

SUMMIT COUNTY PROBATE COURT
LOCAL RULES OF COURT

*[Effective June 10, 1998,
with Amendments through July 1, 2010.]*

PREFACE

Summit County Local Rules supplementing the Supreme Court Rules of Superintendence are numbered with a suffix. For example, a local rule which supplements Supreme Court Rule 53 is designated as Local Rule 53.1.

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LOCAL RULE 9.1**COURT SECURITY PLAN**

The Summit County Probate Court adopts the Security Plan as identified in Summit County Common Pleas Court, General Division, Rule 25.

[Adopted effective July 1, 2010.]

LOCAL RULE 26.1**COURT RECORDS MANAGEMENT AND
RETENTION**

The Court has a Schedule of Records Retention and Disposition which will be followed in conjunction with The Rules of Superintendence for the Courts of Ohio.

[Adopted effective January 1, 2000.]

LOCAL RULE 53.1**HOURS OF THE COURT**

The business hours of the Probate Court shall be from 8:00 A.M. to 4:00 P.M., Monday through Friday and Saturday from 9:00 A.M. to 12:00 P.M., except legal holidays observed by the Court.

[Former Rule 18.1 amended and renumbered as Rule 53.1, effective June 10, 1998; amended effective January 2, 2007.]

LOCAL RULE 54.1 MAGISTRATES

(A) Appointment/Powers.

Magistrates may be appointed by the Common Pleas Court Probate Judge, and shall serve as full-time or part-time employees of the Court as provided in Civil Rule 53. Civil Magistrates shall have those powers as set out in Civil Rule 53 and as set out in any Order of Reference.

(B) General Order of Reference.

The Magistrates so appointed are hereby referred all matters, including pre-trials, pertaining to estates, guardianships, trusts, adoptions, civil commitments, and name changes. This Reference includes all powers of the Court except as restricted by law.

(C) Decisions.

Prior to an objection to a Magistrate's Decision, a request for Findings of Fact and Conclusions of Law may be filed, pursuant to Civil Rule 52.

[Former Rule 19.1 amended and renumbered as Rule 54.1, effective June 10, 1998; amended effective April 1, 2005.]

LOCAL RULE 54.2 RECORD

(A) Matters Heard by the Judge.

All matters occurring in open Court will be recorded on tape. A copy of the tape will be available at a cost set by the Court. Unless waived, a record in all jury trials will be taken by a court reporter. In all other matters, a record by a court reporter will be taken only upon written request.

(B) Matters Heard by the Magistrate.

All contested matters occurring in open Court will be recorded on tape. In all other matters, a record by the court reporter will be taken only upon written request.

(C) Costs.

Unless otherwise ordered, parties requesting a record by a court reporter will bear the cost of the reporter. The costs of taping a hearing shall be assessed to the case except where a party provides a court reporter, or by Order of the Court.

(D) Transcript.

Preparations of transcripts are the responsibility of the requesting parties.

[Former Rule 19.2 amended and renumbered as Rule 54.2, effective June 10, 1998; amended effective July 1, 2010.]

LOCAL RULE 55.1

EXAMINATION OF PROBATE RECORDS

(A) Removal of Files.

The Probate Court's files shall not be removed from the Court.

[Former Rule 20.1 amended and renumbered as Rule 55.1, effective June 10, 1998; amended effective July 1, 2010.]

LOCAL RULE 56.1**CONTINUANCES/LEAVES TO PLEAD****(A) Continuances.**

- (1) When a party fails to object within seven (7) days of the filing of a Motion to Continue, and the party has received notice of the Motion to Continue, such failure to object shall be considered as consent to the continuance.
- (2) An attorney requesting a continuance in a civil action heard by the Judge shall serve a copy of the Motion upon opposing counsel, or upon the adverse party if not represented by counsel.

(B) Leaves to Plead.

The following procedures are applicable:

- (1) Leaves to plead shall be by written application to the Court. The application shall set forth the number of leaves to plead previously obtained, and the total days of such leaves, and shall be served upon opposing counsel or upon the adverse party if not represented by counsel.
- (2) Leaves Granted Without Order of Court

Unless the Court has, on its own Motion, limited leaves to plead, the following Motions for leave to plead are granted, without Order of the Court, for a period of twenty-one (21) days.

- (a) **First Leave to Plead**
When a certification is filed that no previous leave to plead has been taken.
- (b) **Additional Leave to Plead with Consent**
If the only leave to plead taken by a party is under the provision of paragraph (B)(2)(a), an additional leave may be taken by that party upon the filing of the written consent of opposing counsel.

[Former Rule 23.1 and 23.2 amended and renumbered as Rule 56.1, effective June 10, 1998.]

LOCAL RULE 57.1

FILINGS AND JUDGMENT ENTRIES

(A) Requirements for Acceptance.

- (1) The Court may, whenever it deems necessary, require the use of printed forms supplied by the Court.
- (2) Upon filing a new case, or entering an appearance as substituted counsel or as co-counsel, each attorney shall provide the Court with their Attorney Registration Identification Number issued by the Supreme Court of Ohio. The number shall be conspicuously placed on an original filing or Order whenever an attorney first represents a fiduciary in any estate, trust, guardianship, or civil case.
- (3) All filings, except Wills, shall be on white paper.
- (4) All filings must contain original signatures. In all matters with multiple fiduciaries where the fiduciaries' signatures are required, the signature of all fiduciaries are required.
- (5) Notwithstanding Civil Rule 11 and the standard probate forms, the fiduciary's(s') signature(s) is(are) required on all matters pertaining to the receipt and expenditure of funds, resignation of fiduciary or any applications or motions.

(B) Approval by Attorney of Fiduciary Filings.

- (1) Each document presented to the Court for filing on behalf of a fiduciary, if not otherwise required to be signed by the fiduciary's attorney, shall have endorsed thereon the approval of the attorney-at-law, if any, who represents the fiduciary, in the following form:

Approved:

Attorney for Fiduciary

The signature of an attorney constitutes a certification that the attorney has read the pleadings; that to the attorney's best knowledge, information, and belief, there is good ground to support it; and that it is not interposed for delay.

- (2) No one may sign on behalf of an attorney.

(C) **Motions.**

Unless an oral hearing is requested, all Motions shall be submitted on memorandum or brief. Requests for hearing must be in writing, and filed with the Motion. A statement of the grounds upon which the Motion is based, together with a citation of authorities relied upon, shall be presented in the memorandum or brief.

Within ten (10) days after the receipt of a copy of a Motion, opposing counsel shall prepare and file a reply to the Motion, setting forth written statements of opposition to the Motion, together with a citation of authorities relied upon in opposition.

The Motion shall be ruled upon at any time after fourteen (14) days from the date of filing the Motion.

(D) **Maintaining Privacy of Personal Identifying Numbers.**

To protect legitimate personal privacy interests, social security and other personal identifying numbers, such as birth dates, shall be redacted from documents as directed by these rules before the documents are filed with the Probate Court. The responsibility for redacting personal identifying numbers rest solely with the attorneys and parties who file the documents. The clerks will not review the documents to confirm that personal identifying numbers have been excluded.

(E) **Account Numbers.**

All financial asset account numbers in any public record document filed in this Court shall disclose only the last four digits of the account number. It is the responsibility of the person filing the document to redact the remaining digits of the account number.

[Former Rule 24.1 amended and renumbered as Rule 57.1, effective June 10, 1998; amended effective February 1, 2008; amended effective July 1, 2010.]

LOCAL RULE 58.1**DEPOSIT FOR COURT COSTS****(A) Deposits.**

Deposits in the amount set forth in Appendix A shall be required upon the filing of any action and proceeding listed therein. The deposit shall be applied as filings occur and an additional deposit may be required by the Court.

(B) Additional Deposits Herein Enumerated But Not Limited To.

Costs shall be updated, and a further deposit shall be required, when:

- (1) An account is filed;
- (2) Real estate is transferred;
- (3) Requested by the Court to cover certified mail, publication, etc.;
- (4) A wrongful death settlement is filed;
- (5) An Entry confirming sale and ordering deed and distribution is filed in a Civil Land Sale proceeding.
- (6) Necessary in all Civil Actions.

(C) Court Costs.

For the purpose of procuring and maintaining computerized legal research services, an additional fee of Three Dollars (\$3.00) shall be collected as costs in each cause filed in an estate, wrongful death, guardianship, trust, minor settlement, civil action, correction of birth record, registration of birth, change of name, or adoption.

[Former Rules 25.1, 25.2, and 25.3 amended and renumbered as Rule 58.1, effective June 10, 1998; amended effective July 1, 2010.]

LOCAL RULE 59.1**APPLICATION TO PROBATE A WILL**

Before an Application to open an estate is filed, the proposed fiduciary shall review the indexes of Wills to determine if there is a Will of the decedent on file with the Court.

[Former Rule 26.1 amended and renumbered as Rule 59.1, effective June 10, 1998.]

LOCAL RULE 60.1

**APPLICATION FOR LETTERS OF AUTHORITY TO
ADMINISTER ESTATE AND NOTICE OF
APPOINTMENT**

(A) Estate Administration.

(1) Non-Resident Fiduciary

Upon Motion, the Court will appoint as executor a spouse or next of kin named in the Will who is a non-resident of the State of Ohio, provided that a resident of Ohio is also appointed as an Administrator with the Will Annexed.

(2) Notice of Application/Stepparent

If a surviving spouse files an application to be appointed as administrator of an intestate estate, and is:

(a) not the natural parent of the decedent's child or children, and is,

(b) entitled to a priority of appointment under R.C. 2113.06,

the surviving spouse shall, in accordance with Rule 73 of the Ohio Rules of Civil Procedure, cause to be served on all competent adult next of kin of the decedent who reside in the State of Ohio a notice containing the following:

(a) that an application has been filed for the appointment of the spouse as administrator, and

(b) time and place of the hearing for the application.

Notice may be waived, in writing, by the next of kin.

(3) Status Report by Fiduciary

The fiduciary of an estate, or the attorney of record, shall file an annual report with the Court on the anniversary date of the estate opening, explaining the status of the estate and why the case is not closed.

(B) Qualification of Fiduciary.

No person shall be appointed as an executor, administrator, guardian, receiver, trustee or assignee who cannot read, write and speak the English language, unless the Court, for good cause shown, directs otherwise. The Court may require a hearing with the applicant prior to allowing appointment as fiduciary.

(C) Bond - Litigation Only Estates

- (1) If next of kin, beneficiaries under Will, or attorney is applying, bond may be dispensed with if all next of kin or beneficiaries consent.
- (2) If estate is opened by a Plaintiff in order to establish an entity to be the Defendant for purposes of civil litigation, bond may be dispensed with.

[Former Rules 27.1 and 27.2 amended and renumbered as Rule 60.1, effective June 10, 1998; amended effective July 1, 2010.]

LOCAL RULE 61.1**APPRAISER FEES/COMPENSATION**

Appraisers' fees for real estate shall be based upon the entire value of the assets subject to appraisal (not the decedent's interest in the property which may be fractional). Fees shall be computed at the rate of:

- (A) One Dollar (\$1.00) per thousand on the first Thirty-Five Thousand Dollars (\$35,000.00).
Minimum – Seventy-Five Dollars (\$75.00)
- (B) Two Dollars (\$2.00) per thousand on the next Fifty Thousand Dollars (\$50,000.00).
- (C) One Dollar Fifty Cents (\$1.50) per thousand on the next One Hundred Thousand Dollars (\$100,000.00).
- (D) One Dollar (\$1.00) per thousand on the balance over One Hundred Eighty-Five Thousand Dollars (\$185,000.00).

When an appraisal of multiple properties is performed, the above fee schedule shall apply to the aggregate value of all properties.

Ordinary fees under Five Hundred Dollars (\$500.00), paid in compliance with this rule, may be paid without application and entry.

On tangible personal property subject to appraisal the value of which is not readily ascertainable, the appraiser's compensation shall be One Dollar (\$1.00) per thousand of the total value.

If by reason of the application of such percentages to the value of assets of an estate, a disparity or injustice results, such disparity or injustice may be reviewed on the Court's own Motion or upon application of the fiduciary or any party in interest.

Additional compensation for extraordinary services performed may be allowed by the Court upon application filed by the fiduciary.

In land sale proceedings, the appraiser appointed by the Court may be compensated for services in the same manner as provided herein for estate appraisers, with a minimum fee of Seventy-Five Dollars (\$75.00) per parcel, provided that the amount to be paid the appraiser shall be set forth in the entry of distribution and be subject to the approval of the Court.

An appraiser may waive entitlement to all or any part of the compensations allowable under this Rule.

Where any question arises in the interpretation of this Rule, or if the amount of compensation cannot be agreed upon, the executor or administrator shall file an application for allowance of compensation to each appraiser. Otherwise, no Court Order is necessary, and credit may be taken for payment in the next regular account as provided by law, subject to all exceptions which may be thereafter filed.

In the event the appraiser's fee exceeds Five Hundred Dollars (\$500.00) when calculated in accordance with the above schedule, special approval must be obtained upon proper application to the Court.

[Former Rule 28.1 amended and renumbered as Rule 61.1, effective June 10, 1998; amended effective October 1, 2000; April 15, 2002; February 1, 2006.]

LOCAL RULE 61.2

**APPRAISAL/FULL ESTATE ADMINISTRATIONS,
RELEASE AND SUMMARY RELEASE FROM
ADMINISTRATION**

Unless there is a dispute, or an appraisal is required for other purposes, a Court-appointed appraiser shall not be necessary in estates filed as a Release, Summary Release from Administration, or Full Estate Administrations where the spouse inherits the entire estate.

A statement attesting to the auditor's appraisal value, signed by a representative of the County Auditor, will be accepted as the appraised value.

[Adopted effective November 1, 2001; amended effective February 1, 2006.]

LOCAL RULE 61.3**APPRAISER – SELF DEALING**

No appraiser shall directly or indirectly purchase, or negotiate the purchase, sale, trade, or management of the property that he or she has been appointed to appraise.

[Effective April 1, 2005.]

LOCAL RULE 64.1 ACCOUNTS

(A) All Accountings.

(1) Partial Accounts.

The Court reserves the right to require a partial accounting where a waiver of partial accounting may be otherwise authorized.

(2) Notice of Filing.

The Court shall cause notice of the filing of an account and the time and place of the hearing thereon to be published once in a newspaper of general circulation in the County. The hearing shall be set at the discretion of the Court.

(3) Failure to File.

(a) Hearing/Fiduciary Must Appear.

Unless physically unable, a fiduciary who has been cited must appear in open Court for a show cause hearing. Counsel shall not appear in lieu of a cited fiduciary unless leave of Court to appear is granted.

(b) Continuance after Citation.

Upon issuance of a citation for failure to file an accounting, a continuance to file shall not be granted until the fiduciary has personally appeared at a show cause hearing.

(c) Appointment in Other Matters.

A fiduciary, including a corporate fiduciary, shall not be appointed as a fiduciary in other matters while under citation for failure to file an account.

(4) Account Numbers.

All financial asset account numbers listed in a fiduciary's account shall disclose only the last four (4) digits of each account number. It is the responsibility of the person filing the account to redact the remaining digits of each account number.

(B) Guardian's Accountings.

(1) Guardian's Accountings shall be filed:

- (a) on the first anniversary date of the appointment of the guardian, and**

- (b) annually thereafter on the anniversary date, except
 - (c) a qualified bank or trust shall file on a biennial basis.
- (2) Period Covered.

Unless ordered otherwise, all guardian's accounts shall be for a period of twelve (12) months, except a final account may be for a period less than twelve (12) months.

- (3) Continuances to File.

When granted, unless specifically ordered, a continuance to file shall not extend the period as required under Paragraphs (B)(1) and (B)(2) of this Rule.

[Former Rule 32.1 and 32.4 amended and renumbered as Rule 64.1, effective June 10, 1998; amended effective April 1, 2005; February 1, 2008.]

LOCAL RULE 65.1 LAND SALES

(A) Preliminary Judicial Title.

Except for summary land sales, a preliminary judicial title or title commitment shall be required with the filing of the Complaint in all actions filed for the sale of real estate by a fiduciary.

(B) Real Estate Brokers' Commissions.

- (1) Real estate brokers' commissions are limited to seven percent (7%) of the sale price. No minimum fee shall be accepted by the Court.
- (2) Commissions on commercial property (land only) are limited to ten percent (10%) of the sale price. No minimum fee shall be accepted by the Court.

[Former Rule 33.1 amended and renumbered as Rule 65.1, effective June 10, 1998; amended effective April 1, 2005; amended effective July 1, 2010.]

LOCAL RULE 66.1**GUARDIANSHIPS****(A) Guardianships.****(1) Bond.**

Bond shall be posted in an amount of double the probable value of the personalty not in a custodial account or otherwise impounded according to law. However, all guardianships of the estate shall post a minimum bond as determined by the Court.

(2) Release of Funds and Assets.

Funds and assets held in the ward's name shall not be released to a guardian except upon Order of the Court. All Motions for release shall specify the exact amount to be released, the name and address of the financial institution holding the funds, and the person in whose name the funds are held. The Order releasing funds shall order the financial institution to hold all funds in excess of the amount to be released until further Order of the Court.

(3) Custodial Deposits.

Where found necessary, deposit of all, or a portion of, cash assets in a custodial account in a financial institution located in Summit County may be ordered by the Court. The deposit shall be made in the name of the fiduciary, and the personal property deposited shall not be withdrawn from the custody of the bank, association, or trust company, except upon the special Order of the Court.

(a) The custodial account shall be established by the filing of a Motion and Order to Create Accounts. A certified copy of this Motion and Order must be presented to the custodial depository.

(b) A verification of deposit signed by the custodial depository shall be filed within fourteen (14) days of the filing of the Motion and Order to Create Accounts.

(c) The Motion and Order to Create Accounts shall be filed prior to the filing of the Inventory. No Inventory will be accepted without the creation of the account.

(4) Investigation.

All applications for the appointment of a guardian for an adult incompetent shall be inquired into by a Court-appointed investigator, who shall also serve notice on the proposed ward according to law.

(5) School Guardianship.

The Court will not accept for filing any guardianship for a minor where the sole purpose of the guardianship is to establish a residency for school purposes.

(6) Voting.

No adult person adjudicated incompetent shall lose the right to vote, except upon motion, notice, and record hearing before the Court.

(7) Training Sessions.

All guardians of the person and estate, and all guardians of the estate only, shall, within six (6) months of the date of their appointment, attend one guardianship training session, as conducted and scheduled by this Court. This session need not be repeated upon subsequent appointments. Failure to attend a training session will subject the guardian to the Court's citation procedure.

(8) Guardian's Handbook.

Each guardian appointed after May 1, 1995, by this Court shall receive a guardian's handbook issued by the Court for the purpose of providing information as to a guardian's duties and responsibilities. At the time of appointment, the cost of the handbook shall be assessed to the guardian or the estate of the ward.

(9) Change of Residence of Ward.

All guardians must have the approval of Probate Court before transferring a ward out of Summit County or out of the State. A notice must be sent to the assigned Magistrate setting forth the transfer site, the reasons for the move, and alternatives available. The Court or Magistrate shall approve or disapprove the transfer.

(10) Personal Property.

Personal property of the ward, valued at \$500.00 or less, may be sold without prior approval of the Court if the buyer is not a relative.

(11) Death of Ward.

A guardian shall notify the Court of the death of a ward by written notice no later than ninety (90) days after the date of death.

Failure to notify the Court within the prescribed time limits will be considered malfeasance, and will disqualify the guardian from collection of guardian's fees from the ward's estate, including any fees owing to the guardian but not collected or paid. If the guardian is also the attorney for the guardianship, the foregoing rule shall also apply to attorney's fees.

Upon hearing, and for good cause shown, the Court may award guardian's or attorney's fees otherwise denied by this Rule.

(12) Guardian's Reports.

(a) Guardian Reports on all guardianships except Guardianship of a Minor's Estate only shall be filed annually on the anniversary of the appointment date

(b) Where a physician or clinical psychologist states on a Statement of Expert Evaluation that to a reasonable degree of medical certainty it is unlikely the ward's mental competence will improve, the Court may dispense with the filing of subsequent Statements of Expert Evaluations when filing further annual Guardian's Reports.

(13) Notice for Guardianship of Adult.

In addition to those entitled to notice of the hearing on the application for appointment of a guardian of an adult under Ohio R.C. 2111.04, the applicant shall submit to the Court the names and addresses of all adult children of the proposed ward. The Court shall serve the adult children with notice of the time and date of the hearing, unless the notice is waived.

(14) Deposit of Wills.

The guardian must deposit with the Court all Wills of the ward for safekeeping.

[Former Rules 34.1 and 34.2 amended and renumbered as Rule 66.1, effective June 10, 1998; amended effective April 1, 2001; October 1, 2001; December 31, 2001; April 1, 2005; February 1, 2008.]

LOCAL RULE 67.1**MINOR SETTLEMENT/NET PROCEEDS
LESS THAN TWENTY FIVE THOUSAND DOLLARS**

Unless otherwise provided for by Order of the Court, an applicant for release of assets pursuant to Section 2111.05 of the Ohio Revised Code shall:

- (A) File an application for release of assets without appointment of a guardian. Upon approval of the application, the Order of Release shall state the institution acting as depository, shall state that the funds shall not be released until the ward reaches the age of 18, or the ward's death, or until further Order of the Court;
- (B) Deposit funds in a bank or savings institution; and
- (C) File a report within fourteen (14) days after deposit that the deposit was made with the same restrictions on withdrawal as cited in the Order of Release.

[Former Rule 37.1 amended and renumbered as Rule 67.1, effective June 10, 1998; amended effective July 1, 2010.]

LOCAL RULE 68.1

SETTLEMENT OF INJURY CLAIMS OF MINORS

(A) Structured Payments.

If the proposed settlement contains structured payments, counsel shall schedule a conference with the assigned Magistrate prior to setting the hearing date.

(B) Record Hearing Required.

Any settlement of a minor's claim where the parents/guardians are unrepresented by counsel, shall be scheduled for a hearing in open court and recorded on tape.

[Adopted effective June 10, 1998; amended effective April 1, 2001.]

LOCAL RULE 70.1**WRONGFUL DEATH SETTLEMENT****(A) Conference.**

Upon filing of an estate, the assigned Magistrate shall hold a conference with counsel.

(B) Notice.

Pursuant to Civil Rule 73 E(7), the Court shall publish notice to next of kin at least thirty (30) days prior to the hearing on settlement for wrongful death claims.

(C) Hearing.

If all beneficiaries are of an unequal degree of consanguinity, an evidentiary hearing shall be conducted at the discretion of the Magistrate.

[Former Rule 38.1 amended and renumbered as Rule 70.1, effective June 10, 1998; amended effective January 2, 2008.]

LOCAL RULE 71.1

COUNSEL FEES

(A) Estate Administration.

(1) Forms.

Forms as prescribed by the Court shall be used to make application for counsel fees. See Appendices E and F.

(2) When Paid.

Unless otherwise approved by the Court for good cause shown, attorney fees for the administration of decedents' estates shall not be paid until the final account is filed and attorney fees for services rendered to a guardian, trustee or other fiduciary shall not be paid until the annual or biennial account is filed.

(3) Application.

(a) When filed:

An application for counsel fees shall be filed when:

- 1) Counsel is unable to obtain consents as provided in Paragraph (A)(3)(b).
- 2) Counsel serves as both attorney for the estate and fiduciary.
- 3) An objection to counsel fees is filed, or an exception to an accounting based on fees is filed.
- 4) Counsel fees are requested in representing guardians and trustees.

(b) When Not Filed:

Application for fee approval is not required when:

- 1) Written consents are given by heirs at law or residuary beneficiaries, whose combined beneficial interests equal or exceed seventy-five percent (75%) of net distributable estate, are filed with the Court, and
- 2) Notice of consent is given to those not consenting, and whose beneficial interests would be affected.

3) Notice.

Notice, as required in Paragraph (A)(3)(b)(2) of this Rule, shall be sent by certified mail by the attorney of record, and shall be mailed thirty (30) days prior to the filing of an accounting upon which fees are based. Consents and proof of service shall be filed at the time of the required accounting.

(c) Attachment/Time Records:

All counsel fee applications shall be accompanied with itemized time records, which shall state the date and time expended, who performed the service, the nature of the service performed, the hourly rate requested, or the specific basis of the fee requested.

(4) Hearing/When Required:

A Magistrate may require a hearing on fees, or may approve an application for fees without hearing, except where an application is caused to be filed pursuant to Paragraph (A)(3)(a)(3) of this Rule. If application is filed under Paragraph (A)(3)(a)(3), a hearing is mandatory.

(B) Insolvent Estates.

A hearing will be held on counsel fees at the hearing on report of insolvency.

(C) Land Sales.

An application for counsel fees in a land sale shall be filed at the time that the judgment entry confirming sale, ordering deed and distribution, is filed. Fees shall be taken at this time. Notice and hearing shall be as the Court directs. See Appendix G.

[Former Rule 40.1 amended and renumbered as Rule 71.1, effective June 10, 1998; amended effective April 15, 2002.]

LOCAL RULE 72.1 FIDUCIARY COMPUTATION

A computation of fiduciary fees shall be filed on a form provided by the Court when the accounting upon which the fees are based is filed. See Appendix D.

[Former Rule 41.1 amended and renumbered as Rule 72.1, effective June 10, 1998.]

LOCAL RULE 73.1**GUARDIAN'S COMPENSATION****(A) Application.**

Guardians shall file an application for allowance for fees at the time that the regular accounting is submitted to the Court. Such fees shall not be paid until authorized by the Court, and shall be accounted for in the next accounting period. Application forms shall be provided by the Court. See Appendix C.

(B) Schedule.

Guardian's compensation shall be based upon the following schedule:

5% of the first \$100,000.00 of income
3% of all income over \$100,000.00
5% of the authorized expenditures up to \$100,000.00
3% of the authorized expenditures over \$100,000.00

(C) Extraordinary Fees.

An application for extraordinary guardian's fees shall be accompanied with itemized time records. All time itemizations shall state the date and time expended, who performed the service, the nature of the service performed, the hourly rate requested, or the specific basis of the fee requested. A hearing shall be set with notice sent by the applicant to all interested parties as the Court so orders.

(D) Authorized Expenditures.

Conversion of assets to cash, reinvesting assets, distributions upon termination to another fiduciary, or the payment of guardian's fees shall not be deemed to be authorized expenditures or as income for purposes of computing compensation herein.

(E) Minimum Fees.

Minimum guardian's or trustee's fees shall be allowed in the amount of Three Hundred Dollars (\$300.00) a year.

[Former Rule 42.1 amended and renumbered as Rule 73.1, effective June 10, 1998; amended effective July 1, 1999.]

LOCAL RULE 74.1 TRUSTEE'S COMPENSATION

(A) Corporate Trustees.

- (1) Except where the instrument creating the trust makes provisions for compensation, a testamentary trustee may charge fees on the same basis as it charges for living trusts.
- (2) On each accounting where fees have been taken, an affidavit will be required asserting that the fees charged and included in the accounting represent those charges for similar services in living trusts.
- (3) A separate schedule of the computations of the trustee's compensation shall be set forth in the trustee's account as a condition of its approval.
- (4) Fee schedules are to be furnished to the Court on the first day of January of each year, and whenever a change in fees is made within any calendar year.

(B) Individual Trustees.

- (1) Except where the instrument creating the trust makes provisions for compensation, the trustee may charge fees on the same basis as is currently being charged by the banking institution with which the trust is doing business.
- (2) On each accounting where fees have been taken, an affidavit will be required setting forth that the fees charged are based on the schedules of the "name" bank.
- (3) A separate schedule of the computations of the trustee's compensation shall be set forth in the trustee's account as a condition of its approval.

- (C) The Court reserves the right to determine the reasonableness of trustee's compensation in all cases.

[Former Rule 43.1 amended and renumbered as Rule 74.1, effective June 10, 1998.]

LOCAL RULE 78.1

CASE MANAGEMENT PROCEDURE

(A) Inventory.

- (1) All pending cases shall be inventoried:
 - (a) Monthly by computer review.
 - (b) Yearly by physical review.
- (2) The objective of an inventory shall be to obtain an accurate count of pending cases.
- (3) All inventories are the responsibility of the Court Administrator.

(B) Supervision of Estates and Guardianships.

- (1) Each estate and guardianship shall be assigned to a specific Magistrate.
 - (a) Assignment shall be made by the Chief Magistrate and the Magistrate in charge of Human Services.
 - (b) The Magistrate assigned shall be responsible for supervision of the assigned estate or guardianship.
- (2) Monthly, the Court Administrator shall provide a summary of cases pending by Magistrate. Each summary shall indicate the number of cases assigned, completed, and pending at the end of the period, and any estates open for more than one (1) year.
- (3) Estates open more than one year.

Each Magistrate shall, upon the anniversary of an estate that has been open for more than one year, cause to be sent to the fiduciary a letter of inquiry as to the reason/s for failure to close the estate.

- (a) A standard letter shall be composed by the Chief Magistrate.
- (b) All returned letters shall be made part of the case file, and shall be acted upon appropriately by the assigned Magistrate.

(C) Supervision of Trusts, Adoptions, and Civil Commitments.

- (1) The Chief Magistrate shall have the responsibility for supervising trusts.
- (2) The Magistrate in charge of Human Services shall be responsible for adoptions and civil commitments.

(D) **Overdue Accountings, Reports and Inventories.**

- (1) Shall be cited pursuant to R.C. 2109.31.
- (2) Citation shall be for appearance before the Court on a specified date known as Call Day, pursuant to Local Rule 64.1(A)(3)(a).

(E) **Civil Cases.**

- (1) Shall be reviewed monthly to determine status.
- (2) A pretrial shall be set in Will contests, concealment of assets, land appropriations, and all other matters upon request of either party.
- (3) In all matters not set for pretrial, a hearing or trial date shall be set upon completion of service and pleadings.
- (4) A pretrial shall determine:
 - (a) Discovery deadline date;
 - (b) Exchange of witness list date;
 - (c) Pleadings and briefing date; and
 - (d) Trial date.

(F) **Withdrawal of Counsel.**

It is contemplated that counsel who has entered an appearance in a case shall remain in the case until concluded. However, upon written motion for leave to withdraw from the action for good cause shown, the Court may permit counsel to withdraw. In such case, counsel shall certify that the client and all other counsel of record have been notified.

(G) **Jury Management.**

The Summit County Probate Court adopts the Jury Management Plan as identified in Summit County Common Pleas Court, General Division, Rule 24.

[Adopted effective June 10, 1998; amended effective February 28, 2002; amended effective July 1, 2010.]

LOCAL RULE 86.1

MARRIAGE LICENSE

[Adopted effective January 1, 2000; deleted effective July 1, 2010.]

LOCAL RULE 87.1**SERVICE BY DEPUTY CLERK**

Any deputy clerk of this Court who is not less than eighteen (18) years of age and not a party to the proceeding is hereby designated as an authorized person to make service of process or of any notice pursuant to the Ohio Rules of Civil Procedure.

[Adopted effective June 10, 1998.]

LOCAL RULE 88.1 INVENTORY/NOTICE

The notice of the filing of Inventory, in accordance with R.C. 2115.16, shall be by publication only. The publication required shall be issued by the Court.

[Adopted effective June 10, 1998.]

LOCAL RULE 88.2**INVENTORY/SCHEDULE OF ASSETS**

The Schedule of Assets shall contain the legal description and the parcel number of all real estate included in the Inventory of the Estate

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

[Adopted effective June 10, 1998; amended effective February 1, 2008.]

LOCAL RULE 89.1**ATTORNEYS AS SURETIES**

Attorneys at law shall not act as sureties in any cause in this Court, nor shall they be permitted to become sureties on the bond of any fiduciary.

[Former Rule 47.1 renumbered as Rule 89.1, effective June 10, 1998.]

LOCAL RULE 90.1**REMOVAL OF WILL FROM SAFE DEPOSIT
BOXES**

Whenever the County Auditor, or his duly authorized representatives, in the course of conducting an inventory of a safe deposit box or similar receptacle standing in the name of a ward, locates a Will, or document purported to be the Will, of the ward, the County Auditor or his representative shall remove such Will or document, and deliver it immediately to a deputy clerk of the Probate Court, and shall receive a receipt therefore.

[Former Rule 48.1 amended and renumbered as Rule 90.1, effective June 10, 1998; amended effective April 15, 2002; amended effective July 1, 2010.]

LOCAL RULE 91.1**GUARDIAN AD LITEM****(A) Qualifications.**

A guardian ad litem shall be an attorney who is not associated with an attorney of record for the proceeding in which the guardian ad litem has been appointed.

(B) Appointment.**(1) Land Sales**

Subject to approval by the Court, a guardian ad litem will be appointed on recommendation and entry of the attorney of record.

(2) All Other Matters

A guardian ad litem will be appointed without recommendation upon notification of the necessity for appointment.

(C) Fees.**(1) Land Sales**

A fee shall be taxed in the costs of the case for each guardian ad litem in the amount of Ten Dollars (\$10.00).

(2) All Other Matters

Upon application and entry, a fee based on a reasonable hourly rate for time expended shall be taxed in the costs of the case for each guardian ad litem.

[Former Rule 49.1 renumbered as Rule 91.1, effective June 10, 1998; amended effective April 1, 2005.]

LOCAL RULE 92.1 TRUSTS

In cases where a trustee named in the Will is a non-resident of this State, the Court reserves the right to appoint a local resident co-trustee, with or without bond, who will insure that all assets pertaining to said trust remain in this County until distribution, or until the Court determines that the property may be removed from the County in accordance with R.C. 2109.21.

[Former Rule 50.1 amended and renumbered as Rule 92.1, effective June 10, 1998.]

LOCAL RULE 93.1 CHANGE OF NAME

Whenever an application to change the name of a minor is filed without the consent of the natural parent/parents, a hearing shall be required before a Magistrate. Notice on such application shall be in accordance with Civil Rule 73 as the Court may require.

[Former Rule 51.1 amended and renumbered as Rule 93.1, effective June 10, 1998.]

LOCAL RULE 94.1

ADOPTIONS

(A) **Deposits.**

Deposits, costs, and fees required for the filing of adoptions are set forth in Appendix B.

(B) **Expense Hearing.**

In all adoptions, except by a stepparent or where the child was permanently surrendered and/or placed by an Ohio licensed adoption agency, the petitioners shall appear in open Court, before the Judge or Magistrate of the Probate Court, and swear under oath as to any and all expenses being incurred and paid by them to any party or parties involved in the adoption matter before the Court. Costs of the reporter to the petitioner.

(C) **Notice of Hearing on Petition for Adoption (R.C. 3107.11).**

Form 18.2 must be served not less than **thirty (30) days** prior to the date of the hearing on the petition. The failure to file an objection at least **seven (7) days** before the hearing may result in the termination of parental rights.

(D) All R.C. 3107.10 preliminary estimate accountings and R.C. 3107.083 birth parent forms shall be filed with the Court on or before the date of the scheduled placement hearing.

(E) Only forms currently in use by the Probate Court will be accepted.

[Former Rule 52.1 amended and renumbered as Rule 94.1, effective June 10, 1998; amended effective April 15, 2002; amended effective July 1, 2010.]

LOCAL RULE 95.1

REGISTRATION OF BIRTH/CORRECTION OF BIRTH

(A) Registration of Birth.

(Reserved)

(B) Correction of Birth.

- (1) An applicant residing in the State of Ohio shall make at least one (1) appearance in open Court before approval of a correction of birth.
- (2) An applicant residing outside the State of Ohio must appear before a notary or other person able to administer an oath and complete a deposition as required by the Court.

[Former Rule 55.1 amended and renumbered as Rule 95.1, effective June 10, 1998.]

LOCAL RULE 96.1**CONCEALMENT OF ASSETS****(A) Examination before Magistrate.**

Pursuant to R.C. 2109.50, upon the filing of a complaint of concealment, the person or persons accused shall be examined before a Magistrate. The Magistrate, subject to objection, shall rule on all questions of evidence.

(B) Reduction to Writing.

Pursuant to R.C. 2109.50, reduction to writing shall be by a court reporter. A transcript of the examination shall be signed by the party examined, and submitted to the Court. The cost of the reporter and transcript shall be taxed to the complainant, except as provided by R.C. 2109.52.

(C) Trial by the Court.

Upon the filing of the transcript as provided in Paragraph (B), the concealment shall be set for pretrial to the Court or jury.

[Former Rule 56.1 renumbered as Rule 96.1, effective June 10, 1998.]

LOCAL RULE 97.1

APPROPRIATION OF PROPERTY

(A) Filing of Petition and Service of Summons.

Filing and service procedures shall be administered in accordance with R.C. 163.05, et seq..

(B) Court Proceedings.

(1) Hearing on Necessity:

If a property owner's Answer specifically challenges an Appropriation proceeding pursuant to R.C. 163.09(B), the Court shall set a hearing.

(2) Pretrial:

A pretrial shall be scheduled once all named parties are properly before the Court. Following the pretrial, an Order will be issued setting the date for trial and discovery schedule.

(3) Trial.

(C) Award.

The sum of money to be paid to the property owner(s), whether determined by trial or settlement, shall be deposited with the Court for distribution.

(D) Distribution.

Upon Motion for Distribution, the Court shall:

(1) Issue an Order of Distribution when the Motion is stipulated to by all interested parties, or

(2) Set the matter for hearing if distribution is not agreed upon by all interested parties.

(3) Issue checks per the Order of Distribution no sooner than two (2) weeks from date of Order.

[Former Rule 58.1 renumbered as Rule 97.1, effective June 10, 1998.]

LOCAL RULE 98.1 MEDIATION

- (A) At any time any action under the jurisdiction of this Court may be referred to mediation by:
 - (1) Voluntary referral by Motion of all parties; or
 - (2) Selection by the Judge of this Court.
 - (3) The Court shall issue a “Notice of Scheduled Mediation”, which shall identify the Mediator, the parties and their counsel, with contact information.

- (B) A Mediator shall be assigned by the Court to conduct the mediation and submit an agreement or report within ninety (90) days.
 - (1) The Mediator shall contact the parties and schedule the mediation.

- (C) Fees for the Mediation shall be set by the Court Administrator.

- (D) The Court shall utilize procedures for all cases that will:
 - (1) Ensure that parties are allowed to participate in mediation, and if the parties wish, that their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.
 - (2) Screen for domestic violence both before and during mediation.
 - (3) Encourage appropriate referrals to legal counsel and other support services for all parties, including victims of and suspected victims of domestic violence.
 - (4) Prohibit the use of mediation in any of the following:
 - (a) As an alternative to the prosecution or adjudication of domestic violence;
 - (b) In determining whether to grant, modify or terminate a protection order;
 - (c) In determining the terms and conditions of a protection order; and
 - (d) In determining the penalty for violation of a protection order.

- (E) All mediation communications related to or made during the mediation process are subject to and governed by the “Uniform Mediation Act” (UMA) R. C. 2710.01 to 2710.10, the Rules of Evidence and any other pertinent judicial rule(s).

- (1) If a final agreement is reached, that agreement may be filed under seal to preserve confidentiality, provided that the parties request that the agreement be sealed and the Court approves.
- (F) At the conclusion of the mediation and in compliance with R. C. 2710.06, the Court shall be informed of the status of the mediation including all of the following:
- (1) Whether the mediation occurred or was terminated;
 - (2) Whether a settlement was reached on some, all or none of the issues; and
 - (3) Future mediation session(s), including date and time.
 - (4) Further action required by the Court.
- (G) If a dispute involves a matter under the jurisdiction of the Probate Court, including a client with mental health, mental retardation and developmental disability, or aging adult issues, but a guardianship case has not been filed, an agency may file a Motion with the Court to refer the matter to mediation. A case shall be referred if mediation is likely to resolve the dispute as a less restrictive alternative to guardianship.

[Adopted effective June 10, 1998; amended effective May 1, 2002; February 1, 2008.]

APPENDICES

APPENDIX A DEPOSITS FOR COURT COSTS

ESTATES - FULL ADMINISTRATION \$215.00

ESTATES – RELEASE FROM ADMINISTRATION

With or Without a Will (Deposit)	\$190.00
Will Probated, Tax, Journal Entry	\$ 78.00
Will Probated, Journal Entry	\$ 73.00
Tax Only – Journal Entry	\$ 38.00
Tax Only/Part B – Journal Entry	\$ 33.00
Short-Form Release – W/Will	\$ 50.00
Short-Form Release – W/O Will	\$ 25.00
Summary Release – W/Will	\$101.15
Summary Release – W/O Will	\$ 76.15

GUARDIANSHIPS

Person and Estate	\$255.00
Estate Only	\$255.00
Person Only	\$255.00
Each additional minor child	\$180.00
Conservatorship	\$215.00
Application to Dispense with Guardianship	\$ 63.00
Minor Settlement/Dispense With Guardianship	\$ 83.00
Successor Custodian	\$ 63.00

TRUSTS

Application for Appointment of Trustee \$215.00

CIVIL ACTIONS

Complaints to Sell or Mortgage Real Estate	\$200.00
Complaint – Appropriation	\$200.00
Complaint – Concealment of Assets	\$300.00
Complaint – Declaratory Judgment	\$200.00
Complaint – Determination of Heirs	\$200.00
Complaint – Presumption of Death	\$200.00
Complaint – Will Construction	\$200.00
Complaint – Will Contest	\$200.00

SUBPOENAS

Witness subpoenaed – resident of county	\$ 20.00
Witness subpoenaed – non-resident.....	\$ 30.00

MISCELLANEOUS COURT COSTS

Application to Correct Birth Record.....	\$ 18.00
Application for Registration of Birth.....	\$ 20.00
Certification of Document.....	\$ 1.00
Change of Name.....	\$ 99.00
(Additional certified copies - \$1.05 each)	
Claims Against an Estate.....	\$ 20.00
Court Record – Taping per hearing session per day.....	\$ 25.00
Crossclaims/Counterclaims/Third-Party Claims.....	\$ 20.00
Deposit of Will.....	\$ 20.00
Exceptions/Objections (Accounts or Inventories).....	\$ 30.00
Exceptions/Objections (All Others)	\$ 25.00
Fiduciary Claim	\$ 30.00
Motion to Remove Fiduciary	\$ 25.00
60(B) Motion (Relief from Judgment or Order).....	\$ 25.00

In Re:

Approval of Attorney Fees.....	\$ 93.00
APS Order/APS Emergency Order	\$ 0.00
Bureau of Worker’s Compensation Application	\$ 93.00
Designation of an Heir at Law	\$ 73.00
Disinterment	\$ 63.00
Emergency Guardianship.....	\$ 58.00
Emergency Order.....	\$ 0.00
Enforcement of Out of State Orders.....	\$ 93.00
Miscellaneous	\$ 63.00
MRDD Protective Order	\$ 0.00
Nomination of Guardian	\$ 6.00
Paternity of Adult Child.....	\$ 31.05
Right of Disposition of Deceased Person	\$ 93.00
Transfer of Lottery Prize.....	\$ 93.00
Transfer of Structured Settlement	\$ 93.00
Marriage License	\$ 50.00
Certified copy of Marriage License.....	\$ 2.00

[Effective June 10, 1998; amended effective November 4, 1998; December 1, 1999; October 1, 2000; October 1, 2001; December 31, 2001; February 28, 2002; April 1, 2005; October 1, 2005; February 6, 2007; April 1, 2009; amended effective July 1, 2010.]

**APPENDIX B
ADOPTION FEES**

STEP-PARENT ADOPTION	
First Child	\$576.00
Additional	\$151.00
 AGENCY ADOPTION	
First Child	\$149.00
Additional	\$111.00
 PRIVATE ADOPTION	\$704.00
Without Home Study	\$304.00
 INTERNATIONAL ADOPTION	\$594.00
 FOREIGN READOPTION	
With Prefinalization Assessment	\$304.00
Without Prefinalization Assessment	\$149.00
Additional Child	\$111.00
 ADULT ADOPTION	\$149.00
 DISPENSE W/ADOPTION (Surrogacy) (Includes 2 Orders)	\$ 58.00
 PREFINALIZATION FEES (If Required)	\$150.00
 POST-PLACEMENT VISITS.....	\$ 75.00
 AMENDED PETITION	\$ 30.00
 HOME STUDY UPDATE	\$100.00
 OBJECTION TO ADOPTION.....	\$ 25.00
 MOTION TO VACATE ADOPTION (60-B).....	\$ 25.00
 PETITION FOR RELEASE OF IDENTIFYING INFORMATION.....	\$ 53.00
 APPLICATION FOR FOREIGN BIRTH RECORD	\$ 40.00
 CERTIFIED COPY OF OHIO BIRTH CERTIFICATE.....	\$ 21.50

[NOTE: Additional travel fee required if Investigator travels outside Summit County.]

[Effective June 10, 1998; amended effective November 4, 1998; December 1, 1999; October 1, 2001; April 15, 2002; April 1, 2005; October 1, 2005; April 1, 2009; amended effective July 1, 2010.]

GUARDIANSHIP OF: _____

CASE NO. _____

APPLICATION-COMPUTATION OF GUARDIAN FEES

ACCOUNTING PERIOD OF _____ 20__ TO _____ 20__

I. INCOME FOR ACCOUNTING PERIOD	\$ _____	
5% of first \$100,000	_____	
3% of balance	_____	
Total		\$ _____

II. AUTHORIZED EXPENDITURES	\$ _____	
5% of first \$100,000	_____	
3% of balance	_____	
Total		\$ _____

III. TOTAL ORDINARY FEES \$ _____

IV. EXTRAORDINARY FEES (Itemize and attach time records) \$ _____

V. TOTAL FEES REQUIRED \$ _____

VI. MINIMUM ANNUAL FEE \$ 300.00

VII. GREATER OF "V" OR "VI" \$ _____

VIII. TOTAL FEES REQUESTED \$ _____

VIII. TOTAL FEES REQUESTED \$ _____

I have read and understand the above computation of fees, and submit they are necessary and reasonable for the administration of the guardianship for which I am guardian. I, therefore, request the Court's approval of payment of those fees from the assets of the said guardianship.

Attorney for Guardian

Guardian

MAGISTRATE

DISPOSITION

ESTATE OF _____, DECEASED
CASE NO. _____

APPLICATION-COMPUTATION OF FIDUCIARY FEES

I. ORDINARY FEES

Personal Property and Income (including gross proceeds of real estate sold under authority of Will)

Personal Property \$ _____

Income _____

TOTAL _____

Fees: 4% of first \$100,000.00 \$ _____

3% of next \$300,000.00 _____

2% of balance _____

TOTAL FEES (Personal Property and Income) \$ _____

Transferred Real Estate (Unsold)

1% of \$ _____ Unsold Real Estate \$ _____

Non-Probate Assets (Subject to Ohio Estate Tax except Joint Survivorship Property)

1% of \$ _____ Non-Probate Assets \$ _____

TOTAL ORDINARY FEES ALLOWABLE \$ _____

ORDINARY FEES REQUESTED \$ _____

II. EXTRAORDINARY FEES

Extraordinary Fees Requested (Attach itemized time records, and unless waived, a date for hearing should be requested when filing this form). \$ _____

III. TOTAL FEES TAKEN ON PRIOR ACCOUNTS \$ _____

IV. TOTAL FEES REQUESTED OR ALLOWABLE ON THIS ACCOUNT \$ _____
 Partial Final

I have read, and understand the above computation of fees, and submit they are necessary and reasonable for the administration of the estate for which I am fiduciary. I, therefore, request the Court's approval of payment of those fees from the assets of the said estate.

Attorney for Fiduciary

Fiduciary

Magistrate

DISPOSITION

CASE NO. _____

CONSENT TO ATTORNEY FEES BY FIDUCIARY

I have read and understand the Application for Attorney Fees, and I submit they are necessary and reasonable for the administration of the estate, and reflect a true and accurate accounting of the services the attorney has performed.

Fiduciary

NOTICE

TO THE FOLLOWING PERSONS:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

YOU ARE HEREBY NOTIFIED THAT AN APPLICATION FOR ATTORNEY FEES was filed in this Court by _____, on _____, 20_____.

The application will be for hearing before this Court, at the Summit County Court House, 209 S. High Street, Akron, Ohio, on _____, 20__ , at _____ M.

Attorney

ESTATE OF _____, DECEASED
CASE NO. _____

NOTICE OF ATTORNEY FEES

TO THE FOLLOWING PERSONS:

Name

Address

Name

Address

Name

Address

YOU ARE HEREBY NOTIFIED THAT _____, ATTORNEY FOR THE ABOVE-CAPTIONED ESTATE, HAS CHARGED THE ESTATE THE SUM OF \$_____. This amount does not include prior fees taken of \$_____, which include fees from prior accounts, land sales, or other matters.

AN OBJECTION TO ATTORNEY FEES MUST BE FILED WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS NOTICE AT:
Summit County Probate Court
209 S. High Street
Akron, Ohio 44308-1616

CONSENT TO ATTORNEY FEES

The undersigned hereby consents to the sum of \$_____, charged as attorney fees by _____, Attorney for the above-captioned estate.

Name

Address

Name

Address

Name

Address

Approved:

Attorney

