEMENT PLAN

- A. Due to the fact that this Court does not conduct jury trials on a regular basis in any one year, the General Division's jury plan will be followed as needed.
- B. One hundred (100) names shall be drawn every four (4) months listing prospective jurors for the Court. The Court shall summon jurors on a case by case basis. If a trial by jury is requested of the Court, a certain number of jurors as determined by the Court will be sent questionnaires to be filled out and returned to the Court to assist in the selection process.
- C. Jurors shall be paid according to the statute.

RULE 45. EXCEPTION TO THE RULES

Upon application, and for good cause shown, the Probate Division of the Court of Common Pleas may grant exception to Sup. R. 16.1 through 64.1.

RULE 46. COMPLIANCE

Failure to comply with these rules may result in such sanctions as the Probate Court may direct.

RULE 47. COURT SECURITY

(not public record - filed with The Supreme Court of Ohio, Administrative Director's Office.)

RULE 48. MEDIATION

- A. After the filing of a matter over which this Court has jurisdiction, the Court, on its own motion or the motion of any of the parties, may refer disputed issues to mediation.
- B. The mediation sessions may be held until all referred issues are resolved in a manner acceptable to the disputing parties, or until the mediator determines that continued mediation would not be productive.
- C. The Court may order parties to participate in or return to mediation at any time.
- D. Statements made during a mediation session shall be considered compromise negotiations and are not admissible as evidence pursuant to Evidence Rule 408. Mediators will not be permitted to testify regarding the substance of the mediation, including but not limited to, cooperation or non-cooperation of the parties.
- F. Referral to mediation by the Court shall be by order of the Court in which the Court appoints a specific mediator, or gives a list of qualified mediators from whom the parties may choose.
- E. The Probate Court will bear the cost of one mediation session. Any subsequent mediation sessions will be charged to the parties at the Court contract rate.

RULE 49. MEDICAID ESTATE RECOVERY PROGRAM

The attorney or fiduciary in an estate shall be responsible for sending the Notice to Administrator of Estate Recovery Program pursuant to statute. The Court has a Fayette County form (see Appendix U) until such time as a standard form is adopted and promulgated.

RULE 50. TRUSTS

Fayette County Probate Form “Trust Beneficiaries”, attached hereto as Appendix V, shall be filed when opening a new trust case.

RULE 51. DEPOSIT OF WILL (O.R.C. §2107.07)

- A. In addition to the Standard Probate forms, the Court adopts Fayette County Probate Forms “Attachment to Certificate of Deposit of Will” (see Appendix W) and “Receipt of Will on Deposit” (see Appendix X).
- B. The Court requires that the Testator, or person depositing the Will on behalf of the Testator, complete and file the Attachment to the Certificate of Deposit of Will (see Appendix W).

- C. When a Will on Deposit is being retrieved by the recipient, said recipient shall sign a Receipt of Will on Deposit (Appendix X) which shall be filed with the Court. The Court will inquire if it may open and copy the Will to be kept on file until the original is filed in the court of proper jurisdiction. The recipient shall sign to designate on the receipt whether permission is granted or refused. If permission is refused, the Deputy Clerk will copy the outside of the envelope, and keep the photocopy on file.

RULE 52. COURT RECORD, RECORDING OF PROCEEDINGS, AND TRANSCRIPTIONS

The Probate and Juvenile Court defines the requirements of the Court with regard to the record of court proceedings and transcriptions of the court record as follows:

- A. The Court shall ensure that all court proceedings are recorded by a reliable method, which may include a stenographic/shorthand reporter, audio-recording device, and/or video-recording device. The selection of the method in each case is at the discretion of the Court.
- B. A transcript prepared in regard to an appeal of any Probate or Juvenile Court case to the Court of Appeals shall be prepared in accordance with Rule 9 of the Ohio Rules of Appellate Procedure.
- C. A transcript of any other court proceeding in the Probate or Juvenile Court which is not before the Court of Appeals may be requested by any party to the case, or their legal representative, by filing a written order for transcript with the deputy clerk together with a certificate of service upon the opposing party or parties in the case.
 - 1) Said order shall address a specific case caption, and shall cite a specific date(s) or description of which hearing is to be typed, in part or in its entirety.
 - 2) The transcript shall be an accurate reflection of the verbal record of the hearing only. Any documents or evidence entered as exhibits during the court hearing should already be available to the party through discovery and will not be included as an attachment to the transcript.
 - 3) The body format of the transcript shall be consistent with Rule 9 of the Ohio Rules of Appellate Procedure.
 - 4) All costs to prepare a transcript shall be the obligation of the requesting party at the current rate ordered by the court. A deposit payable to the transcriptionist representing approximately half or all of the estimated cost may be required, at the discretion of the transcriptionist.
 - 5) The transcript shall be prepared in a timely manner.
 - 6) The original copy will be provided to the requester directly by the transcriptionist upon receipt of the full balance owed.
- D. The transcriber of any court proceedings must be assigned and approved by the trial court. A party may move to appoint a particular transcriber or the trial court may appoint a transcriber *sua sponte*; in either case, the selection of the transcriber is within the sound discretion of the trial court, so long as the trial court has a reasonable basis for determining that the transcriber has the necessary qualifications and training to produce a reliable transcript that reflects a true, accurate, and certifiable record of the Court in a timely manner.
- E. Correction or modification of the record: if any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by the

trial court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated, the parties by stipulation, or the trial court may direct that omission or misstatement be corrected, and if necessary that a supplemental record be certified, filed, and transmitted. All other questions as to the form and content of the record shall be presented to the court of appeals.

RULE 53. NOTICE BY PUBLICATION

- A. In accordance with Civil Rule 4.4, publication may be perfected by posting and mailing or by newspaper publication.
- B. When publication is not perfected by mailing, the Clerk shall cause notices to be posted in a conspicuous place in the Fayette County Courthouse, the Carnegie Public Library in Washington Court House, and the Fayette County Department of Job and Family Services. Fayette County forms Affidavit of Service, Notice by Publication, and Entry of Posting, shall be used for publication in this manner (see Appendices Y-1, Y-2, and Y-3, respectively).

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**IN THE COMMON PLEAS COURT OF FAYETTE COUNTY, OHIO
PROBATE DIVISION**

CASE NO. _____

Plaintiff/Petitioner

vs./and

COVER PAGE

Defendant/Petitioner

In the Matter Of:

Obligor's Name: _____

Obligor's DOB: _____

Obligor's SSN: _____

IN THE PROBATE COURT OF FAYETTE COUNTY, OHIO

IN THE MATTER OF THE:

- INTER VIVOS TRUST SPECIAL NEEDS TRUST
 TESTAMENTARY TRUST WRONGFUL DEATH TRUST
 ESTATE

OF _____, DECEASED

CASE NO. _____

FIDUCIARY'S ACCEPTANCE
[O.R.C. §2109.02]

I, the undersigned, hereby accept the duties which are required of me by law, and such additional duties as are ordered by the Court. As the ____ Executor, ____ Administrator, or ____ Trustee of the estate, I will:

- 1) Prepare and file an inventory of the real and personal assets of the estate or trust within three (3) months after appointment, or such time as extended by the Court;
- 2) Deposit funds which come into my hands in a lawful depository located within this state. A trust checking account must provide canceled checks which must be displayed when filing accounts. An estate checking account pursuant to L.R. 24(C);
- 3) Keep funds in separate estate or trust accounts at all times during the administration of the estate or trust;
- 4) Invest all funds in a lawful manner;
- 5) Pay and disclose in the estate or trust account all valid debts unless otherwise determined by law;
- 6) Timely pay appraiser fee and bond premium, if any;
- 7) As Executor, prepare and file the final account within six (6) months of my appointment or such other time as extended by the Court; or, as Trustee, make and file a first account within one (1) year following my appointment or such time as ordered by the Court with subsequent accounts filed on a biennial basis and a final account due within thirty (30) days after the trusteeship is terminated;
- 8) Timely file all tax documents as required by law;
- 9) Immediately notify the Probate Court if I change my name, address, and/or contact telephone number;
- 10) Obey all Orders of the Court.

Pursuant to O.R.C. §2109.02, I acknowledge that I am subject to removal as fiduciary for failure to perform the fiduciary duties, and that as fiduciary, I am subject to possible penalties for conversion of property that I hold as fiduciary.

Date

Executor / Administrator / Trustee

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

IN THE ESTATE OF: _____, Deceased
CASE NO. _____

NOTICE OF CHANGE OF ADDRESS
[Per Sup. Rule 57(C)]

Comes now the Fiduciary in the above captioned matter and notifies the Probate Court of the following:

Fiduciary:

New Address: _____

Old Address: _____

New Phone: _____

Email Address: _____

Signature of Fiduciary

Date: _____, 20____

**FAYETTE COUNTY COMMON PLEAS COURT
PROBATE DEPOSITS AND COURT COSTS**

DEPOSITS:

Estate (ORC §2101.16E)	\$125.00
Guardianship	
Incompetent (includes \$100 Investigator fee)	\$245.00
Minor (includes \$175 Investigator fee)	\$300.00
Investigator fee for each additional minor child	\$125.00
Trust	\$100.00
Adoption – Step-parent / Grandparent (includes \$200 Assessor fee)	
Deposit for first child	\$325.00
Deposit for each additional child from same family (includes extra \$50 Assessor fee each)	\$175.50
Pre-finalization assessment (<i>only as needed</i>)	\$ 50.00
Adoption – Full Private / Independent (includes \$350 Assessor fee)	
Deposit for first child	\$475.00
Deposit for each additional child from same family (Children’s Services)	\$120.50
Deposit for each additional child from same family (Private, Full) (includes \$50 Assessor fee each) ..	\$170.50
Pre-finalization assessment (<i>only as needed</i>)	\$ 50.00
Adoption – Adult	\$125.00
Civil Case	\$ 75.00
Minor’s Settlement	\$ 43.00
Reactivation of Probate Case	\$ 25.00
Will on Deposit (Eff.4/6/17 per HB432) (ORC §2107.07).....	\$ 25.00
<u>ONE-TIME FEES:</u>	
Release of Administration	\$108.00
Summary Release of Administration	\$108.00
Fayette County Short Form Release of Administration	\$ 73.00
Will for Record Only (with tax)	\$ 17.00
(without Ohio Estate tax)	\$ 15.00
Change of Name	\$ 69.00
(including certified copy of change with birth certificate)	\$ 90.50
Correction of Birth (includes certified copy of birth certificate with correction)	\$ 49.50
Registration of Birth (includes certified copy of registration of birth)	\$ 51.50
Marriage License	\$ 45.00
Certified copy of marriage license (each) (ORC §2101.16A46)	\$ 2.00
Mental Ill (S.B.43 eff. 09/17/14) (ORC §5122).....	\$ 25.00
Release of Adoption Information	\$ 50.00
Authenticated / Exemplified copies – Application	\$ 10.00
(\$1 each additional page, \$7 COT if applicable, \$7 NDA)	
Certified Copies (\$1 for top certification + .15/page after, or \$1 each for all pages certified)	

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

IN THE MATTER OF: _____

Case No. _____ Docket _____ Page _____

BANK CERTIFICATE

N.B. Must be executed when funds are on deposit.



To

I HEREBY CERTIFY that the within named fiduciary, on the date named below, had on deposit in The

_____ of _____, Ohio the sum of

\$ _____ on _____ to the credit of the estate of

Nature of deposit

Bank

Dated _____

By _____ Cashier

IN THE PROBATE COURT OF FAYETTE COUNTY, OHIO

ESTATE OF: _____, **DECEASED**

CASE NO. _____

REPORT OF DISTRIBUTION
(Release from Administration)

Now comes your duly appointed Fiduciary, _____, herein and submits his Report in said matter. Distribution of the assets has been made in accordance with the previous order of this Court in the following manner:

DATE OF SALE OR DISTRIBUTION	TO WHOM SOLD OR DISTRIBUTED	DESCRIPTION	PROCEEDS OR VALUE

Commissioner

JUDGMENT ENTRY

The within report and distribution having been made according to law and the former order of the Court, it is ordered that the report and distribution are hereby approved.

Judge

**IN THE FAYETTE COUNTY COMMON PLEAS COURT
PROBATE DIVISION**

ESTATE OF: _____, Deceased
CASE NO: _____

APPLICATION TO FILE WILL FOR RECORD ONLY

Applicant states that decedent died on _____, 20_____.

Decedent's domicile was _____
Street Address

P.O. Box / Apartment # County

City State Zip Code

A document purporting to be the original of decedent's Will is attached and offered for filing.

Attorney for Applicant

Applicant

Typed or Printed Name and Atty. Reg. #

Typed or Printed Name

Address

Address

City, State, Zip Code

City, State, Zip Code

Telephone Number

Telephone Number

ENTRY

A document purporting to be the original of the Last Will and Testament of the above named decedent has been filed with this Court. The Court finds that no application for admission to probate has been made. It is hereby ORDERED that the document and all related papers be filed for record only with the Court; and upon filing of Estate Tax Return Summary Release from Administration Short Form Release from Administration documents this proceeding is closed without prejudice.

DAVID B. BENDER, Judge

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

IN THE MATTER OF
THE ESTATE OF: _____, DECEASED

CASE NO. _____

APPLICATION TO EXTEND TIME
[Local Rule 26(D)]

The undersigned makes this application to extend the time for filing the _____
in the above captioned matter which first became due on _____,
for the following reason(s): _____

_____.

The undersigned further states that this matter:

has not been previously extended.

has been extended times previously.

Fiduciary

Attorney

Supreme Court Attorney Registration Number

ENTRY EXTENDING TIME

Upon application and for good cause shown, the Application to Extend Time is hereby granted and time for filing is hereby extended to _____, 20____.

**FAILURE TO COMPLY WITH THIS EXTENSION DEADLINE
WILL RESULT IN A CITATION BEING ISSUED**

DAVID B. BENDER, JUDGE

APPENDIX F

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

IN THE GUARDIANSHIP OF: _____, INCOMPETENT

CASE NO. _____

AFFIDAVIT OF ADDITIONAL INFORMATION

Now comes the applicant for the appointment of the person and estate of the above captioned person, and being first duly sworn, answers the following questions with respect to the prospective ward.

1. Why is the guardianship necessary? _____

2. Specifically is the ward eligible for or receiving any of the following benefits, and if so, where are they or their source located?

TYPE	NAME	AMOUNT PER MONTH
Social Security		\$ _____
P.E.R.S.		\$ _____
Veterans Admin.		\$ _____
R.R. Retirement		\$ _____
Employee's Pension		\$ _____
Insurance Benefits		\$ _____
Other		\$ _____

3. Does the prospective ward have an interest in an estate or trust? If so, give the decedent's name, Court case number, name and location of Court, or Trustee, etc.. _____

4. Does the prospective ward have an expectancy from any minor's settlement? If so, give the defendant's name or his insurer's name, and the amount expected. _____

5. Cash? _____ Amount: \$ _____

6. Bank Account? _____

INSTITUTION	ADDRESS	ACCOUNT	AMOUNT/MONTH
--------------------	----------------	----------------	---------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

7. Securities? _____

ISSUER:

8. LAND INSTALLATION CONTRACTS? _____

VENDEE & ADDRESS	PROPERTY LOCATION	AMT./MONTH & BALANCE
-----------------------------	--------------------------	---------------------------------

9. RENTAL FROM REAL ESTATE? _____

ADDRESS OF REAL ESTATE	AMOUNT PER MONTH
-------------------------------	-------------------------

10. INTEREST IN REAL ESTATE? _____

ADDRESS OF REAL ESTATE

11. INCOME FROM ANY OTHER SOURCE? _____

 Applicant

Sworn to and subscribed before me in my presence this _____ day of _____, 20_____.

(SEAL)

 Notary Public / Deputy Clerk

IN THE PROBATE COURT OF FAYETTE COUNTY, OHIO

IN THE MATTER OF THE GUARDIANSHIP OF: _____

CASE NO: _____

REPORT OF GUARDIAN OF MINOR
[Pursuant to Local Rule 30]

1. This is the: (circle one) 1st, 2nd, 3rd, 4th, 5th, 6th, 7th or _____ Guardian's Report.

2. Guardian's present address: _____
(street)

(city) (state) (zip)

3. Guardian's present telephone number: _____

4. Minor's present address: _____
(street)

(city) (state) (zip)

5. Minor's living arrangements at above address are with:
 Minor's guardian
 Minor's mother / father / parents
 Relative or non-relative of the minor
Whose name is: _____
And relationship to the minor child is: _____

6. Name of school the minor attends: _____
In which school district: _____

7. Are the reasons for the guardianship still valid? _____ Yes _____ No
Explain: _____

8. Has the minor child been hospitalized in the past year? _____ Yes _____ No
Explain: _____

9. If the Guardian is also the guardian of the estate of the minor child, have there been any changes in the financial assets of the child/ward, or any expenditures of the guardianship assets without a Court order? _____ Yes _____ No

Explain: _____

10. What extracurricular activities has the minor child participated in since the previous report was filed?

Explain: _____

11. Are there any additional information and/or concerns regarding the minor child that you feel the Court should know? _____ Yes _____ No

Explain: _____

Date: _____, 20____

Guardian's Signature

Date: _____, 20____

Co-Guardian's Signature

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

IN THE GUARDIANSHIP OF: _____, **INCOMPETENT**

CASE NO. _____

GUARDIAN'S CREDIBILITY APPLICATION

Name of Incompetent Case No.

Name of Applicant to be Appointed Guardian Date of Birth

Applicant's Current Address From What Date

Previous Address (5 years) From What Date to What Date

Previous Address (5 years) From What Date to What Date

Spouse's Name Address Years Married to this Spouse

Applicant's Employer From What Date

Previous Employer (5 years) From What Date to What Date

Previous Employer (5 years) From What Date to What Date

Name of Applicant's Bank Checking

Name of Applicant's Bank Savings

Name of Applicant's Bank Safe Deposit Box

Has Applicant ever filed bankruptcy? Yes No

Has Applicant ever been garnished? Yes No

Has Applicant ever been in receivership? Yes No

Has Applicant ever been convicted of a felony? Yes No
Has Applicant had experience investing in marketable securities? Yes No
Set Forth that Experience: _____

Does the proposed ward owe you or any immediate family money? Yes No
If yes, please describe: _____

Has the proposed ward transferred anything of substantial value to you
or any immediate family member in the last year? Yes No
If yes, please describe: _____

This statement is made in support of my application to be appointed as Guardian in the above styled matter and the undersigned says that the facts stated in the foregoing applications are true.

Signature of Applicant

(01/29/14)

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

IN THE GUARDIANSHIP OF: _____, INCOMPETENT

CASE NO. _____

AFFIDAVIT OF INDIGENCY

Now comes _____, being first duly cautioned and sworn, states the following facts are true:

1. The proposed ward lives at:

_____ and has lived there for _____ years / months.

2. The monthly income of proposed ward is _____

The source of said income is _____

3. The monthly expenses of proposed ward are _____

4. To the best of Affiant's knowledge, the ward owns no assets other than:

Real Estate \$ _____

Bank Accounts \$ _____

Automobile (s) \$ _____

Other (stocks, bonds, IRA, etc.) \$ _____

TOTAL OF ASSETS \$ _____

5. To the best of Affiant's knowledge, none of the ward's assets have been transferred for less than fair market value in the past three (3) years, except:

Affiant

Sworn to before me and subscribed in my presence this _____ day of _____.

Notary Public

APPENDIX J

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

IN THE MATTER OF
THE GUARDIANSHIP OF: _____, INCOMPETENT

CASE NO: _____

ENTRY AUTHORIZING PAYMENT OF COURT COSTS

Upon consideration of the Affidavit of Indigency, the Court finds the proposed ward is indigent and orders the costs of this action to be paid from the Indigent Guardianship Fund. Any assets, beyond those disclosed in the Affidavit, which come into the possession of the Guardian, shall be reported to the Court and may be used to reimburse said fund for the costs of this action.

DAVID B. BENDER, JUDGE

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

IN THE MATTER OF
THE GUARDIANSHIP OF: _____, INCOMPETENT

CASE NO: _____

ENTRY APPOINTING COUNSEL

The Court finds that the proposed ward in this matter has applied for court appointed counsel. The Court further finds that said proposed ward qualifies for court appointed counsel.

WHEREFORE, IT IS HEREBY ORDERED that _____
be and hereby is appointed to represent the proposed ward in this matter and shall be paid from the Indigent Guardianship Fund.

DAVID B. BENDER, JUDGE

**IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, OHIO
PROBATE DIVISION**

**IN THE MATTER OF THE
EMERGENCY GUARDIANSHIP OF:**

CASE NO. _____

**APPLICATION FOR APPOINTMENT OF EMERGENCY GUARDIAN
OR ISSUANCE OF EMERGENCY ORDER**

[O.R.C. § 2111.02]

Comes now _____, Applicant herein, and states that:

1. _____, an alleged incompetent, aged _____, who resides at _____, in Fayette County, Ohio, is in need of an emergency guardian or the issuance of an emergency court order to prevent the imminent risk of significant injury to said person or property.
2. My relationship to alleged incompetent is _____.
3. I am reasonably certain that immediate action is required to prevent injury to the within named person or estate of the minor or incompetent. The nature of this emergency is more adequately described in the affidavit attached hereto.

Wherefore, Applicant requests that the Court issue an order it considers necessary to prevent injury to the person or estate of the incompetent person herein, OR appoint an emergency guardian *ex parte* in accordance with O.R.C. Section 2111.02(B)(3).

Dated: _____, 20____

Applicant

Address

Phone Number

Email Address

APPENDIX M

**IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, OHIO
PROBATE DIVISION**

**IN THE MATTER OF THE
EMERGENCY GUARDIANSHIP OF:**

CASE NO. _____

**AFFIDAVIT IN SUPPORT OF
APPLICATION FOR EMERGENCY GUARDIANSHIP**

STATE OF OHIO :
 : ss.
COUNTY OF FAYETTE :

Comes now _____, Applicant herein, after being duly cautioned and sworn, and states the following:

1. I believe that _____, an alleged incompetent, aged _____, who resides at _____, in Fayette County, Ohio, is in need of an emergency guardian or the issuance of an emergency court order to prevent the imminent risk of significant injury to said person or property.
2. My relationship to the alleged incompetent is _____.
3. The imminent risk of significant injury to the person or property is described as follows:

4. The reasonable efforts that applicant has taken to otherwise prevent significant injury previous to this application are as follows:

5. The proposed Ward may be found: _____
6. Additional information in regard to safety of visiting individuals: _____

Further, Affiant sayeth naught.

Affiant

Sworn to and subscribed before me on this _____ day of _____, 20_____.

Notary Public

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

**IN THE MATTER OF THE
EMERGENCY GUARDIANSHIP OF:**

_____ **CASE NO.:** _____

JUDGMENT ENTRY
APPOINTMENT OF EMERGENCY GUARDIAN FOR ALLEGED INCOMPETENT PERSON

Upon consideration of the Application for Appointment of Emergency Guardian existing herein, the Court finds that it is reasonably certain that an immediate action is required to prevent injury to the person or estate of the within named _____, an alleged incompetent person who has not been placed under guardianship, and that an emergency guardian is necessary.

The Court therefore *ex parte* and without notice does hereby appoint _____, a suitable and competent person, Emergency Guardian of the within named _____, an alleged incompetent person, with powers limited to _____

_____ and contained in the Letters of Emergency Guardianship issued by this Court. This Order is in compliance with O.R.C. Section 2111.02(B)(3).

The Court orders Letters of Emergency Guardianship be issued to the said _____ as provided by law.

Further, this matter shall come on for hearing no later than seventy-two (72) hours from the issuance of this order, to wit: on the ____ day of _____, 20____ at _____ .M..

Dated: _____

DAVID B. BENDER, JUDGE

APPENDIX N

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

**IN THE MATTER OF THE
EMERGENCY GUARDIANSHIP OF:**

CASE NO.: _____

LETTERS OF EMERGENCY GUARDIANSHIP

_____ is hereby appointed as the Emergency Guardian of _____, an alleged incompetent person who has not been placed under guardianship.

As Emergency Guardian, his/her powers are limited to:

Those guardianship powers are for a maximum period of seventy-two (72) hours, and will expire on the _____ day of _____, 20____ at _____ .M.

The above-named Emergency Guardian has the limited powers to do and to perform all the duties above stated, as described.

DAVID B. BENDER, JUDGE

CERTIFICATE OF APPOINTMENT AND INCUMBENCY

The above document is a true copy of the original kept by me as custodian of this Court. It constitutes the appointment and letters of authority of the named Emergency Guardian, who is qualified and acting in such capacity.

DAVID B. BENDER, JUDGE

(SEAL)

By: _____
Deputy Clerk

Dated: _____, 20____

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

In the Matter of the
Emergency Guardianship of:

Case No. _____

NOTICE TO SERVE

TO: _____
Probate Court Investigator

Please serve a copy of the following papers upon _____, the
Notice of Emergency, Judgment Entry Appointing Guardian and Letters of Guardianship.

DAVID B. BENDER, JUDGE
Fayette County Probate Court

By: _____
Probate Deputy Clerk

Return of Service:

Pursuant to the above order, I served the said _____ with the above documents
on the _____ day of _____, 20_____.

Probate Court Investigator

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

IN THE GUARDIANSHIP OF: _____

CASE NO. _____

ADDENDUM TO OATH OF GUARDIAN
[TO BE TAKEN ON APPOINTMENT OF GUARDIAN]

I, _____, Guardian of _____
_____, will faithfully and completely

fulfill my duties as Guardian, including the duty:

_____ To deposit any original Last Will and Testament executed by the Ward,
should I have knowledge that one exists.

Guardian

The above oath was taken and signed in my presence on this _____ day of _____,
20____.

DAVID B. BENDER, JUDGE

FAYETTE COUNTY PROBATE / JUVENILE COURT

**110 E. Court Street, 2nd Floor
Washington C.H., Ohio 43160
(740) 335-0640 telephone
(740) 333-3598 facsimile**

FACSIMILE FILING COVER PAGE

RECIPIENT INFORMATION:

NAME OF COURT: _____
FAX NUMBER: _____

SENDING PARTY INFORMATION:

NAME: _____
SUPREME COURT REGISTRATION NO. (if applicable): _____
OFFICE/FIRM: _____
ADDRESS: _____
PHONE NUMBER: _____
FAX NUMBER: _____
E-MAIL ADDRESS (if available): _____

CASE INFORMATION:

CAPTION OF THE CASE: _____
CASE NUMBER*: _____

*If a judge or case number has not been assigned, please state that fact in the space provided.

TITLE OF THE DOCUMENT: _____

JUDGE: _____

FILING INFORMATION:

DATE OF FAX TRANSMISSION: _____
NUMBER OF PAGES (including this page): _____
COMMENTS:

NOTICE: The information contained in this facsimile message is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

OHIO RULES OF PROFESSIONAL CONDUCT
RULE 1.5: FEES AND EXPENSES

(a) A lawyer shall not make an agreement for, charge, or collect an *illegal* or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a *reasonable* fee. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

(b) The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in *writing*, before or within a *reasonable* time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in writing.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by division (d) of this rule or other law.

(1) Each contingent fee agreement shall be in a *writing* signed by the client and the lawyer and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery' and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement shall clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

(2) If the lawyer becomes entitled to compensation under the contingent fee agreement and the lawyer will be disbursing funds, the lawyer shall prepare a closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under the agreement. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyer's fees with a lawyer not in the same *firm*, as required in division (e)(3) of this rule. The closing statement shall be signed by the client and lawyer.

(d) A lawyer shall not enter into an arrangement for, charge, or collect any of the following:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support, or property settlement in lieu thereof;

(2) a contingent fee for representing a defendant in a criminal case;

(3) a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is simultaneously advised in *writing* that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule.

APPENDIX S

(e) Lawyers who are not in the same *firm* may divide fees only if all of the following apply:

(1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client;

(2) the client has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation;

(3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule;

(4) the total fee is *reasonable*.

(f) In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration.

FEE COMPUTATION SHEET

IN THE ESTATE OF: _____

CASE NO. _____

FIDUCIARY FEE: (Statutory)

Personal Estate (Including income thereon
and proceeds from sale of real estate:

Not more than \$100,000; \$ _____ x .04 = \$ _____

Greater than \$100,000 but
less than \$400,000; \$ _____ x .03 = \$ _____

Greater than \$400,000 \$ _____ x .02 = \$ _____

Real Estate not sold \$ _____ x .01 = \$ _____

Non-Probate Assets (included in Ohio
Estate Tax Return (but excluding Joint
& Survivorship Property):

\$ _____ x .01 = \$ _____

TOTAL FIDUCIARY FEE \$ _____

Approved by: _____

Date: _____

(Eff. 01/01/2016)

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY OHIO
PROBATE DIVISION**

IN THE ESTATE OF: _____, DECEASED

Case No. _____

**APPLICATION FOR
SHORT FORM RELEASE FROM ADMINISTRATION**
[O.R.C. §2113.03]

Now comes _____, who resides at _____, who having been first duly sworn, states as follows:

1. Applicant's relationship to decedent is _____;
2. Decedent's legal residence at time of death _____;
3. Decedent's date of death _____;
4. Decedent (did / did not) have a will, and it is filed herewith;
5. Attached is a list of surviving spouse, next of kin, legatees and devisees known to affiant, entitled to inherit; (see Form 1.0)
6. Decedent's assets consist of the following: (list assets and probable value)

7. Applicant will obtain an Auditor's tax release;
8. Applicant has paid from his own assets, will assume the responsibility of paying from decedent's assets, or has provided the funeral and burial expenses and services;
9. Decedent's funeral and burial expenses were as follows: (please itemize)

10. Applicant requests the Court to enter an order directing and authorizing applicant to collect the assets and distribute them as directed by the Court;

11. Applicant will distribute within thirty (30) days all assets of decedent covered by the order as directed by the Court and receipt therefore to the Court.

Applicant

Phone No. _____

In the State of Ohio, and County of Fayette, said applicant has sworn before me and signed in my presence on this _____ day of _____, 20____.

(SEAL)

Notary Public
My Commission Expires: _____

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY OHIO
PROBATE DIVISION**

IN THE ESTATE OF: _____, DECEASED

Case No. _____

ORDER
[O.R.C. §2113.03]

This matter coming before the Court on an application filed in this cause in accordance with O.R.C. §2113.03, and the Court finding that the Application for Short Form Release From Administration is applicable in this estate.

WHEREFORE, IT IS THE ORDER OF THIS COURT THAT:

- The estate be relieved from administration;
- The financial institution holding accounts in decedent's name, pay the same to _____, the applicant herein, and that said applicant gather such other assets as are listed in said application;
- Said applicant shall apply the assets first in the payment of or reimbursement for the cost in filing of this proceeding to _____, secondly in payment of or reimbursement for the burial expenses in the amount of \$_____ payable to _____ in that order;
- Said applicant shall apply the remaining assets in the payment of the family allowance in the amount of \$_____ to _____;
- Applicant has obtained an Auditor's tax release form, and those assets shall be released to applicant;
- A paid funeral bill or a signed payment agreement regarding the funeral bill shall be attached hereto;
- The Court further orders: _____

Judge

*NOTE: Application only to be used for estates under \$1,000 with no surviving spouse or minor child(ren), or \$6,000 with a surviving spouse or minor child(ren).

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

IN THE ESTATE OF: _____, **DECEASED**

CASE NUMBER: _____

**NOTICE TO ADMINISTRATOR OF ESTATE RECOVERY PROGRAM
(O.R.C. SECTION 2117.061)**

The undersigned gives notice to the Administrator of the Estate Recovery Program that the decedent was fifty-five (55) years of age or older at the time of death and has been determined to have been a recipient of medical assistance under Chapter 5111 of the Revised Code.

-
- Executor
 - Administrator
 - Commissioner
 - Person who filed pursuant to 2113.03 of the Revised Code for release from administration

CERTIFICATE OF SERVICE

This is to certify a true copy of the above notice was served by certified U.S. Mail, postage prepaid, to the Administrator of the Estate Recovery Program on _____.

Person responsible for Estate

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

TRUST OF: _____

FOR THE BENEFIT OF: _____

CASE NO. _____

TRUST BENEFICIARIES

The following are beneficiaries of the trust:

Name	Residence Address	I = Income Beneficiary R = Remainder Beneficiary	Birthdate of Minor

[Check whichever of the following is applicable]

- The Will contains a charitable trust or a bequest or devise to a charitable trust, subject to Revised Code Sections 109.23 and 109.41.
- The Will is not subject to Revised Code Sections 109.23 and 109.41, relating to charitable trusts.

Date

Applicant (or give other title)

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

**ATTACHMENT TO THE
CERTIFICATE OF DEPOSIT OF WILL (FORM 8.01)**

Testator Information

Will Recipient Information

Name

Name

Address

Address

City, State, Zip

City, State, Zip

Phone Number

Phone Number

Date of Birth

The Testator and the Recipient listed above are required to notify the Court of any changes in address or contact information of either party.

The Recipient, or other person with knowledge of the Testator's death, are further required to notify the Court of the Testator's death in a timely manner.

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

RECEIPT OF WILL ON DEPOSIT

Testator Information

Will Recipient Information

Name

Name

Address

Address

City, State, Zip

City, State, Zip

Phone Number

Phone Number

Date of Birth

Come now on the _____ day of _____, 20_____,
I, _____, do hereby testify that I received the Will held
on deposit for _____, who is now deceased.
I do hereby intend to file this Will in the Probate Court of the decedent's county of
residence.

Date

Signature of Recipient of Will

I, the recipient of the decedent's Will on deposit at the Fayette County Probate
Court, do hereby GIVE / REFUSE (circle one) permission for the Probate Court of
Fayette County, Ohio to open and copy the Last Will and Testament of the
deceased.

Date

Signature of Recipient of Will

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

_____ : **CASE NO.** _____
Plaintiff :
 :
vs. :
 :
_____ : **AFFIDAVIT OF SERVICE**
Defendant :

STATE OF OHIO :
 : ss.
COUNTY OF FAYETTE :

I, _____ (affiant) being duly sworn, hereby state:

1. Service of summons upon _____ cannot be made;
2. The current residence of _____ is unknown to affiant, and the residence cannot be ascertained with reasonable diligence;
3. The efforts made on behalf of the party to ascertain the residence of _____ are as follows: _____

4. The last previous known address of _____ was: _____

I hereby certify that the information I have provided herein is true to the best of my knowledge.

Signature of Affiant

Sworn to before me and subscribed in my presence this ____ day of _____, 20____.

(SEAL)

Notary Public
My Commission Expires: _____

NOTICE BY PUBLICATION

TO: _____
whose last known address is: _____

You are hereby notified that a complaint/motion for _____ has been filed in the Fayette County Common Pleas Court, Probate Division, in the case of:

(Case caption)

You are hereby required to appear in the Fayette County Common Pleas Court, Probate Division at 110 East Court Street, 2nd Floor, Washington Court House, Fayette County, Ohio on the _____ day of _____, 20____ at _____ .M.

DAVID B. BENDER, JUDGE
FAYETTE COUNTY COMMON PLEAS COURT
PROBATE AND JUVENILE DIVISIONS

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

CASE NO. _____

Plaintiff

vs.

Defendant

ENTRY OF POSTING

The Court finds that service by regular mail was sent to the last known address of _____ on the ____ day of _____, 20____.

The Court finds that service upon _____ was perfected by publication by posting of the Notice of Service in the Fayette County Court House, the Fayette County Department of Job and Family Services and the Washington Court House Carnegie Public Library from _____ to _____ which is at least seven (7) days prior to the hearing in this matter.

Said service by publication shall be docketed in this case forthwith and the case shall proceed as required by law.

DAVID B. BENDER, JUDGE

**IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO
PROBATE DIVISION**

IN THE MATTER OF: : **CASE NO.** _____
: :
The Adoption of: : :
: :
_____ : **AFFIDAVIT IN COMPLIANCE**
: **WITH ORC §3127.23**

(ANSWERS REQUIRING ADDITIONAL SPACE SHOULD BE CONTINUED ON THE BACK. A SEPARATE AFFIDAVIT MUST BE FILED FOR EACH CHILD.)

STATE OF OHIO, COUNTY OF FAYETTE, SS:

Upon being duly sworn, _____ (your name) hereby states the following:

1. My address and phone number are: _____

2. Name and date of birth of child involved in the proceeding: _____

3. Present address of this child: _____
4. The child currently resides with: _____
5. Names and dates of birth of the child's parents _____

6. The places and dates where the child has lived within the last five (5) years, **other than the current address**, are as follows: _____

7. The child has lived with the following persons during the last five (5) years (names and current addresses):

8. Have you participated as a party, witness or in any other capacity in any other court case or proceeding concerning this child in this or any other county or state? _____

APPENDIX Z

9. State any information you have about any other court case or proceeding concerning this child in this or any other county or state: _____

10. State the name and address of any person not a party to the proceedings, who has had physical custody of this child, or who claims to have custody rights or visitation rights with this child:

11. Have you been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being abused or neglected; or were deemed to be the perpetrator of an abusive or neglectful act which was the basis for a child being adjudicated an abused or neglected child?
(Yes / No). If yes, what were the circumstances? _____

I understand that I have a continuing duty to inform the Court of any custody proceeding concerning this child in this or any other state of which I obtain information during this proceeding.

I swear that these statements are true and accurate to the best of my knowledge.

Affiant

Sworn to before me and subscribed in my presence this _____ day of _____, 20____.

(Seal)

Notary Public

My Commission expires: _____

(Rev. 12/11/13)