



# **WARREN COUNTY PROBATE COURT**

## **RULES OF PRACTICE AND PROCEDURE “LOCAL RULES OF COURT”**

**2022**



**IN THE WARREN COUNTY, OHIO COMMON PLEAS COURT  
PROBATE DIVISION**

**In the matter of:**

<b>THE ADOPTION OF</b>	:	<b><u>ORDER</u></b>
<b>RULES OF PRACTICE</b>	:	
<b>AND PROCEDURE OF THE</b>	:	
<b>COURT OF COMMON PLEAS</b>	:	
<b>PROBATE DIVISION</b>	:	

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The mission of the Warren County Probate Court is to resolve matters fairly and timely by providing an impartial, independent and dignified forum, in order to promote respect for the Rule of Law, instill public confidence and trust, protect individual rights and liberties, and ensure public safety. And, in order to effect the just determination of cases before the Probate Court, to secure simplicity and uniformity in procedure, and to eliminate unjustifiable expense and delay, it is necessary to publish these **RULES OF PRACTICE AND PROCEDURE (“LOCAL RULES OF COURT”)** of the Court of Common Pleas Probate Division.

Therefore, pursuant to the powers vested in this Court by Sections 2101.04 of the Ohio Revised Code, it is **ORDERED** that the following **LOCAL RULES OF COURT** shall be adopted and shall be effective the 1<sup>st</sup> day of February 2022.

So Ordered.



**Joseph W. Kirby, Judge  
Probate Court  
Warren County, Ohio**

**NOTICE**

**The clerks in Warren County Probate Court are not permitted to provide you legal advice of any kind. This includes assistance with the completion of necessary forms/applications. You will need to seek assistance elsewhere.**

## TABLE OF CONTENTS

### Rule

1	General
2	Record of Proceedings
3	Forms
4	Case Management and Pretrial Procedure
5	Filings, Entries and Telephonic Court Appearances
6	Facsimile Filings
7	Court Costs
8	Witness Fees
9	Appointment of Fiduciaries
10	Appraisers and Appraisals
11	Inventory and Appraisal
12	Bond
13	Fiduciary Accounts
14	Certificate of Termination
15	Release from Administration
16	Appraisers-Land Sale Proceedings
17	Adult Guardianships
18	Releases and Order to Expend Funds in Guardianships and Trusts
19	Settlement of Claims for Injuries to Minors
20	Structured Settlement
21	Transfer of Structured Settlement Payment Rights
22	Settlement of Claims for Wrongful Death
23	Contingent Fee Agreements
24	Administrator, Executor and Attorney Compensation
25	Guardian Compensation
26	Veterans Administration Guardianships
27	Trustee Compensation
28	Civil Commitments
29	Adoptions
30	Service by Publication
31	Name Change
32	Miscellaneous
33	Report of Insolvency
34	Marriage License Procedure
35	Registration of Unrecorded Birth; Correction of Birth Record
36	Conflict Resolution; Mediation
37	Jury Management
38	Facsimile Signature by the Court
39	Video/Photography in the Courtroom
40	Effective Date
	Appendices

## **RULE 1. GENERAL**

(A) These rules shall be commonly referred to as the Warren County Probate Rules and may be cited as W.C. Pr. R. \_\_\_\_\_. These rules are to supplement the Ohio Rules of Civil Procedure and Rules of Superintendence to the extent the same govern proceedings in the Warren County Probate Court. These rules shall govern practice and procedure in the Warren County Probate Court.

(B) Probate Court offices shall be open for ordinary business from 8:00 a.m. to 4:00 p.m. Monday through Friday, with the exception of those holidays observed by Warren County offices pursuant to statute and resolution of the Board of Warren County Commissioners and emergency closures. Upon order of the Court, the offices may be open other hours for emergency matters.

(C) Court sessions shall be held at the Warren County Probate-Juvenile Court Facility located at 900 Memorial Drive, Lebanon, Ohio 45036 or at such other place as shall be designated by the Court. Sessions shall be held in the courtroom or in such other place as shall be directed by the Court and may be provided for by order of the Court. Sessions may be adjourned upon order of the Court, or by motion of counsel for the parties subject to approval by the Court.

(D) Attorneys shall conduct themselves in accordance with Gov. Bar R., Appendix V – Statement on Professionalism, A Lawyer’s Creed, and A Lawyer’s Aspirational Ideals. All parties entering the courtroom must be properly attired: no shorts, cutoffs, tank tops, crop tops, etc. are permitted in the courtroom. Inappropriate graphics on clothing will not be permitted in the courtroom.

(E) Continuances shall be granted in accordance with Rule 41 of the Rules of Superintendence of the Ohio Supreme Court (Sup.R. 41). Requests for continuances shall be made by written motion within a reasonable time before the time of the hearing based upon the circumstances necessitating the continuance. Oral motions shall be made on the record. Counsel shall solicit the agreement of all other parties or their counsel to the continuance. If agreed to, a proposed entry/order shall be submitted to the Court to be filed setting out that all parties are in agreement to such continuance and the matter will be rescheduled. Absent agreement to a continuance, counsel shall file a motion for continuance, directed to the judge or magistrate to whom the case is assigned. All motions shall state with particularity why such continuance is necessary to secure fair treatment for the parties or why it is in the best interest of the party requesting such continuance. The Court, at its discretion, may require hearing on motions for continuance. Such motions shall be granted in the Court’s discretion only if the Court finds that the interest of justice and the interests of the parties are best served thereby. No continuance shall be granted without first setting a new and definite date for the trial or hearing. The parties are responsible for advising their own witnesses of the continuance, cancellation or rescheduling of any matter on the Court’s docket.

(F) **Electronic Devices.** Individuals entering the courtroom will turn electronic devices such as cell phones, PDAs or portable computers to silent mode while using them, or off if not using them. No cellular telephone calls shall be initiated or received while in the courtroom while Court is in session, unless initiated by the Court.

(G) **Addresses.** All persons with matters pending before the Court are responsible for ensuring that the Court has a valid current address to which correspondence from the Court may be directed. The Court will direct correspondence to the person's address set forth upon the initial pleading or other filing by the person in the pending matter. If during the pendency of a matter a person experiences a change of address the person shall notify the Court of such change by filing with the Court a Notification of Address Change (WCPC Form 28). A person may informally inform the Court of a change of address by means other than the filing of the Notification of Address Change. However, in the event that there is any dispute or question concerning whether Court correspondence was directed to the proper address, such issue will be resolved by reference to the address set forth upon the person's initial pleading/filing or the Notification of Address Change, whichever was most recently filed with the Court.

## **RULE 2. RECORD OF PROCEEDINGS**

(A) Upon written request of a party, or by direction of the judge or magistrate, hearings before the Court shall be recorded by audio-electronic recording devices. Any party may provide a record by Court reporter paid for by the party requesting the attendance of the Court reporter. When a Court reporter is in attendance, the Court reporter's stenographic record shall be the official record.

(B) Transcription of the record shall be made at the expense of the person requesting such transcription. The transcription may be made by a Court reporter, agent of the Court, or, with leave of Court, by an agent of the party requesting a transcription. Such request shall be made in writing using the Court's form (WCPC Form 29.0). The transcriber, whether a Court reporter, agent of the Court, or an agent of a party, shall attach a certificate attesting to the accuracy of such transcription and that required fees have been paid.

(C) The original audio-electronic recording shall be maintained by the Court. The audio-electronic recording shall not be released from the Court building unless specifically authorized by the judge.

### **RULE 3. FORMS**

(A) Standard probate forms (SPF) shall be used for filings in this Court, as provided by Sup.R. 51, except that computer-generated forms may be used subject to the following limitations:

(1) Such forms shall comply with the Rules of Superintendence for the Probate Division of the Court of Common Pleas.

(2) Such forms shall be in the same form as those provided by the Warren County Probate Court.

(3) Such forms shall contain the same information and be in substantially the same format as the SPFs.

(4) Counsel shall certify to the Court that any computer-generated forms are in full compliance with the Rules of Superintendence and the Local Rules of Court. All printed material shall be in the same sequence and in the same location on the page as the SPF. In the event of multiple page forms or two-sided forms, the printed material shall be on the same page as the SPF.

(5) Any deviation from the format of the SPFs shall be cause for rejection of such of non-compliant forms.

(6) The SPFs and other forms are available on the Court's official website at [http://www.co.warren.oh.us/Probate\\_juvenile/probate/forms/default.aspx](http://www.co.warren.oh.us/Probate_juvenile/probate/forms/default.aspx).

## **RULE 4. CASE MANAGEMENT AND PRETRIAL PROCEDURE**

(A) For the purpose of ensuring the readiness of civil cases in the Probate Court, the following procedures shall be in effect:

(1) **Civil Actions, Land Sales and Contested/Adversary Proceedings.**

(a) Within sixty (60) days after the filing of all responsive pleadings to the complaint and any counterclaims and/or crossclaims, a pretrial conference may be requested by the parties.

(b) Notice of the pretrial conference shall be given to all counsel of record and unrepresented parties by ordinary mail.

(c) The pretrial conference will result in a pretrial order which addresses the following:

(i) A discovery schedule shall be established (discovery deadlines require that the request for the discovery must be submitted within such time as will permit response pursuant to the Ohio Rules of Civil Procedure on or prior to the deadline);

(ii) A date for identification of expert witnesses shall be established;

(iii) A date for filing of all pretrial and case dispositive motions shall be established;

(iv) A final pretrial, if necessary, and the date thereof, shall be established;

(v) A trial date shall be established.

(d) The following shall apply at the final pretrial, and all counsel attending must have full authority to enter into binding settlement agreements.

(i) A written status report shall be filed with the Court no later than seven (7) days prior to the scheduled final pretrial.

(ii) Briefs on any legal issues shall be submitted.

(iii) Proposed jury instructions shall be submitted.

(iv) Proposed jury interrogatories shall be submitted.

(v) Settlement negotiations will be summarized.



(vi) Clients shall be present.

(vii) No motions shall be heard after final pretrial without leave of Court and without good cause.

(e) The trial date shall not be changed nor shall the trial be continued without order of the Court and without good cause.

(f) In cases where there has been no activity for one (1) year, the Court may dismiss for want of prosecution after notice to the parties.

(2) **Decedent's Estates.**

(a) Administration of decedent's estates shall proceed in accordance with the timeframes established by the Ohio Revised Code unless such timeframes are modified by order of the Court.

(b) Exceptions to Inventory and Exceptions to Account:

(i) A hearing shall be scheduled within sixty (60) days of the filing of the exceptions to an inventory or account.

(c) All decedent's estates that remain open a period of two (2) years after initial filing shall be subject to a status conference. The fiduciary, if unrepresented, or if the fiduciary is represented by legal counsel, the attorney for the fiduciary, shall be present and a written status report shall be submitted to the Court at the time of the status conference.

(3) **Wrongful Death Settlements.**

(a) All hearings shall be held within sixty (60) days of the filing of the Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims, provided, however, if either a guardian or guardian ad litem is necessary to be appointed, the hearing shall be held within sixty (60) days after the appointment of the guardian or guardian ad litem.

(4) **Trusts.**

(a) Establishment and administration of trusts shall be in accordance with the timeframes established by the Ohio Revised Code unless such timeframes are modified by order of the Court.

(5) **Motions/Applications, etc.**

(a) The Court shall determine motions, applications or other filings seeking specified relief, Court approval or other judicial action (hereinafter collectively referred to as the motion) without hearing unless hearing is ordered by the Court or upon application of a party and a showing of good cause.

(b) Upon the filing of a motion, absent a scheduling order issued by the Court, other parties may file memoranda supporting or opposing the motion within twenty (20) days after the filing of the motion. Reply memoranda shall be filed within seven (7) days after the filing of the supporting and/or opposing memoranda. Unless oral hearing is conducted, the Court will take the matter under advisement for decision after the expiration of the time for the filing of memoranda supporting and opposing the motion.

(c) Memoranda, exclusive of exhibits, supporting and opposing motions shall not exceed ten (10) pages unless leave of Court is otherwise granted.

(d) Prehearing motions shall be accompanied by an entry granting the relief prayed for in the motion.

(e) In addition to the foregoing requirements, all motions to withdraw as counsel shall be accompanied by:

- (i) an order which compels the attendance of the fiduciary; or
- (ii) the fiduciary's written consent to counsel's withdrawal.

**(B) PROCEDURE FOR FILING and HEARING OF OBJECTIONS TO DECISION OF MAGISTRATE and APPEALS TO ORDERS OF MAGISTRATE**

(1) The Magistrate shall announce his/her decision from the bench or shall file his/her written decision within a reasonable time after conclusion of the hearing of the case.

(2) A party objecting to a magistrate's decision or seeking to set aside a magistrate's order shall file the same in writing within the time provided by Civ. R. 53, as applicable. The objection/motion to set aside shall specifically enumerate the portion or portions of the decision/order to which objection is taken. Objections/motions to set aside shall state with specificity the grounds for objection. Failure to comply with the specificity requirement may result in an order striking the objection/motion to set aside.

(3) It shall be the responsibility of the party objecting to a magistrate's decision or seeking to set aside a magistrate's order to file a typed transcript of the hearing prior to consideration of the objection/motion to set aside or demonstrate good cause why the transcript could not be provided to the Court. The original recording of

the hearing cannot be removed from the courthouse for transcription without order of the Court.

(4) Upon the filing of objections the Court will issue a scheduling order setting forth the time for the filing of the transcript and the briefing of the objections. The scheduling order may also advise the objecting party of contact information for the Court transcriptionist who is assigned to prepare the transcript to facilitate transcript preparation and filing. The objecting party shall be responsible for payment of the cost of the preparation of the transcript unless such party is entitled to a transcript at government expense. Generally, the objecting party must pay the Court a deposit based upon the estimated cost of transcript preparation within fourteen days following the issuance of the scheduling order. Payment of the deposit and any balance due shall be made in cash or by money order payable to Warren County Probate and Juvenile Court. Failure to pay the deposit in accordance with this rule and/or the scheduling order may result in the immediate submission of the objection to the Court for decision.

(5) In cases where the transcript of the proceedings before the Magistrate exceeds fifty (50) pages in length, the parties shall file written memoranda with reference to the transcript and record which supports their respective positions. Failure to file a supplemental memorandum with transcript references may result in dismissal of the objection.

(6) No oral argument will be heard on any objection/appeal unless ordered by the Court.

(7) No additional evidence shall be offered upon objections without leave of Court. A party seeking to admit additional evidence shall file with the Court a motion for submission of such additional evidence which specifically describes the additional evidence sought to be admitted and demonstrates that the party, with reasonable diligence, could not have produced that evidence for the magistrate's consideration.

## **RULE 5. FILINGS, ENTRIES and TELEPHONIC COURT APPEARANCES**

(A) Any filing for immediate Court approval must first be presented to the Clerk's Office so that the file may be presented to the judge with the requested orders.

(B) All entries and orders presented to the Court shall recite the date of the hearing, if any, and the specific motion or application heard by the Court on that date.

(C) All filings and entries which bear an endorsement of a party or counsel per telephone authorization shall contain a certificate of service by the attorney who prepared and filed the entry that notice has been given to the consenting party or counsel.

(D) Every pleading, motion, or other document of a party represented by an attorney shall be signed by at least one attorney of record, in the attorney's individual name, whose address, attorney registration number, telephone number, facsimile number, if any, and business e-mail address, if any, shall be stated. A party who is not represented by an attorney shall sign the pleading, motion, or other document and state the party's address and daytime telephone number.

(E) **Personal Identifiers.** Personal identifiers, as defined in Sup.R. 44, omitted from a filing shall be submitted upon the Personal Identifiers Omission Form (WCPC Form 45(D)).

(F) **Telephone appearance.**

(1) The intent of this rule is to promote uniformity in the practices and procedures relating to telephone appearances in cases where such an appearance is permitted by these rules or Court order. To improve access to the courts and reduce litigation costs, the Courts shall permit parties, to the extent feasible, to appear by telephone at appropriate conferences, hearings, and proceedings in cases pending before the Court.

(2) **Application.** Except as provided in W.C. Pr. R. 5(G)(4)(a) below, a party may appear by telephone at the following conferences, hearings, and proceedings:

(a) Case management/scheduling/status/review conferences, provided the party has made a good faith effort to meet and confer with her or his client before the conference date;

(b) Non-evidentiary motion hearings;

(c) Hearings on discovery motions;

(d) Scheduling conferences and status conferences;

- (e) Pre-trial hearings; and
- (f) Any hearing approved in advance by the Court for appearance by telephone.

(3) **Required personal appearances.** Except as provided in W.C. Pr. R. 5(G)(4)(b) below, a personal appearance is required for hearings, conferences, and proceedings not listed above, including the following:

- (a) Trials and hearings at which witnesses are expected to testify;
- (b) Hearings on temporary restraining orders;
- (c) Settlement conferences;
- (d) Hearings in which a party is proceeding pro se.
- (e) Hearings in which the presence of the parties is required.

(4) **Court discretion to modify rule.**

(a) **Court may require personal appearances.** The Court may require a party to appear in person at a hearing, conference, or proceeding in which a telephone appearance is otherwise authorized by this rule if the Court determines that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case.

(b) **Court may permit appearances by telephone.** The Court may permit a party to appear by telephone at a hearing, conference, or proceeding for which a personal appearance is otherwise required if the Court determines that a telephone appearance is appropriate.

(5) **Need for personal appearance.** If, at any time during a hearing, conference, or proceeding conducted by telephone, the Court determines that a personal appearance is necessary, the Court may continue the matter and require a personal appearance.

(6) **Notice by party.** A party choosing to appear by telephone at a hearing, conference, or proceeding under this rule must:

(a) At least three court days before the appearance, notify the Court and all other parties of the party's intent to appear by telephone. The notice must be made in writing, it must be given by filing a *Motion and Entry to Appear by Telephone* with the Court at least three court days before the appearance and by serving the notice at the same time on all other parties by personal delivery, fax transmission, express mail, or

other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day.

(b) If after receiving notice from another party as provided under W.C. Pr. R. 5(G)(6)(a) above, a party that has not given notice also decides to appear by telephone, the party may do so by notifying the Court and all other parties that have appeared in the action, no later than noon on the court day before the appearance, of the intent to appear by telephone.

(c) If a party that has given notice that it intends to appear by telephone under W.C. Pr. R. 5(G)(6)(a) above, subsequently chooses to appear in person, the party must so notify the Court and all other parties that have appeared in the action, by telephone, at least two court days before the appearance.

(d) The Court, on a showing of good cause, may permit a party to appear by telephone at a conference, hearing, or proceeding even if the party has not given the notice required under W.C. Pr. R. 5(G)(6)(a) or (b) above, and may permit a party to appear in person even if the party has not given the notice required in W.C. Pr. R. 5(G)(6)(c) above,.

(7) **Notice by Court.** After a party has requested a telephone appearance under W.C. Pr. R. 5(G)(6) above, if the Court requires the personal appearance of the party, the Court must give reasonable notice to all parties before the hearing and may continue the hearing if necessary to accommodate the personal appearance. The Court may direct the Court clerk, a court-appointed vendor, a party, or an attorney to provide the notification.

(8) **Private vendor; charges for service.** A Court may provide teleconferencing for Court appearances by entering into a contract with a private vendor. The contract may provide that the vendor may charge the party appearing by telephone a reasonable fee, specified in the contract, for its services.

(9) **Audibility and procedure.** The Court must ensure that the statements of participants are audible to all other participants and the Court staff and that the statements made by a participant are identified as being made by that participant.

(10) **Reporting.** All proceedings involving telephone appearances must be reported to the same extent and in the same manner as if the participants had appeared in person.

(11) **Skype (or similar videoconferencing software).**

(a) A proceeding conducted by videoconferencing shall be conducted in the same manner as if the parties had appeared in person, and the jurist presiding over the matter may exercise all powers consistent with the proceeding.

(b) Anyone requesting the use of videoconferencing appearances shall first file a motion with the Court seeking permission. Additionally, the party requesting the use of videoconferencing shall make arrangements with the Court's bailiff prior to the commencement of the proceeding to ensure the equipment is in working order.

(c) In any proceeding conducted by videoconference, the remote location(s) shall be considered an extension of the courtroom and held before the jurist who is presiding. The jurist's pronouncements, instructions, and rulings shall have the same force and binding effect as if all participants had been physically present in the courtroom. The jurist shall consider and rule on any objections of a party or non-party witness prior to beginning the proceeding.

(d) An oath administered by the jurist, court bailiff, or other authorized person to a witness, interpreter, or a party in a proceeding conducted by videoconference shall have the same force and binding effect as if the oath had been administered to a person physically present in the courtroom.

(e) In any proceeding conducted by videoconference, an interpreter, who can see and hear the witness and other participants, may provide interpreter services without being physically present in the same locale as either the jurist or the remote participants.

(f) This Rule is intended to provide a jurist presiding over any matter in Warren County Probate Court with broad discretion regarding the use of videoconferencing.

## **RULE 6. FACSIMILE FILINGS**

The provisions of this local rule are adopted under Civ.R. 5(E) and Civ.R. 73(J). Pleadings and other papers may be filed with the Probate Court Clerk's Office by facsimile transmission to 513.695.2945 subject to the following conditions:

### **(A) Applicability**

(1) These rules apply to probate proceedings in the Warren County Probate Court.

(2) These rules do not apply to adoption proceedings. In these proceedings, no facsimile transmission of documents will be accepted, except the petitioner's final account.

(3) The following documents will not be accepted for fax filing: original wills and codicils, documents required to be certified prior to filing.

### **(B) Original Filing**

(1) A document filed by fax shall be accepted as the effective original filing. The person making a fax filing need not file any source document with the Probate Court Clerk's Office but must, however, maintain in his or her records and have available for production on request by the Court the source document filed by fax, with original signatures as otherwise required under the applicable rules, together with the source copy of the facsimile cover sheet used for the subject filing.

(2) The source document filed by fax shall be maintained by the person making the filing until the case is closed and all opportunities for post judgment relief are exhausted.

### **(C) Definitions**

As used in these rules, unless the context requires otherwise:

(1) A facsimile transmission means the transmission of a source document by a facsimile machine that encodes a document into optical or electrical signals, transmits and reconstructs the signals to print a duplicate of the source document at the receiving end.

(2) A facsimile machine means a machine that can send and receive a facsimile transmission.

(3) Fax is an abbreviation for facsimile and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.



**(D) Cover Page**

(1) The person filing a document by fax shall also provide therewith a cover page containing the following information [appendix I]:

- (a) the name of the court;
- (b) the title of the case;
- (c) the case number;
- (d) the title of the document being filed;
- (e) the date of transmission;
- (f) the transmitting fax number;
- (g) an indication of the number of pages included in the transmission, including the cover page;
- (h) if a case number has not been assigned, state that fact on the cover page;
- (i) the name, address, telephone number, fax number, Supreme Court registration number, if applicable, and e-mail address of the person filing the fax document if available; and
- (j) if applicable, a statement explaining how costs are being submitted.

(2) If a document is sent by fax to the Probate Court Clerk's Office without the cover page information listed above, the Clerk may, at its discretion: Enter the document in the Case Docket and file the document; or Send a faxed notice to the sending party of a failed fax filing.

**(E) Signature**

(1) A party who wishes to file a signed source document by fax shall fax a copy of the signed source document.

(2) A party who files a signed document by fax represents that the physically signed source document is in his/her possession or control.

**(F) Exhibits**

(1) Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile transmission for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the Court otherwise orders, the

missing exhibit shall be filed with the Court, as a separate document, not later than five (5) Court days following the filing of the facsimile document. Failure to file the missing exhibits as required by this paragraph may result in the Court striking the document and/or exhibit.

(2) Any exhibit filed in this manner shall be attached to a cover sheet containing the caption of the case which sets forth the name of the Court, title of the case, the case number, name of the judge and the title of the exhibit being filed, and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this Court [Appendix II].

**(G) Time of Filing**

(1) Subject to the provisions of these rules, all documents sent by fax and received by the Clerk shall be considered filed with the Clerk's Office as of the date and time the Clerk time-stamps the document received, as opposed to the date and time of the fax transmission. However, the fax machine will be available to receive facsimile transmission of documents on the basis of 24 hours per day, seven days per week including holidays.

(2) The Clerk's Office may, but need not, acknowledge receipt of a facsimile transmission.

(3) The risks of transmitting a document by fax to the Clerk's Office shall be borne entirely by the sending party. Anyone using facsimile filing is urged to verify receipt of such filing by the Clerk's Office through whatever technological means are available.

**(H) Fees and Costs**

(1) No document filed by facsimile that requires a filing fee shall be accepted by the Clerk for filing until Court costs and fees have been paid. Court costs and fees may be paid by cash, business check (no personal checks) or money order. Documents tendered to the Clerk without payment of Court cost and fees, or with incomplete information on the charge authorization or request, or which do not conform to applicable rules will not be filed.

(2) No additional fee shall be assessed for facsimile filings.

**(I) Length of Document**

Facsimile filing shall not exceed twenty (20) pages in length. The filer shall not transmit service copies by facsimile.

## **RULE 7. COURT COSTS**

(A) Deposits in the amount set forth in the schedule of costs shall be required upon the filing of any action and proceeding listed therein. The schedule of costs is available from the Clerk's Office or from the Court's official website at: [http://www.co.warren.oh.us/probate\\_juvenile/probate/court\\_costs.aspx](http://www.co.warren.oh.us/probate_juvenile/probate/court_costs.aspx)

(B) Counsel is responsible for ensuring payment of all Court costs.

**RULE 8. WITNESS FEES**

Statutory witness fees shall be assessed as Court costs in accordance with the judgment entry.

## **RULE 9. APPOINTMENT OF FIDUCIARIES**

(A) Prior to filing an Application for Letters of Administration, a copy of the death certificate for the person whose Estate is being opened must first be received by the Court.

(B) Prior to filing an Application for Letters of Administration, the attorney or the proposed fiduciary shall determine if there is a Will of the decedent on deposit with the Court by checking the Index of Wills.

(C) Any person filing an Application for Letters of Administration, who is not the surviving spouse or next of kin of the decedent, shall give notice to the surviving spouse and/or decedent's next of kin, regardless of their residency unless written waivers of notice are obtained from those persons. All written notices must contain the time, date, and place of the hearing and shall be served upon such persons by certified mail at least seven (7) days prior to the date set for hearing.

(D) Applications for the appointment of fiduciaries (whether executors, administrators, guardians, trustees, etc.) shall be accompanied by such information as a copy of a driver's license and social security number that will permit the Court to conduct a background check if determined necessary and to locate the fiduciary should the fiduciary fail to respond to Court notices, orders to appear, etc.,

(E) No person shall be appointed a fiduciary who cannot read and write, unless the Court for good cause shown directs otherwise.

(F) No person shall be appointed a fiduciary who is incarcerated, unless the Court for good cause shown directs otherwise.

## **RULE 10. APPRAISERS and APPRAISALS**

(A) When required by law, there shall be suitable and disinterested appraiser(s) appointed by the executor or administrator of an estate, with Court approval. Separate Court approval for appraisers on the Court's appraiser list is not required. The following persons shall be disqualified from being such an appraiser:

- (1) A person related by consanguinity or affinity to the decedent;
- (2) A beneficiary of the estate;
- (3) A person related by consanguinity, affinity, or employment to the fiduciary of the estate.

(B) If the appraiser is related to the attorney for the estate by consanguinity, affinity or employment, then such relationship shall be disclosed to the fiduciary and proof of such disclosure shall accompany the application of appointment of appraiser.

(C) Real estate appraisals shall be made by licensed real estate agents, brokers, auctioneers, credentialed real estate appraisers, or such other persons who by experience and/or training are qualified to make real estate appraisals.

(D) As to all personal property with no reasonably ascertainable value, appraisals shall be made by licensed auctioneers, credentialed personal property appraisers, or such other persons who by experience and/or training are qualified to make such appraisals.

(E) Verification of the qualification for appointment of appraisers not on the Court's appraiser list shall accompany the application for appointment of such appraiser.

(F) No appraiser or broker shall be permitted to purchase or acquire, directly or indirectly, any of the property he or she appraises, except at public auction.

(G) The fiduciary shall certify on each appointment of appraiser that the appraiser is a qualified and suitable person in accordance with this Local Rule 10.

(H) Court Approved Appraiser List.

(1) The Court shall maintain a list of appraisers who have been approved by the Court to conduct appraisals for all probate Court proceedings.

(2) The appraisers' list shall be reviewed biennially by the Court.

(a) The review shall include a survey of those appraisers currently on the list to determine their continued willingness to serve.

(b) Members of the Probate Committee and other members of the Warren County Bar Association may nominate appraisers for inclusion on the appraisers' list.

(3) To be considered for inclusion on the appraisers' list, the appraiser must complete an application on a form provided by the Probate Court.

(4) The purpose of the appraisers' list is not to exclude persons from conducting appraisals but rather to provide an easy reference for attorneys and fiduciaries requiring appraisals for probate proceedings. Any person who is qualified in accordance with this Rule 10 may conduct appraisals in probate proceedings.

## **RULE 11. INVENTORY AND APPRAISAL**

(A) All inventories must be filed within three (3) months after the appointment of the fiduciary. Citations shall be issued when filings are late unless an extension of time for filing has been granted. Applications for an extension shall set forth the time needed and be accompanied by an entry having a blank space for the Court to insert the inventory due date.

(B) Applications for extension of time for filing the inventory and appraisal shall be signed by both the fiduciary and the attorney representing the estate.

(C) The clerk of the probate court shall send the attorney for the estate a reminder notice if an inventory and appraisal is not timely filed, notifying that a citation shall issue for late filing unless either an extension is granted or the inventory and appraisal is filed by a particular date.

(D) No distribution or sale of any real property will be ordered until an inventory and appraisal is filed.

(E) Upon the filing of the inventory required by Section 2115.02 of the Revised Code, the Court forthwith shall set a day, not later than thirty (30) days after the inventory was filed, for a hearing on the inventory. Unless notice is waived, upon filing of an inventory, the executor or administrator shall serve the notice of the hearing upon any person who is interested in the estate in accordance with Civ. R. 73(E). The fiduciary shall file WCPC Form 6.6, Certificate of Service of Notice of Hearing on Inventory, accompanied by such waivers and proofs of notice, on or prior to the date of hearing on the inventory.

(F) The County Auditor's most recent fair market value appraisal may be submitted in lieu of an independent appraisal unless otherwise ordered by the Court, a copy of which shall be attached thereto.



## **RULE 12. BOND**

(A) All bonds must be for twice the amount of the personal property value with a minimum amount of \$10,000. All bonds must have the Court's Bond form attached (4.2, 15.3, or 50.3), as applicable.

(B) Bond premiums are administrative expenses, which shall be paid when due. No estate, guardianship, or trust shall be closed until the bond premiums are paid in full.

(C) The Court will waive fiduciary bonds only after the filing of a Motion and Entry requesting the bond be waived and hearing with notice to all who have not filed with the Court a Bond Waiver Acknowledgment (WCPC Form 4.2A).

### **RULE 13. FIDUCIARY ACCOUNTS**

(A) Fiduciary accounts shall be due and filed within the applicable time periods established by Revised Code Sections 2109.301, 2109.302 and 2109.303 as the same may, from time to time, be amended or in accordance with any order of the Court modifying such time periods and annually thereafter. Citations shall be issued when accounts are not filed in accordance with this rule, unless an extension of time for filing has been granted. The application shall set forth the time needed and the accompanying judgment entry shall have a blank space for the Court to insert the account due date.

(B) The Clerk of the Probate Court shall send the attorney for the estate a reminder notice if an account is not timely filed, notifying that a citation shall issue unless an extension is granted or the account is filed by the date specified in the notice.

(C) Applications for extension of time to file an account shall be signed by both the fiduciary and the attorney representing the estate.

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

(E) All guardianship and trust accounts shall be supported by vouchers. The vouchers shall be referenced to the account by number. Supporting vouchers will not be required in estates.

Except as provided herein, the fiduciary of a decedent's estate is not required to submit vouchers to verify disbursements made from the estate. The fiduciary shall collect and retain vouchers for his or her records. If an interested party requests to view a voucher, the fiduciary shall provide a copy of the requested voucher to the interested party. If an interested party files exceptions to an account, the fiduciary shall file the vouchers that relate to the exceptions with the Court at least five (5) days prior to any hearing on the exceptions.

(F) All fiduciary accounts shall set forth:

(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.
- (G) If real property 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 attached thereto.
- (H) Receipts for distributive shares signed by persons holding a power of attorney may be accepted. A copy of the recorded power of attorney shall be attached to the account.
- (I) 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 letter from the financial institution in which funds are deposited certifying the amount of funds on deposit to the credit of the fiduciary.
- (3) Assets held in a safe deposit box of a fiduciary or by a surety company on current inventory thereof shall be certified by the manager of the safe deposit box department of the financial institution leasing the safe deposit box or by a qualified officer of the surety company if the assets are held by a surety. If the assets are held by a bank, trust company, brokerage firm, or other financial institution, such exhibition may be made by proper certification as to the assets held.
- (4) For good cause shown, the Court may designate a deputy clerk, probate investigator, or bailiff of the Court to make an examination of the assets located in the county, not physically exhibited to the Court or may appoint a commissioner for that purpose if the assets are located outside the county. The designated appointee shall make a written report of his findings to the Court.
- (J) A final and distributive account shall not be approved until all Court costs have been paid in full.
- (K) Where there has been a Federal Estate Tax determination, the closing letter shall be filed as soon as practical.
- (L) Unless notice is waived in writing, upon the filing of a final account, the fiduciary shall serve notice of hearing of the account, to the following:
- (1) Decedent's Estates: To all residual beneficiaries in a testate estate, and to all next of kin in an intestate estate.
- (2) Guardianships: To the ward, if living, or to all next of kin of the ward, whose addresses are known, if ward is deceased.

(3) Trusts: To all the trust beneficiaries or their guardian or custodian if the beneficiaries are minors or incompetent.

(M) Accounts in Decedent's Estates.

(1) Notice of hearing upon current/partial accounts shall be given if ordered by the Court and to persons who have filed with the Court a request for such notice, including the address to where such notice should be directed.

(2) The fiduciary filing a partial account shall provide at the time of filing the account a copy of the account to each heir of an intestate estate or to each beneficiary of a testate estate, except to an heir or a beneficiary whose residence is unknown or to beneficiary of a specific bequest or devise who has received the distribution and for which a receipt has been filed or exhibited with the Court. The fiduciary shall file a Certificate of Service of Account to Heirs or Beneficiaries (Form 13.9) prior to the hearing upon the account. If the Court has ordered that notice of hearing upon the partial account be given to any heir or beneficiary, then, in lieu of the Certificate of Service of Account to Heirs or Beneficiaries (Form 13.9), the fiduciary shall comply with W.C.Pr. R. 13(N)(4) below.

(3) Service of notice of hearing on the account shall be in accordance with Civ. R. 73.

(4) The fiduciary shall file a certificate, prior to the date set for hearing upon a final account, which identifies the person(s) upon whom notice of hearing upon the account has been served, or who have waived notice. The fiduciary shall file WCPC Form 13.9A, Certificate of Service of Copy of Account and Notice of Hearing Account, accompanied by such waivers and proofs of notice, on or prior to the date of hearing on the account.

(5) In order to avoid having an estate being reported as delinquent for failing to file a current/partial account, a waiver of current/partial account, signed by all necessary parties as set forth in Revised Code Section 2109.301(A) or an Application for Extension of Time to File an Account (13.0A&B) signed by both the fiduciary and the attorney representing the estate must be filed.

(6) An affidavit and entry affirming that there are no assets in the hands of the fiduciary may be presented in lieu of a current/partial account in estates established for purposes of prosecuting a claim for wrongful death.

(7) A current/partial account shall have an accounting period which ends not more than six (6) months prior to the time it is presented and approved by the Court.

**RULE 14. CERTIFICATE OF TERMINATION**

(A) A Certificate of Termination may be filed in estates where the sole beneficiary is also the sole fiduciary (no account or application for attorney fee is required).

## **RULE 15. RELEASE FROM ADMINISTRATION**

An estate may not be released from administration pursuant to Revised Code sections 2113.03 or 2113.031 if the estate is insolvent or if there are claims against the estate which are rejected or otherwise disputed by the fiduciary or other interested party. All Releases require a copy of the funeral bill and death certificate to be submitted with the initial filing.

**RULE 16. APPRAISERS - LAND SALE PROCEEDINGS**

In land sale proceedings, the Court shall appoint one suitable and disinterested person as appraiser unless the property has been appraised in the estate within the previous year, or the auditor's value is used.

## **RULE 17. ADULT GUARDIANSHIPS**

The Court hereby adopts Rules 66.01 – 66.09 of the Rules of Superintendence, subject to the following changes:

### (A) Emergency Guardianships

Pursuant to R.C. 2111.02, if a minor or incompetent has not been placed under a guardianship, and if an emergency exists and it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or incompetent, at any time after it receives notice of the emergency, the Probate Court, ex parte, may issue any order that it considers necessary to prevent injury to the person or estate of the minor or incompetent, or may appoint an emergency guardian for a maximum period of seventy-two hours.

Applications for emergency guardianship must be accompanied by a completed Statement of Expert Evaluation (Form 17.1), along with a completed Supplement for Emergency Guardian of Person (Form 17.1A). Applications should also contain any attachments or exhibits that may assist the Probate Court in determining whether to grant an emergency guardianship.

Once the Application has been filed and the appropriate filing fee paid, the Application and any accompanying materials will be reviewed by the Judge. The Judge may, but is not required to, meet with the applicant and/or the attorney filing the Application.

Emergency guardianship will be granted only if there is reasonable certainty that immediate action is required to prevent significant injury to the person or estate of the individual. The Probate Court recognizes that emergency guardianship should not be granted where another remedy may be appropriate.

If the Judge declines to grant an emergency guardianship, the Probate Court may, in its discretion, schedule the matter on an expedited basis.

If the Judge approves the request for emergency guardianship, the following will occur:

1. A Judgment Entry will be issued granting emergency guardianship for a period of seventy-two (72) hours.
2. A hearing will be scheduled within seventy-two (72) hours in order to determine whether to extend the emergency order for up to thirty (30) days.
3. A hearing will be scheduled on the regular guardianship docket for hearing on the Application for Appointment of Guardian.



4. As soon as possible after the issuance of the emergency guardianship order, the Probate Court Investigator will visit with the ward in order to serve notice of the emergency guardianship proceedings and scheduled Probate Court hearings.

After the notice to the ward and hearing, the Probate Court may extend the seventy-two (72) hour emergency guardianship for a period not to exceed thirty (30) days, in which case a Judgment Entry will be issued.

#### (B) Guardian Comments and Complaints

The following procedure will be followed upon the Court's receipt of a complaint or comment regarding a guardian:

1. Complaints shall be in writing and filed with the Probate Court. No filing fee will be required. Complainants are encouraged to attach supporting documentation and affidavits to their complaint.
2. Upon receipt, the complaint will be docketed by a Probate Court deputy clerk and delivered to the Judge for review.
3. Upon receipt, a deputy clerk will log the complaint into the database maintained by the Probate Court for the purpose of monitoring such complaints.
4. The complaint will be promptly delivered to the Judge who will develop a plan of action for the complaint within ten (10) days. Plans of action may include any of the following:
  - a. The matter may be set for Review Hearing, in which case a copy of the Complaint will be sent to the guardian and a hearing notice will be sent to the complainant and the guardian.
  - b. The Judge may conduct an investigation into the complaint, which may or may not involve the use of the Probate Court Investigator, after which a written response will be prepared and sent to the complainant and the guardian.
  - c. The Judge may determine that, on its face, the complaint does not warrant further action, in which case a written response will be prepared and sent to the complainant.
5. In all cases in which the Probate Court generates a response pursuant to Items (4)(b) or (c) above, the response of the Probate Court will be docketed and the complaint and response will be maintained in the Probate Court file.
6. At the conclusion of the Review Process, a deputy clerk will make a notation into the database regarding disposition of the complaint.

When the Ward is a Veteran and the Court appoints the Guardian under R.C. Chapter 5905, notice of the complaint, reports, hearings and actions shall be given to the Administrator of Veterans Affairs of the United States pursuant to R.C. 5905.03.

The above Review Process does apply to those communications received by the ward or from the ward. However, complaints filed by the ward do not need to be on the

designated form; do not incur a filing fee; and are set before the Judge, subject to the limitations set forth in R.C. 2111.49(C).

(C) Comments and Complaints Retention

Comments and complaints submitted to the Probate Court shall be kept in a manner consistent with Local Rule 17(B).

(D) Guardian Background Checks

An applicant for appointment as a guardian, including as an emergency guardian, must submit to a civil and criminal record check satisfactory to the Court and execute such consent, if any, as may be requested by the Court to authorize the Court to perform that record check. In place of a civil and criminal background check, an Ohio attorney applicant currently in good standing with the Supreme Court of Ohio, may obtain and submit to the Court a Certificate in Good Standing with disciplinary information, issued by the Supreme Court of Ohio.

(E) Guardian with Ten or More Adult Wards

To assist the Court in meeting its supervisory responsibilities under Superintendence Rule 66.05(B) and in satisfaction of the responsibilities arising under Superintendence Rule 66.08(H) by January 31 of each year, a guardian with ten or more wards through this Court shall register with this Court a current list of active guardianship cases. A standard form will be created by the Court for that purpose. The registration shall include a listing of the guardian's wards, the case number and the appointing Court. The guardian in such cases shall advise the Court of any change in the guardian's name, address, telephone number and electronic mail address within ten days of the change occurring.

If the guardian will be seeking compensation from the guardianship or from the Court, the guardian shall accompany the annual registration with a fee schedule that differentiates guardianship services fees as established by local rule from legal fees or other direct services.

A guardian with ten (10) or more wards shall include with the Guardian's Report form, a statement indicating whether the guardian is aware of any circumstances that may disqualify the guardian from continuing to serve as a guardian.

(F) Guardian Fundamentals Training Requirement

A Guardian holds a unique role with respect to the ward and the Guardian has an obligation to obtain an understanding of the fundamentals of that relationship. Formalized training is one means to gain that competency.

Except as set forth below, every Guardian must meet the Guardianship Fundamentals Training required under Superintendence Rule 66.06 by completing prior

to appointment or within six (6) months thereafter a six (6) hour Guardian Fundamentals Training provided by the Supreme Court of Ohio or, with prior approval of that Court, another entity, unless the Court waives or extends the requirement for good cause.

The Guardianship Fundamentals Training requirements shall not apply to the Guardian of a Minor or Guardian of the Person/Estate for an Adult related to the Ward by consanguinity (a blood relationship) or affinity (kinship by marriage).

The guardian is responsible for providing to the Court, in a timely manner, documentation that establishes compliance with the Guardian Fundamentals Training requirement. Those failing to meet the requirement shall be subject to citation for being in contempt of court and subject to sanctions including, but not limited to imposition of a fine, denial of compensation, and/or removal.

#### (G) Guardian Continuing Education

Except as set forth below, every Guardian shall annually complete a three (3) hour Guardian Continuing Education Course provided by the Supreme Court of Ohio, or with prior approval of that Court, another entity. The continuing education requirement shall not apply to Guardians of a Minor related to the Ward by consanguinity (a blood relationship) or affinity (kinship by marriage), or Guardians of the Person & Estate of an Adult related to the Ward by consanguinity (a blood relationship) or affinity (kinship by marriage).

If a guardian fails to comply with the guardian continuing education requirement, the guardian shall not be eligible for further appointment until the requirement is met. The guardian also may be subject to sanctions including, but not limited to imposition of a fine, denial of compensation, and/or removal.

By December 31 of the first calendar year after completing the guardian fundamentals course, or its waiver by Court order, the guardian is responsible for providing to this Court documentation demonstrating compliance with this guardian continuing education requirement, including the title, date, location and provider of the education, or a certificate of completion containing such information.

#### (H) General Responsibilities of the Guardian to the Court

The person seeking to be appointed as the guardian is expected to have met with the proposed ward at least once prior to appearing before the Court for the hearing on the application, unless the Court has waived the pre-appointment meeting for good cause.

If the guardian becomes aware of allegations of abuse, neglect or exploitation of the ward, the guardian shall immediately report the same to the appropriate law enforcement authorities and the Court.

A guardian appointed by this Court shall inform the Court as to any change of address for either the guardian or the ward. This notification must be made within ten (10) days of the address change. The Notification of Address Change form may be used for that purpose, but is not required [ref. Sup.R. 66.08(E)]. If the ward's residence is changed the reason for the change should be indicated. Failure to notify the Court, under this rule, may result in the guardian being removed and/or the guardian's compensation being reduced or denied.

The guardian shall not move the ward from Warren County, Ohio or into a more restrictive setting without prior Court approval, unless a delay in obtaining authorization for the change of residence or setting would affect the health and safety of the ward.

While a guardian is generally required to seek prior approval of this Court before filing a suit for the ward, prior approval shall not be required when the suit is being filed in this Court.

The guardian shall avoid conflicts of interest with the ward and endeavor to avoid the appearance of impropriety (perceived self-serving, self-dealing, or perceived actions adverse to best interests decisions) when dealing with the ward's assets and needs. A potential conflict for the guardian may arise if the guardian's immediate family (parent, spouse, or child) is being employed or contracted by the guardian. The guardian shall disclose all conflicts to the Court in a clear and unequivocal manner. Doing so facilitates a determination whether the conflict can be mitigated or eliminated through the use of a guardian ad litem, a limitation of the powers of the guardian, or other actions.

The guardian shall obey all orders of this Court and shall perform all guardianship duties in accordance with the state and federal laws and rules and this Court's local rules, as all of them may be effective during the guardianship.

#### (I) General Responsibilities of the Guardian to the Ward

The guardian shall treat the ward with respect and dignity.

The guardian shall meet with the ward at least quarterly throughout the year, or more often if needed to promote the best interests of the ward.

Unless a guardian is related to the ward by consanguinity (a blood relationship) or affinity (kinship by marriage), the guardian shall not deliver the ward direct services, as defined in Superintendence Rule 66.01(B), without approval of this Court.

#### (J) Next of Kin for Guardianship of Incompetent Adults

For purposes of completing the Next of Kin of Proposed Ward (SPF 15.0), the applicant, pursuant to R.C. 2111.01(E), shall identify any person, whether or not an Ohio

resident, who at that time would be entitled to inherit from the proposed ward under the Ohio laws of intestacy and all known children of the proposed ward.

(K) Inventory, Fund Release, Expenditures and Identification of Legal Documents

Within three months of appointment, a guardian of the estate shall file an inventory of the ward's assets and income. If the assets include real estate, a legal description of the ward's real estate interest should accompany the Inventory. Funds in the name of the ward shall not be released to the guardian without the approval of an Application to Release Funds (SPF 15.6) or other specific court order. The expenditure of funds by a guardian shall not be approved until a Guardian's Inventory (SPF 15.5) has been filed and an Application to Expend Funds (SPF 15.7) has been approved.

Within three months of appointment the guardian shall file a list of all the ward's known important legal papers, including but not limited to estate planning documents, advance directives and the location of such papers. If it becomes known to the guardian that such information has changed or the existence of other important legal papers becomes known, the guardian shall report that new information to the Court in writing within thirty days of discovery.

(L) Guardians Report & Bi-Annual Guardianship Plan

Bi-annually, the guardian of the person and/or estate of an adult incompetent shall file the Guardian's Report (SPF 17.7), and Biennial Guardianship Plan - Person (Form 27.7) and/or Estate (Form 27.8). Unless otherwise ordered by the Court each Guardians Report for an incompetent shall be accompanied by a Statement of Expert Evaluation (SPF 17.1). If a physician or clinical psychologist states as an Additional Comment on a Statement of Expert Evaluation, that it is their opinion that to a reasonable degree of medical or psychological certainty that the ward's mental capacity will not improve, the Court, may dispense with the filing of subsequent Statements of Expert Evaluation with the Guardians Report. The Guardian's Bi-Annual Guardianship Plan shall be included in the Guardian's Report.

(M) Deposit of Will by Guardian

The guardian must deposit with the Court for safekeeping any instrument known to the guardian and executed by the ward that would constitute a "Will" under R.C. 2107.01. A deputy clerk shall issue to the Guardian a receipt of the deposited Will.

(N) Powers of Attorney by Guardian Prohibited

The Court, through this Local Rule, exercises its discretion under R.C. 2111.50(A)(2)(c) and hereby prohibits a guardian appointed by the Court from executing a power of attorney or any other document which purports to appoint an agent to execute

any of the duties or responsibilities imposed upon the guardian by law, rule, or order of the Court, unless otherwise approved by a specific order of the Court.

(O) Terminations

Except for the termination of a guardianship of a minor attaining the age of majority or upon the death of the Ward, a termination of a guardianship shall require notice to all persons designated in R.C. 2111.04 and to any other individuals who received actual notice of the original appointment of the guardian.

(P) Indigent Wards

The applicant or the guardian must file with the Court an Affidavit of Indigency, if the waiver of Court costs is being requested from the Indigent Guardianship Fund. False affidavits are punishable by findings of contempt, prosecution, and/or other sanctions.

(Q) Veteran's Guardianship

Veteran's guardianships are governed by R.C. Chapter 5905 and to the extent that there are special rules established therein for veteran's guardianship, those rules shall apply. In every respect, the general guardianship laws and rules shall apply.

(R) Additional Court Deposit

Pursuant to R.C. 2111.031 and in addition to the basic cost deposit, the Court may require an Applicant for a guardianship to make an advance cost deposit, the Court may require an Applicant for a guardianship to make an advance cost deposit in an amount the Court determines necessary (a) to defray the anticipated costs of examinations of an alleged incompetent, and (b) to cover the fees and costs to be incurred to assist the Court in deciding whether a guardianship is necessary.

**RULE 18. RELEASES AND ORDER TO EXPEND FUNDS IN GUARDIANSHIPS AND TRUSTS**

(A) An order to expend funds in a guardianship or trust shall not be granted if an inventory has not been filed or an account is due.

(B) The Court may require that applications for expenditure of funds include a statement of how the expenditure benefits the ward/beneficiary.

(C) Applications for expenditure of funds of wards/trust beneficiaries may be set for hearing.

(D) Applications for expenditure of funds for purchase of a motor vehicle for a minor ward shall also be accompanied by proof of liability and collision insurance and proof of the ward's/trust beneficiary's valid licensure.

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

(F) All applications for release of funds also shall specify the exact amount to be released, the financial institution holding the fund, its address, and the person in whose name the fund is held.

(G) Applications for release/expenditure of funds held in trust shall cite and quote the provision of the trust authorizing the release/expenditure.

(H) The entry authorizing release of funds shall authorize its release to the guardian in his fiduciary capacity, and shall authorize the financial institution, upon the request of the guardian, to release all sums in the name of the ward or former guardian.

## **RULE 19. SETTLEMENT OF CLAIMS FOR INJURIES TO MINORS**

(A) Unless otherwise ordered by the Court, an application for approval of settlement of claim for injuries to a minor shall be accompanied by a current statement of the examining physician with respect to injuries sustained, the extent of the recovery from such injuries and the physician's prognosis. This requirement is not satisfied by the attachment of the attorney's narrative, nurses' notes or emergency room report. The Court may waive this requirement upon application and a showing of good cause for waiver.

(B) Unless waived by the Court the presence of the injured minor and at least one parent (or legal custodian or guardian) shall be required at the hearing on the application.

(C) In the settlement of a minor's claim, seven (7) days' notice must be furnished to the minor's parents wherever they reside.

(D) Applications for approval of net settlement of a minor's claim of more than Twenty-Five Thousand Dollars (\$25,000.00) shall require the establishment of a guardianship of the estate of such minor.

(E) A guardianship shall not be required to administer net settlement proceeds that are deposited or invested in such manner that the proceeds are not subject to disbursement without prior Court authorization or otherwise not accessible to the minor prior to his or her attaining eighteen (18) years of age.

(1) Verification that the net settlement proceeds are not subject to disbursement without prior Court authorization or otherwise not accessible to the minor prior to his or her attaining eighteen (18) years of age shall be required. This requirement is satisfied for deposits with financial institutions by the filing of a Verification of Receipt and Deposit (WCPC Form 22.3) executed by an authorized financial institution officer.



## **RULE 20. STRUCTURED SETTLEMENT**

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

(A) The application shall include an affidavit from an independent certified public accountant, or an equivalent professional, specifying the present value of the settlement and the method of calculation of that value.

(B) If the settlement is to be funded by an annuity, the annuity shall be provided by an annuity carrier meeting or exceeding the following criteria:

(1) The annuity carrier must be licensed to write annuities in Ohio and, if affiliated with the liability carrier or the person or entity paying the settlement, must be separately capitalized, licensed and regulated and must have a separate financial rating.

(2) The annuity carrier must have a minimum of \$100,000,000.00 of capital and surplus, exclusive of any mandatory security valuation reserve.

(3) The annuity carrier must have one of the following ratings:

(a) A.M. Best Company: A++, A+ or A.

(b) Moody's Investors Service (Financial Strength): Aaa or Aa.

(c) Standard & Poor's Corporation (Claims Paying/Solvency): AAA or AA.

(4) In addition to the requirement of subsection (3), an annuity carrier must meet any other requirement the Court considers reasonably necessary to assure that funding to satisfy periodic payment settlements will be provided and maintained.

(5) A qualified insurer issuing an annuity contract pursuant to a qualified funding plan under these rules may not enter into an assumption reinsurance agreement for the annuity contract without the prior approval of the Court, the owner of the annuity contract and the claimant having the beneficial interest in the annuity contract. The Court shall not approve an assumption reinsurance agreement unless the proposed reinsurer is also qualified under the foregoing rules.

(6) The annuity carrier or an insurance broker procuring the annuity contract shall furnish the Court with an affidavit certifying that the carrier meets the criteria set forth in Subsection (3) above as of the date of the settlement and that the qualification is not likely to change in the immediate future. A broker's affidavit shall also state that the determination was made with due diligence based on rating information which was

available or should have been available to an insurance broker in the structured settlement trade.

(7) In the event the parties desire to place the annuity with a licensed insurer in Ohio which does not satisfy any provision of this rule, the Court may consider approving the same, but only if the annuity obligation is bonded by an independent insurance or bonding company, licensed in Ohio, in the full amount of the annuity obligation.

(C) The application shall include a statement of the total actual cost to the defendant of the settlement, and it shall be used to fix and determine attorney's contingent fees. Payment of attorney fees shall be determined on an individual basis so as not to impose financial hardship upon the plaintiff.

**RULE 21. TRANSFER OF STRUCTURED SETTLEMENT  
PAYMENT RIGHTS**

(A) Applicants seeking Court approval to transfer structured settlement payment rights shall file with the application a Statement of Financial Affairs (Official Form 107) as is required of Chapter 13 bankruptcy petitioner.

(B) If the transfer of the structured settlement payment rights is sought in whole, or in part to pay the applicant's current creditors;

(1) The applicant shall provide documentation of the amounts owed each creditor; and

(2) The Court may order that the purchaser shall issue payment directly to each such creditor identified by the applicant.

## **RULE 22. SETTLEMENT OF CLAIMS FOR WRONGFUL DEATH**

(A) Those persons entitled to notice of an application to approve settlement and distribution of wrongful death and survival claims pursuant to this rule are considered “interested parties” for purposes of this rule.

(B) All interested parties to the distribution of the net proceeds of the settlement shall be listed by name, residence, and relationship to the decedent on the application and entry approving settlement or distributing wrongful death proceeds.

(C) Notice of an application to approve settlement and distribution of wrongful death and survival claims shall be given to the following persons:

- (1) The surviving spouse, the children and parents of the decedent;
- (2) Other next of kin of the decedent if the decedent is not survived by a spouse, children or parents;
- (3) Any next of kin who are known or anticipated by the fiduciary to claim to have suffered damages due to the decedent’s death;
- (4) Other next of kin to whom the Court has ordered notice be given.

(D) The Court may require that an application to approve settlement and distribution of wrongful death and survival claims shall be accompanied by a narrative statement explaining the allocation of proceeds between the wrongful death and survival claims. Such narrative statement shall, upon order of the Court, include expert/medical documentation supporting such allocation.

(E) When the Court is called upon to endorse an agreed entry of distribution or to adjust the shares thereof, consents from or notice to those “interested parties” designated above shall be required.

(F) The presence of the duly appointed fiduciary shall be required at the hearing of the application to approve wrongful death settlement or distribution.

(G) The fiduciary shall file a Report of Distribution of Wrongful Death and Survival Claims not later than ten (10) days after journalization of the Entry Approving Settlement and Distribution.

(H) Appointment of a legal guardian or guardian ad litem for a minor who is interested in the settlement and distribution of wrongful death and survival damages may be necessary where the minor’s guardian, parent or legal custodian is also a beneficiary of the wrongful death damages or adverse interest or conflict of interest may be present.

(I) In order for the Court to track the progress of wrongful death cases that are pending, annual status update reports shall be submitted to the Court no later than the 1<sup>st</sup> day of July of each calendar.

## **RULE 23. CONTINGENT FEE AGREEMENTS**

(A) Unless otherwise authorized, a contingent attorney fee agreement between an attorney at law and a fiduciary which does not exceed 33-1/3% of the recovery (40% if an appeal is taken), may be approved by the Court at the time of settlement of claim. A contingent fee agreement which exceeds the foregoing formula shall require prior Court approval for the fiduciary to enter into said contract. Application for approval of contingent fee agreements shall be signed by the fiduciary. The Court shall review the reasonableness of the attorney's fees and the itemized expenses of litigation.

**RULE 24. ADMINISTRATOR, EXECUTOR, and ATTORNEY  
COMPENSATION - ADMINISTRATION OF ESTATES,  
GUARDIANSHIP/TRUSTS**

[Attorneys are expected to be familiar with Prof.Cond.R. 1.5, Sup.R. 66.08, Sup.R. 71, and Sup.R. 73.]

**ESTATES**

(A) Attorney fees, as set forth herein, shall only be paid upon the filing of a final account or as otherwise ordered by the Court. Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing the accounts.

(B) As used in this rule “persons affected by the payment of attorney fees”, include estate beneficiaries whose distribution will be reduced and creditors who will not be paid in full if the attorney fee sought is approved by the Court and paid by the fiduciary.

(C) Attorney fees that are within the attorney fee guideline set forth in W.C. Pr. R. 24(H) shall be considered ordinary attorney fees. Attorney fees in excess of the attorney fee guideline shall be considered extraordinary.

(D) In all cases the Court will approve such counsel fees as are reasonable for legal services which are necessary for estate administration and beneficial to the estate with a consideration of those factors set forth in Ohio Prof. Cond. Rule 1.5.

(E) Prior to a fiduciary entering into a contingent fee contract with an attorney for services, an application for authority to enter into the fee contract shall be filed with the Court. The Court will either give preliminary approval or deny the request. Preliminary approval shall be subject to final review at the conclusion of the matter that is the subject of the contingency fee contract.

(E) Applications for attorney fees.

(1) All applications for attorney fees shall be signed by the fiduciary and include:

(a) the amount of the fee requested;

(b) the Court’s Addendum to Attorney Fee Application with asset values on which the requested fee is calculated; and

(c) a description of the services rendered.

(2) In addition to the foregoing, applications for extraordinary attorney fees shall include:

(a) an itemization of the extraordinary services and the time required for the performance of such services; and

(b) a memorandum describing the necessity for such extraordinary services.

(3) Notice of applications for extraordinary attorney fees shall be given to persons affected by the payment of attorney fees pursuant to WCPC Form 13.14, Notice of Application for Attorney Fees, for those who have not signed detailed consents (stating the guideline attorney fee and the requested attorney fee). Counsel for the estate shall complete WCPC Form 13.14 and submit it to the Court with the application for attorney fees.

(4) Proofs of notice and detailed consents, stating the guideline attorney fee and the requested attorney fee, must be filed with the Court prior to the Court's consideration of the application for extraordinary attorney fees.

(F) The Court may conduct a hearing upon any application for attorney fees, whether ordinary or extraordinary and regardless of the fact that waivers have been obtained.

(G) Where the attorney, law partner, or firm associate, is appointed as fiduciary, the total administration fee for ordinary administration may not exceed the statutory fiduciary commission plus one-half (1/2) of the guideline attorney fees set forth herein.

(H) Counsel and Fiduciary fee guidelines. In the consideration of applications for counsel fees the Court shall consider the guideline set forth below for legal services of an ordinary nature rendered in the administration of a decedent's estate. This guideline is not to be considered or represented to clients, estate beneficiaries or others as schedules of minimum or maximum fees to be charged. In all cases the Court will approve such counsel fees as are reasonable for legal services which are necessary for estate administration and beneficial to the estate after a consideration of those factors set forth in Ohio Prof. Cond. Rule 1.5. This section shall also apply to fiduciary fees.

(1) On the personal property which is subject to administration and for which the fiduciary is charged and upon the gross proceeds of real estate that is sold under a power of sale under the will or by consent under R.C. 2127.011 as follows:

- (a) For the first \$100,000 at a rate of 5% (4% for fiduciary);
- (b) All above \$100,000 not exceeding \$400,000 at a rate of 4% (3% for fiduciary); and
- (c) All above \$400,000 at the rate of 3% (2% for fiduciary).

(2) On real property that is not sold at a rate of 2% (1% for fiduciary).



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

(4) On all property not included in this rule:

(a) If a federal estate tax return is not required, 2% (1% for fiduciary) of all non-probate property. This percentage fee shall only be taken if services on non-probate property were rendered during the administration of the estate.

(b) If a federal estate tax return is required and the attorney making application for the fee prepared the federal estate tax return, 3% of all such property subject to federal estate tax.

(5) Releases from Administration

(a) Release from Administration without real estate shall not exceed \$1,000 unless written consents of all heirs is obtained along with a detailed fee statement, attached to WCPC Form 13.13, to include the itemization and date of service performed, time expended, and identification of the individual performing the services.

(b) Release from Administration with real estate shall not exceed \$1,250 unless written consents of all heirs is obtained along with a detailed fee statement, attached to WCPC Form 13.13, to include the itemization and date of service performed, time expended, and identification of the individual performing the services.

(I) All estate assets that fall within the jurisdiction of the Warren County Probate Court must remain in the State of Ohio, unless approved by the Court.

## **GUARDIANSHIPS**

In guardianship administration, the Court shall consider applications for attorney fees for the establishment of the guardianship upon the filing of the first accounting, and shall consider additional fees annually upon the filing of each account. Notice of the application shall be signed by the guardian of the estate, and upon order by the Court, Notice shall be given to other interested persons. The guardian of the estate may waive notice of the hearing and consent to the payment of fees. All applications for attorney fees in guardianships shall be accompanied by a detailed fee statement including the itemization and date of service performed, time expended, identification of the individual performing the services, and the hourly rate.

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

All guardianship assets that fall within the jurisdiction of the Warren County Probate Court must remain in the State of Ohio, unless approved by the Court.

### **TRUSTS**

In trust administration, the Court shall consider applications for attorney fees for the establishment of the trust upon the filing of the inventory and shall consider additional fees upon the filing of each account. All applications for attorney fees in trusts shall be accompanied by a detailed fee statement including the itemization and date of service performed, time expended, identification of the individual performing services, and the hourly rate.

Notice of application shall be signed by the trustee. The Court may require notice of the hearing on the payment of the fees be given to the trust beneficiaries who are affected by the payment of fees.

All trust assets that fall within the jurisdiction of the Warren County Probate Court must remain in the State of Ohio, unless approved by the Court.

**RULE 25. GUARDIAN COMPENSATION (NON-INDIGENT WARDS)**

Unless otherwise provided by law or ordered by the Court, a guardian may charge for his or her ordinary services an amount computed in accordance with the following schedule:

A. During each accounting period required by statute:

3% of the first \$100,000 of income; and  
1% of the balance in excess of \$100,000.

3% of the first \$100,000 of expenditures; and  
1% of the balance in excess of \$100,000

B. In addition to Paragraph “A” above, an amount to be computed on the fair market value of the principal in accordance with the following schedule:

\$5.00 per \$1,000 on the first \$100,000 of fair market value of principal;  
\$4.00 per \$1,000 on the next \$200,000 of fair market value of principal;  
\$3.50 per \$1,000 on the next \$700,000 of fair market value of principal;  
\$3.00 per \$1,000 on all over \$1,000,000 of fair market value of principal;

For the purpose of computing the principal portion of the guardian’s compensation as herein provided in Paragraph “B” above, the fair market value of the principal shall be determined by the guardian as of the date of his or her appointment and as of each anniversary thereafter. The compensation so determined may be charged during the ensuing year. The annual principal valuation shall be adjusted from time to time to reflect additions to and withdrawals from the principal of the estate, and the compensation for the remaining portion of the annual period shall be similarly adjusted to reflect such revised valuation.

C. The minimum compensation for a guardian shall be \$350 per year.

D. Any attorney who serves as guardian and who also acts as attorney for said guardianship or whose partner, associate or attorney employee acts as attorney for said guardianship shall be limited to the fee as guardian and one-half (1/2) the fee as attorney.

E. The compensation of co-guardians in the aggregate shall not exceed the compensation which would have been payable if only guardian had been acting.

F. Except for good cause shown, neither compensation for a guardian nor fees to the attorney representing the guardian, will be allowed when the guardian is delinquent in filing an account as required by R.C. 2109.30.

**RULE 26. VETERANS ADMINISTRATION – GUARDIANSHIPS**

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

## **RULE 27. TRUSTEE'S COMPENSATION**

Except where the instrument creating the trust makes provision for compensation, a testamentary trust may charge for ordinary services performed by the trustee in connection with the administration of the trust as follows:

A. During each accounting period required by statute:

3% of the first \$100,000 of income; and  
1% of the balance in excess of \$100,000.

3% of the first \$100,000 of disbursements from income; and  
1% of the balance in excess of \$100,000

B. In addition to Paragraph "A" above, an amount to be computed on the fair market value of the principal in accordance with the following schedule:

\$5.00 per \$1,000 on the first \$100,000 of fair market value of principal;  
\$4.00 per \$1,000 on the next \$200,000 of fair market value of principal;  
\$3.50 per \$1,000 on the next \$700,000 of fair market value of principal;  
\$3.00 per \$1,000 on all over \$1,000,000 of fair market value of principal;

C. Trustees in any event, shall receive a minimum of at least \$350 each accounting period required by statute.

Such above computed compensation shall be charged one-half (1/2) to income and one-half (1/2) to principal, unless otherwise provided in the instrument creating the trust or approved by the Court.

There may be allowed an amount equal to 1% of the fair market value of any distribution or payment from the principal of the trust property. This amount shall be charged against and deducted from the distribution or payment.

For the purposes of computing the trustee's compensation as herein provided in Paragraph "B" above, the fair market value of the trust property shall be determined by the trustee as of a date, determined by the trustee, such date to commence during the month of the original receipt of trust property and each anniversary date thereafter. At the option of the trustee, fee evaluations may be made on a quarterly basis, each evaluation to be coordinated with the original annual evaluation date as selected by the trustee – if this option is selected by the trustee, the trustee must continue to compute his/her trustee's fee on the quarterly valuation basis, unless upon application to the Probate Court, a change in fee valuation method is allowed.

D. A separate schedule of the computation of trustee's compensation shall be shown in the trustee's account as a condition of its approval.

E. Any attorney who serves as trustee and who also acts as attorney for said trust or whose partner, associate or attorney employee acts as attorney for said trust shall be limited to the fee as trustee and one-half (1/2) the fee as attorney.

F. Except for good cause shown, neither compensation for a trustee nor fees to the attorney representing the trustee, will be allowed while the trustee is delinquent in filing an account as required by R.C. 2109.30.

G. A corporate trustee may take trustee fees in accordance with its published fee schedule, provided the fee schedule has been filed with the Court. A corporate trustee shall file its current published fee schedule with the Court on an annual basis. Any amendments to the schedule must be filed before a fee may be taken in accordance with the amended schedule. Fee schedules shall be limited to a maximum, 1% fee for all trust estates with a market value of \$75,000 or less.

**RULE 28. CIVIL COMMITMENT OF THE MENTALLY ILL OR DEVELOPMENTALLY DISABLED**

When an affidavit alleging that a person is a mentally ill person subject to hospitalization by Court order or is a developmentally disabled person subject to institutionalization by Court order has been accepted for filing and an order of detention issued, the Court shall appoint an attorney to represent the respondent without the necessity of a hearing.

Affidavit will not be accepted without the filing of the case history, certificate of examination, and application for emergency admission (if any). A social security number of the respondent shall be provided by the affiant.

## **RULE 29. ADOPTIONS**

(A) Putative fathers shall be named and due diligence exercised by the applicant to provide notice to putative fathers in all adoption proceedings. A putative father need not be named or notified of the filing of a petition and hearing thereon where a certificate issued by the Putative Father Registry stating that there is no registration of a putative father is filed with the Court

(B) A Petitioner's Preliminary Account shall be filed with the initial case documents and a Petitioner's Final Account shall be filed not later than 10 days prior to the final hearing. Cases are set for one hearing unless objections are filed or unless the child has been in the home less than six months, then Interlocutory and Final hearings are set.

(C) In step-parent adoptions wherein Domestic Relations Court, Juvenile Court, or the Child Support Enforcement Agency has a pending case for support, petitioner(s) or counsel shall notify said court or agency of the child's adoption to allow the support order to be terminated or reduced to a lump-sum judgment.

(D) Petitioner(s) shall procure a new birth certificate from the Division of Vital Statistics once the adoption is finalized.

(E) The individual who performs the duties of an assessor, as described in R.C. 3107.014, shall indicate on the home study and/or assessment filed with the Probate Court the assessor's licensure qualification. The assessor shall be appointed by the Court or with the Court's approval.

(F) Petitions for adoption pursuant to R.C. section 3107.18(B) and applications for issuance of a foreign birth record for the adopted person pursuant to R.C. section 3107.18(C) shall be accompanied by USCIS form I-171H or I-797C, a copy of the foreign decree of adoption and foreign birth certificate with English translations of both documents. A copy of the completed home study and criminal background report must also be submitted (original ones will suffice).

(G) Surrogate adoptions. Surrogate adoptions shall be treated as non-relative adoptions. All surrogate contracts must be pre-approved as part of the pre-placement process. Any application or petition failing to comply with this requirement shall be dismissed.

(H) Initial hearings on petitions for adoption shall be scheduled for one-half hour unless the petition for adoption is contested. Counsel representing persons contesting a petition for adoption shall notify the Court and the petitioner or the petitioner's counsel, if the petitioner is represented by counsel, of the intent to contest the petition. The Court shall conduct a pretrial conference for all contested adoptions. If a person appears at the initial hearing and advises the Court of intent to contest the adoption, the Court shall use the initial hearing to conduct the pretrial conference and schedule further hearing on the adoption.



(I) Adult Adoptions. Petitions for the adoption of an adult shall be accompanied by the Affidavit of Relationship with Adult Adoptee, WCPC Form 19.01, with copies of the applicable documents to support the relationship, included with the SPFs on the Court's official website. Consent from the Adult Adoptee is required.

(J) Independent Adoptions/Placements. Applications for Approval of Placement of children for adoption (WCPC Form 19.5) by a private person or entity not connected with or certified by the Department of Job and Family Services shall be accompanied by an Acknowledgement of Natural Parent (WCPC Form 19.6) and a completed Entry Approving Placement (WCPC Form 19.7).

### **RULE 30. SERVICE BY PUBLICATION**

(A) Requests for service by publication in adoptions shall be accompanied by a completed form WCPC Form 19.9 (Adoption Affidavit for Notice by Publication).

(B) Requests for service by publication in all proceedings other than adoptions shall be accompanied by a completed form WCPC Form 19.4 Affidavit for Service by Publication (for estates, guardianships and trusts), and a completed WCPC Form 21.6 (for name changes).

(C) If a praecipe or request for service of process is filed in a case with a scheduled hearing, then such praecipe or request for service of process must be filed not later than the number of days prior to the hearing that are required by the civil rules or Court order necessary to complete the service prior to the hearing date plus an additional three (3) business days.

### **RULE 31. NAME CHANGE**

(A) Consent in writing to the change of name of a minor child is required from both natural parents at the time of filing application, or both natural parents are required to be served to attend the hearing on the request for the change of name of a minor child.

(B) Name change applicants have an affirmative duty to disclose all relevant information to the Court as regards the name change, the reasons therefore, that such name change is not contrary to public policy and that there is reasonable and proper cause for such name change. Failure to comply with this rule may result in vacation of the judgment granting the name change.

## **RULE 32. MISCELLANEOUS**

(A) All documents filed with the Warren County Probate Court shall be legible. Typewritten documents are preferred. All *pro se* filings shall include complete instructions to the Clerk's Office for service.

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

(C) No certified copies of Entries or Letters, etc. will be issued unless all required filings have been made. One day advance notice must be given to the Clerk's Office on any requests for certified copies, authenticated copies, etc.

(D) In any proceeding before this Court when the Court determines that a guardian ad litem is necessary or appropriate, the Court shall appoint one suitable and disinterested person as a guardian ad litem.

(E) Any court appointed attorney appointed or attorney appointed by the Court to serve as guardian ad litem shall be paid a reasonable attorney fee in accordance with Ohio Prof. Cond. Rule 1.5.

(1) Where guardian ad litem fees are to be paid by the Court due to the indigency of the child, incompetent or other person, fees will also be accordance with the hourly fee schedule adopted by the office of the Ohio Public Defender and in an amount of not more than \$1,000.00 unless the Court orders otherwise in a specific case.

(2) Applications for fees to be paid by the Court shall be made upon a Motion for Approval of Payment of Appointed Counsel Fees and Expenses (WCPC Form 26.0).

(F) Interpretive Services: When an interpreter is needed, the attorney or party requiring an interpreter shall inform the Court Administrator not less than ten (10) days prior to the hearing or court function at which the interpreter is necessary, excepting hearings where parties have not received ten (10) days' notice. The Court will arrange for an objective interpreter to be present for the hearing. The interpreter will be compensated pursuant to the Court's Interpreter Fiscal Policy. (Appendix III)

### **RULE 33. REPORT OF INSOLVENCY**

(A) Upon the filing of a Report of Insolvency, the Court forthwith shall set a day, no sooner than thirty (30) days, for a hearing on the Report of Insolvency. The executor or administrator shall serve the notice of the hearing in compliance with Section 2117.17 of the Revised Code. The executor or administrator shall file proof that such notice has been given to all persons entitled to such notice.

(B) Reports of Insolvency shall be accompanied by a schedule of debts which sets forth the amount of the debt, its classification pursuant to R.C. section 2117.25 and the amount proposed to be paid.

(C) Objections to a Report of Insolvency or to the classification or allowance of a claim may be made in writing at any time prior to the hearing or orally at the hearing. If such an objection is made the matter will be scheduled for further hearing to consider the objection.

(D) Absent objections, counsel for the estate shall present an entry for the Court's approval that provides that all persons entitled to notice of the hearing have been duly notified or waived such notice, that no objection has been made to the report of insolvency or the classification or allowance of claims, finds that the estate is insolvent, adopts and approves the fiduciary's classification of the costs, debts and claims of the estate and orders that the costs, debts and claims be paid by the fiduciary according to the priority and procedure established in section 2117.25 of the Revised Code.

(E) Insolvent estates may not be released from administration pursuant to R.C. section 2113.03.

(F) Guardians of insolvent estates shall comply with the same procedure set forth herein for executors and administrators except to the extent that such procedure would be clearly inapplicable due to differences in the administration of decedent's estates and guardianship estates.

### **RULE 34. MARRIAGE LICENSE PROCEDURE**

(A) Marriage license applicants must present a signed and time-stamped copy of their most recent final decree of divorce.

(B) All marriage license applicants shall demonstrate an understanding and comprehension of the oath; if any applicant does not speak English, an interpreter will be provided.

**RULE 35. REGISTRATION OF UNRECORDED BIRTH;  
CORRECTION OF BIRTH RECORD**

Only those Applications for Unrecorded Birth or Corrections of Birth Records from applicants who claim to have been born in the State of Ohio shall be accepted.

### **RULE 36. CONFLICT RESOLUTION; MEDIATION**

In accordance with section 2101.163 of the Ohio Revised Code, the Court approves of mediation by a qualified trained mediator of proper probate cases upon application of any interested party. The parties involved in the dispute shall pay the fees of the mediator.



## **RULE 37. CASE MANAGEMENT & JURY MANAGEMENT**

### **A. CASE MANAGEMENT**

(1) Scheduling Conferences. The purpose of the scheduling conference is to identify the issues in controversy, establish a timetable for discovery, schedule a pretrial conference and schedule an evidentiary hearing. At the conclusion of the scheduling conference, a scheduling order may be issued. The Court may conduct a scheduling conference in conjunction with any hearing on other pending motions in order to expedite the case. If a pretrial conference is scheduled the Court may require the parties to file pretrial statements as set forth below.

(2) Pretrial Conferences.

(a) All discovery shall be completed thirty (30) days prior to trial, unless for good cause shown, the time period may be modified by the Court. Nothing in this rule shall nullify a discovery request unless it is prohibited by the Court.

(b) Upon request by the Court, a pretrial statement shall be filed and served upon all other parties not less than seven (7) days prior to the date of the pretrial. The pretrial statement shall contain all of the following information:

(i) A statement of pertinent facts;

(ii) A statement of the contested issues of fact and law;

(iii) Names and addresses of all witnesses;

(iv) A list of all exhibits;

(v) If shared parenting is requested, a written-shared parenting plan must be filed on or before the pre-trial date.

(c) If a pretrial statement is not filed in accordance with this rule, the Court may continue the pretrial in progress and entertain a motion for attorney fees against the non-complying party.

(d) Unless excused by the Court, trial counsel and the parties must attend the pretrial. Failure to abide by this rule may result in a second pretrial with opposing counsel's attorney fees paid by the non-complying attorney.

(3) Pursuant to Civ. R. 53 and/or Juv. R. 40, the Court may refer matters to a Magistrate.

- (4) Exhibits: the parties shall prepare their trial exhibits prior to the hearing.
- (a) Plaintiff shall use numbers
  - (b) Defendant shall use letters.
  - (c) Counsel shall supply a witness list, exhibit list and a copy of each exhibit to the Court at any time prior to the commencement of the trial and/or hearing.
  - (d) When exhibits are admitted into the record during a hearing, it is the parties' responsibility after the hearing is concluded to redact all personal and financial information from them (i.e. account numbers, social security numbers, etc.). The original exhibits will be kept in the file under seal and the redacted copies will be made part of the Court's file which will be subject to public access.

## **B. JURY MANAGEMENT**

“Rule 8. Jury Management Plan” of the Rules of Practice for the Warren County Common Pleas Court, General Division, is hereby adopted and incorporated herein by reference.

**RULE 38. FACSIMILE SIGNATURE BY THE COURT**

A Judge or Magistrate may elect to attach a facsimile signature to his or her journal entries, notices, orders, opinions and any other filings.

## **RULE 39. VIDEO/PHOTOGRAPHY IN THE COURTROOM**

(A) Intent: this Rule, pertaining to recording or broadcasting within the Courthouse, is to be read in conjunction with Rule 12 of the Rules of Superintendence.

(B) Recordings in the courtroom: no video, photographic or audio recording device, including cell phones when used for this purpose, may be used to record Court proceedings inside the courtroom without prior approval.

- (1) Anyone wishing to broadcast, record, or photograph of Court proceedings must receive prior approval of the Court Administrator. The Court Administrator will confer with the judge for approval.
- (2) The written application must be made prior to each hearing for which permission is sought, and shall indicate the applicant's news media affiliation, if any, the recording equipment proposed to be used (video camera, still camera, audio recording device), and any special requirements, such as microphone hook-ups or electrical conduits.
- (3) The judge will assign positions in the courtroom to approved media representatives and technicians. They will not be permitted to move about the courtroom, nor to enter or leave the courtroom during active Court proceedings.
- (4) There shall be no recording or broadcasting of activities in the courtroom that take place during the recesses of a hearing, or during the half-hour before or after the hearing.
- (5) Photographing or videotaping jurors is not permitted.
- (6) Audio equipment shall be controlled so that it will not pick up conferences or conversations between counsel and client, between counsel and the judge at the bench, or between counsel and official Court Reporter as in the case of a proffer.
- (7) The use of artificial lighting and flash photography is prohibited. Equipment used in the broadcasting or televising of proceedings, such as microphones and television cameras, must be positioned prior to the commencement of the hearing, and must remain in position until the entire proceeding is concluded.
- (8) Attorneys shall inform witnesses and/or victims of their right to object to being filmed, videotaped, recorded or photographed.
- (9) The filming, videotaping, recording or taking photographs of victims or witnesses who object shall not be permitted.
- (10) If the Court orders that a particular witness or other person in the courtroom is not to be photographed or recorded, it will be the responsibility of each individual to inform assistants of the trial judge's instructions.

The Court may further regulate the conduct of any broadcasting or recording activity so as to avoid distracting the participants and to guarantee a fair trial.

## **RULE 40. EFFECTIVE DATE**

These rules shall take effect on the 1<sup>st</sup> day of February 2022. They govern all proceedings and actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

APPENDIX I

PROBATE COURT OF WARREN COUNTY, OHIO

FACSIMILE FILING COVER PAGE

**RECIPIENT INFORMATION:**

NAME OF COURT: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

**SENDING PARTY INFORMATION:**

NAME: \_\_\_\_\_

SUPREME COURT REGISTRATION NO.: \_\_\_\_\_

OFFICE/FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

E-MAIL ADDRESS (if available): \_\_\_\_\_

**CASE INFORMATION:**

TITLE OF THE CASE: \_\_\_\_\_

CASE NUMBER \* : \_\_\_\_\_

TITLE OF THE DOCUMENT(S): \_\_\_\_\_

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**FILING INFORMATION:**

DATE OF FAX TRANSMISSION: \_\_\_\_\_

NUMBER OF PAGES (including this page): \_\_\_\_\_

STATEMENT EXPLAINING HOW COSTS ARE BEING SUBMITTED, IF  
APPLICABLE: \_\_\_\_\_

[\*If a case number has not been assigned, please state that fact in the space provided.]



### APPENDIX III

#### Court Interpreter Fiscal Policy

Pursuant to Ohio Sup. R. 88, the Court appoints a foreign language or sign language interpreter when requested and/or when deemed necessary to ensure the meaningful participation of a party or witness.

**Effective September 1, 2013** all interpreters will be compensated for their services at uniform rates established by the Court.

Mileage	.50¢ per mile
Interpretation	\$50.00 per hour

Interpreters will be compensated for a minimum of two (2) hours of interpretation on every occasion which the Court requests their services.

Upon completion of the hearing or Court function, the interpreter shall send an invoice (see enclosed sample invoice) to the attention of the fiscal office at the Court. Said invoice must include a signature of a Court employee that verifies the interpreter's presence at the hearing or Court function.

In the event an interpreter is scheduled to appear at a hearing that is continued or dismissed, the Court will make every attempt possible to notify the interpreter their services are no longer needed.