

Tuscarawas County Court of Common Pleas

Probate Division

Local Rules

Effective May 20, 2016

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The Probate Court of Tuscarawas County, Ohio has adopted the following rules for the management of proceedings and other functions of the Court pursuant to Rule 5 of the Rules of Superintendence for the Courts of Ohio. These rules supersede and replace the Local Rules of this Court which became effective on July 1, 1991. The Court reserves the right to amend or revise these rules as needed as required by law.

These rules are intended to supplement and complement the Rules of Superintendence for the Courts of Ohio.

These rules are effective May 20, 2016. For good cause shown, the Court may grant exception to the Rules of the Probate Court of Tuscarawas County should the circumstances so warrant in any particular case.

These rules are available to view online on the Probate Court's website: <http://www.co.tuscarawas.oh.us>. Written copies of these rules are also available for public viewing at the office of the Probate Court, 101 East High Avenue, New Philadelphia, Ohio, and at the Tuscarawas County Law Library located in the Tuscarawas County Office Building at 125 East High Avenue, New Philadelphia, Ohio.

Copies of these Local Rules have been provided to the offices of the Tuscarawas County Commissioners, Auditor, Treasurer and Clerk of the Court of Common Pleas, General Division, as well as being filed with the Ohio Supreme Court.

Copies of these Local Rules may be purchased from the Court at a cost of \$5.00 for a complete copy, or at a cost of \$.25 per page for copies of individual rules.

The omission of a local rule corresponding to a Rule of Superintendence is by design and indicates that the area of inquiry is suitably addressed by a Rule of Superintendence, state statute, or controlling case law. The Rules of Superintendence provide context to the local rule.

In conformity with Sup. R. 6, which requires all attorneys to include the attorney or pro hac vice registration number issued by the Supreme Court on all documents filed with the Court, the Court construes pleadings, applications, motions, accounts, inventories, memoranda and briefs to fall within that rule. Appendices, attachments, and exhibits submitted for filing are deemed excluded from the requirement.

- (A) The court will maintain a master list of persons who may be appointed as attorneys for wards, prospective wards or guardians in guardianship cases where the ward is indigent, or as fiduciaries themselves in guardianship and decedent's estates cases. Attorneys will be added to the list upon written request and, in the case of prospective appointees new to the Court, submission of a resume of legal experience. Persons seeking appointment with relatively little legal experience are requested to be candid with the Court regarding the need for mentoring or other assistance. Appointments will be made from such list taking into consideration the qualifications, skill, expertise and caseload of the appointee, in addition to the type, complexity and requirements of the case. The list will be maintained in Administration Case File 2014 CI 20208, along with all updates.
- (B) To ensure an equitable distribution of appointments among all lawyers on the appointment list described in paragraph (A), the chief deputy clerk will maintain a list, by case number, of cases where appointment is made with the name of the appointee listed beside it. The Court will periodically review the appointment list maintained by the deputy clerk in conjunction with the revision of the master list of attorneys, per paragraph (A), to ensure an equitable distribution of appointments. The Court may make its own inquiries regarding whether potential appointees continue to meet established qualifications and remain in the practice of law within reasonable proximity of this Court.
- (C) Attorneys so appointed will be paid a reasonable fee with consideration to the factors contained in Rule 1.5 of the Ohio Rules of Professional Conduct, the Ohio Revised Code, and related Local Rules of this Court written hereafter.
- (D) Rules pertaining to appointment of guardians ad litem are given later in these local rules (see Local Rule 48.1, et seq.).

The Court has adopted and implemented a court security plan in conjunction with the Court of Common Pleas, General Division, which complies with Sup. R. 9. This plan is confidential and is not available for public access.

- (A) The Court has a digital recording system in its courtrooms. The digital record shall be the official record unless an official transcription is filed with the Court, in which case such transcription shall supersede the digital recording as the official record of the Court. If any other recording procedure is requested, it must be provided by the requesting party, and approved in advance of the proceeding. The requesting party is responsible for all costs associated with any additional recording, which will not be taxed as court costs. Such system of recording (stenographic, electronic, etc.) will be in addition to the digital record which remains the official record unless it has become non-operational. The digitally produced recordings will be accessible for reasonable review by the parties, court-approved member of the public or media upon request made to the court's transcriptionist at a time mutually agreeable to the Court and the person making the request. The digitally-produced recording of the court proceeding and the previously used audio tapes shall be maintained by the Court for three (3) years from the date of the final appealable order in the case or final decision on appeal, whichever is later. Any person desiring to preserve the record beyond this period must make arrangements to have the record transcribed.
- (B) Unless the cost of transcription is required to be waived by statute or civil rule, transcription of the record shall be at the expense of the person so requesting. The request for transcription shall be in writing. A deposit may be required at the discretion of the court's transcriptionist for the reasonably expected cost of transcript. The requesting party shall pay the actual cost of the transcription upon completion before the transcript is released.

- (A) Request for permission to broadcast, televise, record or photograph public hearings shall be made in writing and delivered to the chief deputy clerk as far in advance as reasonable practicable but not less than twenty-four hours prior to the proceeding. If the request is approved, the Judge will set forth the conditions of the broadcasting or photographing using the standards of Sup. R. 12.

- (B) In adoption proceedings, the Court will allow the families to photograph the proceedings without advance written consent of the Court.

- (A) Tuscarawas County Probate Court records are public records, with the exception of certain adoption records, mental illness records and Ohio estate tax records. Any request for such records will be reviewed and ruled upon by the Court.
- (B) Public records may be accessed in the Clerk's Office Monday through Friday from 8 a.m. to 4:15 p.m. except for government holidays. The Court's address is 101 E. High Avenue, New Philadelphia, OH 44663.
- (C) The Court's General Index Books (1808-1994) may be accessed online anytime at www.co.tuscarawas.oh.us by choosing "Departments," "Courts," "Probate," and "Index Books." These books contain all of the Court's cases except marriage licenses.
- (D) The Court's online docket, a continuation of the General Index Books (1990 to present) may be accessed online anytime at www.co.tuscarawas.oh.us and by choosing Searches, Docket Search, Probate. This enables the public to access the Court's CourtView system.
- (E) The Court's marriage licenses may be accessed online anytime by following the instructions in item (D) above. The Court's marriage license database currently contains marriage licenses issued from 1940 to the present.
- (F) The cost for a non-certified photocopy made in the Clerk's office is 25 cents per page. Cash, check or money order is accepted. There will be no charge accounts.
- (G) The cost for a certified copy of a marriage record is \$3.00. Cash, check or money order is accepted.
- (H) Before being removed from the Court, all copies will be reviewed for the presence of personal identifiers and any identifiers found will be redacted.
- (I) Records may not be removed from the Court without permission of the Judge.

- (A) If the Judge or Magistrate orders documents submitted for *in camera* review, such as proffered discovery responses, the documents should be submitted within closed envelope or container and a filing should be made of a Notice that the documents have been submitted for *in camera* review. The documents will not be filed or made available for public view or view of other parties until there is a final determination of the admissibility of the documents.

- (B) If a judicial officer's hearing notes are retained in the case file, they will be sealed and are confidential. No access to such notes is granted to the public.

Rules regarding the appointment of guardians ad litem are found in Rule 8 of the Local Rules of the Tuscarawas County Common Pleas Court, Juvenile Division.

Rule 51.1 Standard Probate Forms

Standard Probate forms shall be used when applicable. Where a standard form has not been prescribed by the Rule, the form used shall be that required by the Civil Rules or as prescribed or permitted by the Probate Division of the Court of Common Pleas.

Many standard probate forms, as well as local, non-standard probate forms prepared for use by this Court for different situations are available at the Court and on the Court's website: <http://www.co.tuscarawas.oh.us/Probate/Forms.htm>.

Rule 53.1 Hours of the Court

The office of the Probate Court will be open for the transaction of business from 8:00 a.m. to 4:30 p.m. except Saturday, Sunday and legal holidays. Applicants for marriage license must present themselves by 4:00 p.m.

Court offices may be reached by telephone during business hours at 330-365-3266. The Court's fax number is 330-364-3190.

The Court accepts cash, checks or money orders. No electronic payment (i.e. debit or credit card) can be made for any reason, either in person or over the telephone.

Rule 54.1 Conduct in the Court

- (A) Proper conduct is required by all attorneys, parties, court personnel and persons who appear before the Court. Conduct that interferes with the proper administration of justice is prohibited and may subject the offender to sanctions or removal from the Court, including courtrooms, offices and adjoining hallways. This would include the use of profanity or threats of harm.

- (B) Proper attire is required of all persons who appear in Court or come to Court for business. No tank tops, shorts cut off above the thigh, or t-shirts with vulgar messages are permitted. Shoes must be worn.

- (C) No audio or video recording device may be used in any proceeding or communication with the Court, unless expressly permitted.

Rule 55.1 Examination of Probate Records

The Court prohibits removal of files. On-premises inspection of files, records, papers and documents shall be as follows:

- (A) The general records of the Court shall be subject to inspection by the public during regular office hours of the Court. Copies may be obtained at reasonable cost (currently \$.25 per page for standard-sized 8 ½” x 11” documents). If a request is received to send copies by regular U.S. mail, such copies will be mailed only if the cost of the copies, postage and any other mailing expenses are paid.
- (B) Files of adoption, mental illness and Ohio Estate Tax returns are confidential. The Judge may authorize access to such files for good cause shown.
- (C) Any folder or envelope contained within a case file that is marked “confidential” may not be opened and reviewed without approval of the Judge or magistrate assigned to the case.
- (D) The Court’s docket is available online at <http://www.co.tuscarawas.oh.us> by choosing “Searches,” “Docket Search,” then “Probate”. The docket is simply a chronological list of filings in any given case that includes a brief description of the filing made on each date. There is no ability to view or print any document filed in a case.

Rule 56.1 Continuances

- (A) In order to comply with Sup. R. 56, no continuance will be granted without written notice to all parties in interest. Failure to object to the requested continuance within three court days after the motion is filed shall be deemed consent to the continuance. Except for extraordinary circumstances, no motion for a continuance shall be granted unless filed no less than seventy-two hours before the hearing.

Rule 57.1 Filings & Journal Entries

- (A) The Court will accept for filing only such filings that are clean, complete and legible. Filings that have been folded excessively or that are discolored will not be accepted for filing. Filings that are submitted but rejected and not filed are not considered part of the record.
- (B) The Court will accept facsimile copies subsequent to the original filing but no document longer than 10 pages in length shall be filed in this manner. The independent telephone line used by the Court for facsimile filings is (330) 364-3190. Within three business days after the transmission to the Court of a facsimile copy, an original document bearing original signatures shall be received by the Court. Facsimile copies will be docketed when received. Thereafter, when the original document is filed, the Court shall docket it in the usual manner and the filing shall relate back to the date upon which the facsimile copy was filed. Facsimile copies received after 4 p.m. on a regular business day or on a weekend day or holiday shall be considered filed on the next ensuing business day of the Court.
- (C) When required on a Court filing, the attorney or fiduciary's address must be a street address, and, if applicable, include any post office box number used as a mailing address. The address of the fiduciary must be the fiduciary's legal residence. Reasonable diligence should be exercised to obtain the complete street address of the surviving spouse, next of kin, legatees and devisees.
- (D) Any pleading, filing or other document which by law requires the fiduciary's signature shall contain the fiduciary's original signature. The attorney for the fiduciary may not sign for the fiduciary.
- (E) The Court will not return file-stamped copies by mail unless a postage-paid, self-addressed envelope was provided for that purpose.
- (F) All applications and other motions shall be set for oral hearing unless the Court, upon review of the matter, decides there is cause for a non-oral hearing, such as when all interested parties have consented to the relief for good cause.

Rule 58.1 Deposits for Court Costs

(A) Deposits in the amounts listed below shall be provided for filings and applied as necessary. Deposits shall be made in cash or by check or money order. Once a deposit is exhausted, court costs will be billed intermittently or at the conclusion of a proceeding, whichever the Court prefers, and are due upon receipt of said bill.

1.	Full estates	\$200
2.	Trusts	\$120
3.	Release of estates	\$150
4.	Summary release of administration	\$75
5.	Re-open an estate.....	\$25
6.	Tax only	\$40
7.	Will for record only or for probate and tax	\$50
8.	Deposit of will for safekeeping.....	\$5
9.	Application to distribute unclaimed funds	\$10
10.	Guardianship (incompetent)	\$275
11.	Guardianship (minor)	\$175
12.	Conservatorship	\$140
13.	Minor’s settlement/minor’s claim	\$65
14.	Release of guardianship.....	\$65
15.	Adoption (step-parent/grandparent) first child \$330; each subsequent child \$190
16.	Adoption with prior pre-placement first child \$225; each subsequent child \$150
17.	Pre-placement adoption first child \$550; each subsequent child \$415
18.	Adoption (agency) each child \$150
19.	Petition for adult adoption	\$155
20.	Petition to recognize adoption.....	\$90
21.	Petition for release of adoption information	\$100
22.	Transfer of structured settlement	\$100
23.	Will contest.....	\$225
24.	Application to admit foreign records	\$175
25.	Change of name	\$170
26.	Birth registration.....	\$65
27.	Birth correction	\$75
28.	Termination of trust	\$100
29.	All other civil, including declaratory judgment, concealing of assets, determination of heirship, construction of will and land sales	\$200
30.	Application to open a safe deposit box only.....	\$10

(B) In any case where a jury trial is available at law and a jury demand is filed, a jury deposit of \$600 shall be paid within fifteen days of such demand. If not so paid, the demand will be deemed to have been withdrawn.

- (C)** The filing of a subpoena shall require a minimum deposit of \$15 for in-county service by the sheriff and \$12 for witness fees. A subpoena for out-of-county service may require additional deposits and should include a check for witness fees of \$12 per day and mileage fees made payable to the witness.
- (D)** Witness fees must be requested at the conclusion of the hearing for which the subpoena was issued. If not requested at that time, the fee is waived. All unused portions of the subpoena deposit will be refunded to the depositor.

Rule 59.1 Wills on Deposit

- (A) The Court shall accept original Wills for safekeeping at a cost of \$5. Wills shall be kept in a locked cabinet in the Court's large safe. Wills on deposit are not public records.
- (B) Upon the deposit of a Will, the name of the testator shall be added to the Court's docket under Case No. 2009 CI 19951 and shall be added to the written listing of Wills on Deposit kept in the Clerk's Office.
- (C) A receipt shall be generated upon each deposit of a Will with the Court and upon each withdrawal of a Will from the Court. The original shall be kept with the written listing of Wills on Deposit and a copy shall be given to the person handling the Will.
- (D) A Will on deposit may be withdrawn by only the testator, the named executor or the attorney handling the estate.
- (E) The listing of Wills on deposit shall be reviewed prior to the opening of any estate case. Any Will that is found to be in the Court's possession and signed prior to the Will that is being offered for probate shall be withdrawn and returned to the executor or attorney pursuant to (C) above.

Rule 59.2 Admission of Wills

- (A) Either the Judge or Magistrate shall make the initial determination, upon presentation, whether a purported will shall be admitted to probate. The Court reserves the ability to set the matter for hearing under R.C. 2017.18.

- (B) If a will presented to probate contains alterations or extraneous markings and the original text remains legible, the admission of the will shall be set for hearing pursuant to R.C. 2107.181 and the witnesses to the will shall testify as to the execution of the will and the physical appearance or condition of the will at the time of execution.

- (C) Any document presented for admission to probate as a will which appears to instead be a photocopy with photocopied signatures will either be subject to denial of the application or the Court, upon its own motion, may treat the application to admit as a motion to admit a lost will under R.C. 2107.26 and set the matter for an evidentiary hearing.

- (D) Where the will names an intervivos trust, or trustee thereof, as a beneficiary, a copy of the trust shall be displayed to the Judge or Magistrate, but the trust agreement need not be filed with the Court. Except for good cause shown, this requirement must be met before the inventory or entry relieving the estate from administration is filed with the Court. Besides ascertaining whether the trust and/or trustee are in existence, the Court is entitled to see the trust provisions for support of a spouse, minor child or disabled adult child under guardianship.

Rule 60.1 Fiduciary Appointments

- (A) Notwithstanding any waiver of bond contained in a decedent's will, the Court may require the executor, whether a non-resident or a resident, or administrator to place a substantial amount of the assets in a custodial depository in this county, pursuant to R.C. 2109.13.
- (B) Executors who are not residents of Ohio shall keep all assets located in Tuscarawas County at the time of the decedent's death in Tuscarawas County until final distribution or until further order of the Court, unless a bond in compliance with R.C. 2109.04 is filed.
- (C) Applicants for authority to administer an estate who are not represented by an attorney shall exhibit to the Court a picture identification and proof of current address, which must be updated within fourteen (14) days of any change.
- (D) Along with the notice of admission of a will to probate described in R.C. 2107.19, the fiduciary *shall* send a copy of such will to all legatees and devisees named in the will except those receiving nominal assets of less than \$200.
- (E) All applicants for administration of an estate must provide a good-faith estimate of values on Form 4.0. "Unknown" is not acceptable; reasonable inquiry by the applicant of the decedent's estate is expected before the application is made. An exception to this rule will be made in cases where the estate is opened for litigation purposes only by the applicant or by a creditor to establish a claim. A creditor-applicant will be required to post a bond once the assets become known.
- (F) An applicant who has served as guardian of an estate shall not be granted letters of authority to administer the decedent's estate upon the death of the ward unless the guardian of the estate is also named as fiduciary in the ward's will, or upon a showing of good cause.

Rule 61.1 Appraisers & Appraisals

- (A) When required by law, there shall be one suitable and disinterested appraiser appointed by the executor or administrator of an estate, with Court approval. The following persons shall be disqualified from being such an appraiser:
1. a person related by blood or marriage to the decedent;
 2. a beneficiary of the estate;
 3. a person related by blood, marriage or employment to the attorney for the estate;
 4. a person related by blood, marriage or employment to the fiduciary for the estate.
- (B) Appraisals shall be made by licensed real estate agents, brokers, auctioneers, credentialed real estate appraisers or such other persons whose experience and training qualify them to make appraisals. Upon the filing of Form 3.0 or Form 6.0, the Court may require said appraiser to file either a completed appraiser application or a resume listing the credentials of said individual.
- (C) No appraiser shall be permitted to directly or indirectly purchase or acquire any of the property her or she appraises, except at public auction.
- (D) The market value of real estate as found in the Tuscarawas County Auditor's property records shall be accepted as the readily ascertainable value of the property and no further appraisal of such property shall be required except as ordered by the Court. A copy of said valuation shall be attached to Form 6.1 or Form 5.1, whichever is applicable.
- (E) The market value of any motor vehicle found in the current N.A.D.A. Official Used Car Guide or in the current Kelley Blue Book under the category "average retail" may be adopted as the readily ascertainable value of the motor vehicle unless otherwise determined by the Court. A copy of the appropriate page from said guide or a printout from either publication's online site shall be attached to Form 6.1 or Form 5.1, whichever is applicable.

- (F) An administrator, executor, fiduciary, beneficiary or creditor of a decedent's estate may file a written request with the Probate Court not later than the date set for hearing on the Inventory and Appraisal pursuant to R.C. 2115.16 that any property

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deemed to be appraised by readily ascertainable means shall be appraised by a suitable and disinterested appraiser as provided.

- (G) Any fiduciary, beneficiary or executor of a decedent's estate may file a written request within five days prior to the date set for hearing of the inventory requesting itemization of and appraisal of household goods and furnishings and other specified tangible personal property. The Court may, in its discretion, continue the issue of inventory approval upon such request.

Rule 62.1 Claims Against Estate

- (A) No estate, guardianship or trust should be closed until all claims filed with the Court have been resolved, including claims for bond premiums. Bond premiums shall be regarded as administrative expenses and shall be paid when due. No application need be made for authority to pay a bond premium.
- (B) When an estate is insolvent, the executor, administrator, or guardian may file a notice of insolvency with the court but is not required to. If insolvency proceedings are commenced, the schedule of claims shall state the name and address of each claimant as it appears on each claim, the amount claimed, the date of presentation of the claim, the class into which the claim falls for payment under R.C. 2117.25, the security held therefor, whether the claim has been allowed or rejected by the executor or administrator and the date of such allowance or rejection.
- (C) No insolvency proceedings will be conducted within an action to relieve an estate from administration. If insolvency proceedings become necessary to protect the applicant or commissioner from potential liability for failing to make proper payment, the applicant, commissioner, or Court on its own motion can seek to convert the case to a full administration and to select a proper administrator or executor with proper notice to those entitled to notice of an application for appointment.
- (D) If an insolvency proceeding is commenced, the attorney or fiduciary shall also indicate the amount of proposed payment for each creditor. The attorney or fiduciary shall obtain a hearing date on the insolvency and notify all creditors of the hearing by certified mail and bring the mail receipts to the hearing to be retained in the case file.

Rule 63.1 Application to Sell Personalty

If a fiduciary proposes to sell an automobile or other item of personal property to himself/herself, a family member, business associate, client or agent of the fiduciary, all of the following must be submitted:

- 1) an adequate description of the item, and its current location and condition;
- 2) an estimate of value from the inventory with appraisal or, if not suitable for expert appraisal, the fiduciary's good-faith belief as to market value; and
- 3) written consent of all legatees or residuary beneficiaries potentially affected by the sale.

The Court retains the authority to reject the proposed private sale and require sale to the public at auction, or take such other steps as may seem necessary to protect creditors and beneficiaries.

Rule 64.1 Fiduciary Accounts

(A) General provisions which apply when filing any type of account:

1. All accounts must be personally signed by the fiduciary and contain the full name, current address and telephone number of the fiduciary. If there are multiple fiduciaries, all fiduciaries must sign.
2. If canceled checks are used as a receipt for any account, copies of both the front and back of said checks shall be filed with the Court. If the canceled checks are not returned to the fiduciary, a copy of the front of the check and a copy of the corresponding bank statement showing that the check was cashed will be permitted.
3. No expenditure, sale, distribution or fee will be approved while the fiduciary is delinquent in filing any type of account.
4. Accounts will not be approved without vouchers or other proof which verifies each disbursement.

(B) Requirements for filing estate accounts:

1. In the event a final and distributive estate account is not required to be filed by the administrator or executor within six months of appointment due to circumstances described in R.C. 2109.301 (B), or other leave of the Court, a first partial account must be filed within nine months of appointment. All subsequent accounts must be filed on a yearly basis unless the Court orders otherwise.
2. A fiduciary shall make no distribution of attorney's fees or fiduciary commission until said fees have been approved by the Court.
3. The following items must be included with the filing of the final estate account:
 - a. attorney fee computation form;
 - b. receipt for attorney fees or waiver of fees;
 - c. fiduciary fee computation form;

- d. receipt for fiduciary fees or waiver of fees;
- e. Form 13.9;
- f. a copy of the funeral bill showing it is paid in full;
- g. receipts for distributions to all beneficiaries for the amounts they received as reflected in the final account;

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- h. receipts for specific items bequeathed and received;
- i. settlement statement from the sale of any real estate or personal property auction; and
- j. Form 10.4A if estate is being closed less than six months from the date of death.

(C) Requirements when filing guardianship accounts:

1. Guardianship accounts are due on the anniversary of the date that the letters of authority were issued. Accounts shall be filed every year unless the Court orders otherwise.
2. The expenditures shown on the guardian's account shall be compared with the applications for authority to expend funds previously filed to ensure no expenditures were made without Court approval.
3. Proof of the values of the items in the ward's estate shall be filed with the account (bank statements, bank certificate, etc.) to show the ward's estate value as of the ending date of the account.
4. For guardianships in which there is a guardianship of the ward's estate but the estate is composed only of Social Security Administration funds, the Court may permit the filing of a copy of the annual Social Security Representative Payee Report in lieu of an account. This report will be filed as a "status report" and will generate no costs. A request to file the payee report only must be filed in writing with the court.
5. No attorney or guardian fees are to be paid until approved by the Court.
6. Accounts for guardianships will not be approved without vouchers or other proof which verify each disbursement.
7. Copies of all bank statements, brokerage statements, etc. are to be filed with each guardian's account.
8. Vouchers, receipts, statements, etc. filed in support of any guardianship account will be kept by the Court for three years from the date of filing pursuant to Rule 26 and then destroyed. Should the fiduciary or

attorney want the records returned after that time, said request should be made when the documents are filed.

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- (D) Requirements for filing trust accounts:
1. Trust accounts are due on the anniversary of the date of appointment of the trustee. Accounts shall be filed every year unless the Court orders otherwise.
 2. Vouchers and receipts filed in support of any trust account will be kept by the Court for 12 years from the date of filing pursuant to Rule 26 and then destroyed. Should the fiduciary or attorney want the records returned after that time, said request should be made when the documents are filed.
- (E) The Court, may upon its discretion, create a separate file for bulky financial records. Although said separate file may be kept in another location, said records are part of the Court's public record. If copies of such records are sought, all account numbers and any other identifying information must be redacted before the copies leave the probate court office.

Rule 66.1 Guardianships of Minors

- (A) The Court will not accept for filing any application for guardianship of a minor when the sole purpose of the action is to establish residency for school purposes. Requests for custody for school purposes should be heard and determined by the Juvenile Division upon a filed complaint or motion.
- (B) When a non-parent seeks to obtain custody and control of a child and at least one parent is alive, the action should be brought in the Juvenile Division unless the minor has assets of more than \$10,000 in which case the non-parent is to apply to become the guardian of the child's person and estate.
- (C) Notice of hearing should be given to all next of kin who are residents of the State of Ohio, unless waived. Notice of hearing must be served upon a parent, regardless of residency. An applicant's contention that a parent's whereabouts are unknown and cannot be ascertained by exercise of due diligence must be accompanied by an affidavit demonstrating the specific investigation undertaken to locate the parent.
- (D) When an application for guardianship of an indigent child is filed, the application should be accompanied by an affidavit of the child's known financial circumstances.
- (E) A copy of the child's birth certificate shall be filed with the application for appointment. Prospective minor wards must appear personally in court unless good cause is demonstrated to waive their presence.
- (F) A guardian must inform the Court as to any change of the address of said guardian and the minor ward within thirty (30) days of that change of address.
- (G) Upon settlement of a minor's claim, whether pursuant to guardianship proceedings or not, the attorney representing the applicant or guardian is responsible to see that

the minor's funds are disbursed according to the Court's order by returning Form 22.3, signed by the depository financial institution within ten (10) days of the order.

- (H) An application by a parent-guardian for permission to use the child's funds will cause the Court to consider of the parents' income and ability to provide the item for which the funds are sought.

Rule 66.2 Guardianships of Incompetent Persons

- (A) A separate guardianship application must be filed for each prospective ward. There will be a separate case file and case number for each ward.
- (B) All guardians of the person are to file their first Guardian's Report (Form 17.7) within twelve months of their appointment – approximately on the anniversary date of such appointment. Subsequent reports are filed every year. The Statement of Expert Evaluation (Form 17.1) must be included with the first Report, but need only be submitted every other year thereafter.
- (C) The guardian must deposit all of the ward's Wills with the Court for safekeeping.
- (D) A guardian must inform the Court as to any change of address of the guardian or ward within thirty (30) days of that change in address.
- (E) Whether upon an application for Emergency Guardianship or regular guardianship, if the applicant provides a statement and proof that no medical/psychological record is available and the prospective ward refuses to submit to an examination, the court may proceed upon the application without the Statement of Expert Evaluation. The Court may use lay testimony to establish the need for emergency or temporary orders, including an order requiring the prospective ward to submit to medical or psychological evaluation.
- (E) All guardians of the person and estate shall receive a guardian's handbook issued by the Court. The guardian's handbook will provide the guardian with general information on the guardian's duties and responsibilities.

- (G) A guardian of the person of an incompetent ward shall personally visit his or her ward at least quarterly. Failure to comply with this requirement may result in the removal of the guardian.
- (H) All guardians shall follow the mandates set forth in Superintendence Rule 66, effective June 1, 2015, unless expressly exempted from said mandates by the Court.

- (I) For purposes of the indigent guardianship fund, an adult ward or alleged incompetent will be rebuttably presumed to be indigent if his or her personal property is less than \$1,500 and his/her annual income is less than U.S. Department of Health and Human Services poverty guidelines. Persons with greater resources are rebuttably presumed not to be indigent. All adults qualified for Medicaid are rebuttably presumed to be indigent.
- (J) An attorney appointed to represent an indigent ward or a guardian at the expense of the indigent guardianship fund is not expected to serve pro bono. The hourly compensation available for attorneys is \$75 per hour for both in-court and out-of-court work.

Rule 66.3 Emergency Guardianships

- (A) An application for appointment of an emergency guardian shall be accompanied by the Statement of Expert Evaluation and Supplement for Emergency Guardian of Person signed by a physician describing the circumstances which make it reasonably certain that immediate action is required to prevent significant injury to the prospective ward's person and/or estate of the prospective ward.
- (B) If the applicant demonstrates that the prospective ward refuses assessment, the Court may grant the emergency guardianship for at least the first 72 hours upon clear and convincing lay testimony.
- (C) In all cases, the emergency guardian must establish that he/she has given the ward a copy of his appointment as emergency guardian, indicating the guardian's authority, and any notice of hearing for determination whether the emergency guardianship is to continue. Documents should be handed to the ward personally unless the ward's condition prevents a receipt of the notice, in which case copies of the appointment and notice may be constructively served by leaving them at bedside and/or with direct caretakers.
- (D) If the ward is hospitalized, notice of the action granting emergency guardianship and notice of the hearing to determine whether the emergency guardianship is to continue for another thirty (30) days shall be served upon the ward personally, at the earliest opportunity, by the emergency guardian, his attorney, or hospital personnel. The guardian must establish by evidence that the ward was served with notice of hearing at the hearing to determine whether the emergency guardianship is to be extended.

- (E) For purposes of setting an emergency guardianship for further hearing upon the issue of continuing it for thirty days, the days when the Court is not open due to weekends or holidays are not included within the first 72 hours of the emergency guardianship.

Rule 67.1 Estates of Minors

- (A) When a guardianship of the minor is dispensed with, but funds of the child are placed in a restricted bank account, the funds must be deposited in the name of the minor, and Form 22.3 must be completed and returned to the Court within thirty (30) days. Also, the court requires that when the minor reaches the age of majority, the parent/applicant must give a satisfactory report to the Court that such funds have been disbursed or received by the child.
- (B) The Court will allow applications for release of the child's funds to be filed in the same case file that was used to establish the child's funds. Parents are not to attempt to withdraw the child's funds for items that the parents have a duty of support to provide unless it can be established to the Court that the parents lack the economic means of providing the items and that the expenditure is needed to further the child's best interests.

Rule 68.1 Settlement of Injury Claims of Minors

- (A) The Court will require the appointment of a guardian for the purpose of settling a minor's claim when the net amount of settlement is in excess of the amounts set forth in the Ohio Revised Code. The "net amount of settlement" includes any amount which the parent or applicant proposes to transfer to a structured settlement.
- (B) When a minor is not represented by an attorney in the settlement of a minor's claim, the Court may, at its discretion, appoint a guardian ad litem for the minor.
- (C) A hearing is set in all cases. The injured minor and the applicant shall appear at the hearing. In cases where multiple persons were injured in an accident, the Court will expect a satisfactory demonstration or briefing regarding the status of others' claims.
- (D) Notice of the hearing must be given to the noncustodial parent at least seven days in advance as provided by Civil Rule 73.
- (E) Regarding structured settlements of injury claims of minors, defined as a settlement wherein payments are made on a periodic basis, the following rules shall apply:
 - 1. The application shall include a signed statement from one of the following independent professionals, specifying the present value of the settlement, and the method of calculation of that value: an actuary, certified public accountant, certified financial planner, chartered life underwriter, chartered financial consultant or an equivalent professional.

2. If the settlement is to be funded by an annuity, the application shall include a signed statement by the annuity carrier or the broker procuring the policy stating:
- a. the annuity carrier is licensed to write annuities in Ohio;
 - b. the annuity carrier's ratings from at least two of the following organizations, which meet the following criteria:
 - I. A.M. Best Company: A++, A+ or A;
 - II. Fitch Company: AAA, AA+ or AA;
 - III. Moody's Investors Service: Aaa, Aa1 or Aa2;
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 - IV. Standard & Poor's Corporation: AAA, AA+ or AA;
 - V. Weiss Research Inc.: A+ or A.
 - c. In addition to the requirements of paragraph b above, an annuity carrier must meet any other requirements that the Court considers reasonably necessary to assure that funding to satisfy periodic payment settlements will be provided and maintained.
 - d. There shall be no premature withdrawals or hypothecation of the structure without prior Court approval.

Rule 70.1 Settlement of Wrongful Death & Survival Claims

- (A) Applications to settle wrongful death and survival claims shall be set for an oral hearing even when the applicant contends that all interested persons have consented. An exception will be when there are later partial settlements of asbestosis or black lung claims which come after an initial settlement, and the settlement being proposed is less than \$15,000 and known interested parties have consented to the partial settlement being considered.
- (B) The application for approval of settlement of a claim for wrongful death shall contain a statement of facts, including the amount to be received in the settlement of that claim and the amount, if any, to be received in the settlement of the right of action for conscious pain and suffering.
- (C) Guardians ad litem may be appointed for minor beneficiaries at the Court's discretion.
- (D) An attorney who is submitting a wrongful death trust must submit the form of the trust to the Court at least seven days prior to the hearing on the wrongful death settlement.
- (E) The application to settle a claim for wrongful death and the apportionment of the proceeds are two distinct matters for which the Court may require separate hearings.
- (F) Any person rebuttably presumed to have suffered loss under R.C. 2125.02 is an interested person and must receive notice of the application for settlement, the fiduciary's proposed allocation and the statement of facts required by this rule.

- (G) All next of kin who appear to have claims for loss under R.C. 2125.02, even those not being rebuttably presumed to have suffered loss, are expected to be identified by the executor or administrator during his/her investigation and prosecution of the wrongful death claim. Such next of kin must be given opportunity to explain or present his/her loss to the fiduciary *before* settlement is reached. In apportioning the settlement or judgment, the court will consider whether there are next of kin who may have suffered loss to assess the need for notice and an opportunity to participate in the allocation process of R.C. 2125.02 and 2125.03.

Rule 71.1 Attorney Fees

- (A) Attorney fees are governed by the Rules of Professional Conduct, specifically Rule 1.5, and the Rules of Superintendence, Rule 71, adopted by the Ohio Supreme Court. The Court has the ultimate responsibility and authority to review attorney fees in decedent's estates and guardianships.
- (B) All applications for attorney fees shall be in writing and shall be signed by both the attorney and the fiduciary.
- (1) The attorney and fiduciary may deliver completed but unfiled applications along with either itemized time records, a completed guideline fee schedule, or their written fee agreements, (compare with (D) hereafter) to those having a beneficial interest in the residuary estate in order to obtain consents to the proposed fee. The local Form AFC is to be used in obtaining any consent that may be forthcoming prior to the filing of the application.
- (2) Any Form AFC consents from beneficiaries obtained through the process described in (B)(1) are to be filed at the same time as the fee application. For any consent filed, the attorney and fiduciary are certifying to the Court that, prior to the beneficiary giving consent, the beneficiary has been given the complete application showing how the requested fee has been determined.
- (3) Unless the circumstances described in (C) below pertain, either an oral or non-oral hearing will be scheduled by the Court. When a hearing is set, the fee will not be approved until after the hearing.

(4) A copy of each filed application with all supporting attachments will be mailed by the Court via regular mail to each estate beneficiary who is entitled to a percentage of the net estate, unless the consent of such beneficiary is filed with the application. It is the responsibility of the attorney and fiduciary, when filing the fee application, to provide the Court with written update of the beneficiary's current address. It is the responsibility of the attorney and fiduciary to ascertain whether such beneficiary has changed addresses prior to the filing of the application. The deputy clerk responsible for such mailing of the application will also send the non-consenting beneficiary either a

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Form AFC for possible use, and a Notice of Non-oral Hearing on Application for Attorney Fees, local Form AFNN, or after consultation with the judge or magistrate, a Notice of Oral Hearing on Application for Attorney Fees, local Form AFNO, unless hearing is dispensed with by the judicial officer pursuant to (C) below.

(C) Consideration of fee applications will be given without either an oral or non-oral hearing in the following circumstances:

(1) Sufficient information and detail has been made available to the Court for the Court to conclude that the requested fee is **reasonable; and**

(2) The fiduciary who has approved the fee application is the sole residuary beneficiary, **or** all those persons having a significant beneficial interest in the residuary estate have consented in writing to the requested fee using Form AFC; **and**

(3) The estate is solvent. In cases where the estate is insolvent, the Court will consider the issue of setting the application for hearing and giving notice to creditors having an interest deemed significant by the Court.

(D) The application for fees is to be accompanied by the details supporting the fee calculation:

(1) If the fee request is presented in the form of itemized time records, the records shall state the date and time for each attorney service, identify who performed the service, identify the hourly rate requested, and give enough description of each service so that the reasonableness of time consumption can be deduced. Brief explanations why written or verbal communications

were lengthy are helpful and thus advisable. Time increments are to be broken down to a tenth of an hour, i.e., .1, .2, etc.

(2) If attorney fees will be based upon the fee schedule described hereafter in (F), the Court may require documentary proofs supporting the numbers used for calculation. The Court may still, in its discretion, require itemized time records when it is difficult to find a correlation between a fee calculated per the fee schedule and a reasonable fee derived from Prof. Cond. R. 1.5(a) factors. A fee generated by the schedule must produce a fee that is reasonable under Prof. Cond. R. 1.5(a).

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(3) If attorney fees are based upon a “flat fee” agreement, the agreement should be in writing and the fee application should describe the factors which demonstrate that such fee is fair and reasonable. The resulting fee must be reasonable under Prof. Cond. R. 1.5 and the Court may still require further identification of services performed.

(E) The Court continues to use a fee schedule, contained in (F) as an alternative method of determining a reasonable fee. The schedule is only a guideline. The fiduciary and beneficiaries are not to be advised that the schedule is the exclusive method of determining a reasonable fee, or a method that is preferred by the Court.

(1) There is no place for calculation of an “extraordinary fee” on the Court’s guideline schedule of fees. The attorney cannot use the time-sheet method for calculating part of the work of estate administration and use the fee schedule for other parts of that work.

(2) No attorney fees are allowed on funds advanced to the estate to meet expenses of administration or debts of the estate.

(3) There is no fee generated upon non-probate assets if the (F) schedule fee method is used to calculate a reasonable fee. When an attorney provides services to the estate in identifying and distributing non-probate assets, a fee can be charged on an hourly basis using itemized time records in conjunction with the time charges for all other work. However, attorney time spent in helping a particular beneficiary secure non-probate property should be charged to the individual beneficiary requesting such service pursuant to separate contract unless it would be impractical to charge anyone other than the estate fiduciary.

(4) When the fee request is based upon itemized time records, the Court will not allow attorney fee rates or paralegal rates to be used for work that appears to be clerical in nature. The typing of a letter from an attorney's draft or dictation, the filing of papers with the Court, file management, checking the Court's online docket or calling the Court by telephone, preparation of cover letters, the taking and giving of messages between counsel and clients are examples of clerical work which is to be compensated only as part of the overhead costs built into the attorney or paralegal rate.

(5) Paralegal rates in excess of \$120 per hour may cause increased scrutiny of the paralegal's qualifications. The Court may require identification of any paralegal's education and employment experience. A high hourly rate for

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attorney's fees will not be considered as a valid reason for the setting of a higher paralegal rate. The Court retains discretion to set the fee application for hearing to determine the reasonableness of the hourly rate of the paralegal or the number of hours attributed to the paralegal. Pursuant to Prof. Cond. R. 1.5, reported paralegal service time may be disregarded by the Court if the amount of reported time is found to be excessive in relation to the complexity, or lack thereof, involved in the case.

(F) The fee schedule which may be used if it provides just results and a reasonable fee is as follows:

	<u>VALUE</u>	<u>FEE</u>
A.	Appraised value (when not sold) or gross proceeds (when sold) of \$ _____ personal property included on inventory; gross proceeds of sale of real estate under power of sale in Will or purchased by election of surviving spouse at appraised value; and amount of estate income for which fiduciary accounts:	
1)	For the first \$10,000 at a rate of 6 percent(\$600 maximum)	\$ _____
2)	From \$10,001 to \$100,000 at a rate of 4 ½ percent(\$4,050 maximum)	\$ _____
3)	From \$100,001 to \$400,000 at a rate of 3 ½ percent(\$10,500 maximum)	\$ _____
4)	For \$400,001 and above at a rate of 2 ½ percent	\$ _____
B.	Appraised value of real estate transferred to heirs or devisees by \$ _____ certificate of transfer when no sale is involved at a rate of 2 percent.	\$ _____
C.	If federal estate tax return is filed, the fee is .6 percent on entire \$ _____ gross estate up to a \$2,500 maximum without Court approval.	\$ _____
D.	Land sale proceedings:	
1)	10 percent of the first \$5,000(\$500 maximum)	\$ _____
2)	5 percent of the next \$10,000(\$500 maximum)	\$ _____
3)	3 percent of the next \$15,000(\$450 maximum)	\$ _____
4)	2 percent of the balance (with maximum total fee of \$2,000)	\$ _____
E.	Abstract fee allowed by Court entry	\$ _____
F.	RELEASE OF ESTATE FROM ADMINISTRATION:	
	The attorney handling a release of administration is entitled to a minimum fee of \$500 without time itemization, unless the attorney fee contract calls for a smaller fee. A larger fee is available based on the Local Rule 71.1 (D)(1) method of fee calculation involving itemized time records.	\$ _____

- (G) No attorney fee shall be paid without Court approval. Absent order of the Court upon motion, no attorney fee shall be paid prior to the filing of the final account.
- (H) When an attorney is both the attorney for the estate and the executor/administrator OR when the estate attorney and the executor/administrator are from the same law firm, full executor/administrator fees are allowed plus half of the allowed attorney fees calculated under one of the methods described in (D).

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- (I) Where attorney fees have been awarded for services to the estate which normally would have been performed by the executor or administrator, the said executor's or administrator's fee may be reduced by the amount awarded to counsel for those services rendered, unless, for good cause shown, the Court finds that such a ruling would be unfair. See Local Rule 72.1.
- (J) Attorney fees up to \$500 for representing a guardian of the estate who has been appointed, filed an inventory and whose inventory has been approved by judgment entry may be allowed without an itemized statement of services performed.
- (K) Attorney fee requests filed in guardianships shall consist of Local Form G/AF, signed by both the attorney and guardian, and an itemized invoice showing each task, the time spent on the task and who performed the task.
- (L) Attorney fees up to \$500 for preparing and filing a guardian's annual account and whose account has been approved by judgment entry may be allowed without an itemized statement of services performed, provided the account is found suitable for approval.
- (M) The Court may reduce or deny attorney fees where there is a delinquency in filing an account.

Rule 72.1 Executor's & Administrator's Commissions

- (A) The fiduciary and attorney must both sign any request for fiduciary fees. The Court follows R.C. 2113.35 for the allowance of fiduciary fees but may reduce or deny such fees where there is a delinquency in filing an account. Where the fiduciary has not performed the duties of his/her office but has relinquished those duties to others to perform, as when the attorney performs strictly lay services to the estate, the commission may be reduced or denied.
- (B) Any surcharge upon the estate fiduciary's commission or the attorney fee due to error, negligence or misconduct may be considered at an oral hearing upon motion of an interested party.
- (C) No commissions are to be paid prior to the filing of the final account.
- (D) A commissioner appointed upon his/her application for relief of an estate from administration usually serves without expecting compensation. If compensation is expected, the court will grant a fee for the commissioner based on the amount of time the commissioner has or will expend for the benefit of creditors and beneficiaries, the size and complexity of the assets being relieved from administration and the appropriate performance of the court's orders. Any fee requested will be evaluated on a case-by-case basis and will not be computed using the guideline for fiduciary commissions in R.C. 2113.35.
- (E) No commission will be paid without court approval. Requests for fees for executors or administrators in estate administrations shall be in writing and shall be calculated using the following guidelines in Form ACFF:

- a. Executor and administrators shall be allowed commissions upon the amount of all the personal property and real estate at appraised value when not sold, or gross proceeds when sold, including the income from the personal estate that is received and accounted for by them.
- Total value of assets used for this calculation: \$ _____
- (1) For the first \$100,000.00 at the rate of 4% (\$4,000.00 Maximum) \$ _____
- (2) From \$100,000.00 to \$400,000.00 at the rate of 3% (\$9,000.00 Maximum) \$ _____
- (3) All above \$400,000.00 at the rate of 2% \$ _____
- b. Executors and administrators shall be allowed commissions upon the amount of the appraised value of real estate not sold:
- Total value of assets used for this calculation \$ _____
- (4) Fee on same at the rate of 1% \$ _____
- c. Executors and administrators shall be allowed commissions upon the amount of all property not subject to administration but is includable for purposes of computing Ohio estate tax, **except joint and survivorship property, which is not to be included in this computation.** (The filing of an estate tax return is not necessary to receive this commission.)
- Total value of assets used for this calculation: \$ _____
- (5) Fee on same at the rate of 1% \$ _____
- TOTAL FIDUCIARY FEE ALLOWED:** \$ _____

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Rule 73.1 Guardian's Compensation

(A) Requests for guardian's fees shall be in writing and shall be calculated using the following guidelines in Form ACGF:

- a. A guardian shall be allowed compensation of 5 percent of the income in a Veteran's Administration guardianship.
- Total value for this computation: \$ _____
- (1) Fee on same at the rate of 5% \$ _____
- b. A guardian shall be allowed compensation on the income and expenditures in all other guardianships. The original receipt of principal (corpus) may be included as income in the guardian's first request for fees. Neither any balance carried forward from prior accountings nor the investment and reinvestment of principal may be considered as income.
- Total income for this computation: \$ _____
- Total disbursements for this computation: \$ _____
- (2) For the first \$1,000 of income at the rate of 3% \$ _____
- (3) For the balance of the income at the rate of 2% \$ _____
- (4) For the first \$1,000 of expenditures at the rate of 3% \$ _____
- (5) For the balance of the expenditures at the rate of 2% \$ _____
- c. A guardian shall not receive any compensation on the final distribution of assets.
- d. Any request for compensation over and above these guidelines shall be in writing and shall include a detailed description of the tasks which the guardian feels warrants the extra fees. Extra fees may be approved with or without a hearing.
- TOTAL GUARDIAN'S FEE ALLOWED:** \$ _____

(B) Requests for guardian's fees shall be signed by the guardian.

(C) The Court may reduce or deny guardian fees where there is a delinquency in filing an account.

- (C) In the absence of approval by the beneficiary(ies), all requests for fees shall be sent by the Court to the beneficiary(ies) for review. Time will be given for any objections to be filed.
- (D) The Court may reduce or deny trustee fees where there is a delinquency in filing an account.
- (E) Fee schedules are subject to review by the Court and shall be furnished to the Court by January 10 of each year and whenever a change in the calculation of fees is made during the year. A copy of the fee schedule shall also be served upon each current beneficiary.

**Rule 78 CASE MANAGEMENT IN DECEDENT'S ESTATES,
GUARDIANSHIPS AND TRUSTS**

Rule 78.1 Applications for Appointment

A waiver to administer on Form 4.3 signed by persons who have a priority status under R.C. 2113.06 to administer an estate does not indicate agreement that the applicant is a suitable person to administer. The waiver of right to administer an estate is separate from the process of determining the suitability of the applicant to serve as administrator. Local Form 4.3A should be used to establish that a person interested in the estate consents to the applicant's appointment as administrator. Unless all those interested in the estate have consented to the appointment of the applicant as administrator, the application for appointment will be set for hearing within twenty-one (21) days of filing, either for oral or non-oral hearing as the Court determines.

Rule 78.2 Inventory of Safe Deposit

If keys are available, the Court will appoint the attorney for a decedent's estate, a deputy clerk of the Court, or an attorney not serving as attorney for the estate as a commissioner to list the contents of the box and retrieve the decedent's will and codicils from the decedent's safe deposit box for delivery to the court or as directed by the Court. The Court may appoint the estate fiduciary who is without counsel to make such examination and retrieval, but may require notice to other next of kin or beneficiaries prior to the appointment.

Rule 78.3 Inventories

- (A) The inventory in a decedent's estate shall be filed within 90 days of the issuance of the letters of authority.
- (B) Notice of the filing of the inventory in a decedent's estate shall be given in accordance with R.C. 2115.16 and shall be given by publication one time, as a group, in a newspaper of general circulation in Tuscarawas County. The publication shall be at least 10 days before the day set for the non-oral hearing. Notice given in compliance with this rule shall be deemed notice to each person or class of persons entitled thereto, without specifically naming such person or class of persons.
- (C) The inventory in a guardianship shall be filed within 90 days of the issuance of the letters of authority.
- (D) Any inventory filed by a guardian pursuant to R.C. 2111.14 shall include evidence that the inventory is a true and accurate inventory of the estate of the ward. This evidence may include, but is not limited to, income tax returns, current bank statements, the county auditor's property records, and Social Security records of the ward or any other documents that are relevant to determining the accuracy of the inventory.

- (E) The street address, auditor's parcel number and legal description of all of the ward's real property located in Ohio shall be set forth on the Guardian's Inventory.
- (F) Each item of personal property set forth on the Guardian's Inventory shall be identified as being tangible personal property or intangible personal property.
- (G) Unless ordered by the Court, in guardianships wherein the fiduciary determines, in good faith, that the total fair market value of all the decedent's household goods and furnishings is less than \$2,000, the ward's household goods and furnishings may be considered assets, the value of which is readily ascertainable, and which need not be appraised. In the event that an interested party objects to any such determination and files an exception to the inventory pursuant to R.C. 2115.16, the fiduciary shall obtain a formal appraisal of the ward's household goods and furnishings prior to the hearing on such exception.

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- (H) In the event the fiduciary determines that an asset was incorrectly included in the original inventory or the original inventory included an incorrect valuation which results in a decrease in value, the inventory must be amended, and service of the notice of the hearing on the amended inventory effectuated unless said notice is waived in writing.
- (I) In the event the fiduciary determines that the original inventory included an incorrect valuation which results in an increase in valuation, the fiduciary shall amend the inventory, but a new hearing on the amended inventory shall not be required. The fiduciary or counsel shall notify the surviving spouse and beneficiaries of the change in the inventory.
- (J) When newly discovered assets come into the hands of the fiduciary after the filing of the original inventory, an amended inventory is not required. The fiduciary shall report the newly discovered assets to the Court pursuant to R.C. 2113.69.

Rule 78.4 Decedent's Estates – Status Reports

- (A) Inventories and accounts (both partial and final) must be served upon all estate beneficiaries, except legatees who have already received and given a receipt for their specific bequests under the will. The service shall be by the fiduciary or his/her counsel. Regular mail service or hand delivery is sufficient.
- (B) The Court may order a status report at any time. The status report will explain the status of the administration and list the steps remaining to complete the estate, along with an estimated time frame for completion. A copy of the status report shall be served upon all persons or creditors who have an interest in the completion of the estate.
- (C) In addition to the foregoing and in conformity with Sup. R. 78 (C), the fiduciary and the attorney shall prepare, sign and file a written status report in all decedent's estates that remain open for more than 13 months from the date of appointment, and annually thereafter. A status review hearing may be set. The fiduciary and attorney may be ordered to attend and bring records relevant to the estate administration, including time records for attorney fees.

- (D) The filing of a status report has no bearing on the requirement to complete and file inventories, partial accounts and final accounts as previously directed in these Rules.

Rule 78.5 **Civil Actions**

- (A) A pre-trial conference shall be conducted in all civil cases, except in land sale proceedings. Within thirty days after the answer day, the case shall be set by the Court for a pre-trial conference.
- (B) At the pre-trial conference, all counsel must attend and have authority to enter into a binding pre-trial order. The following decisions will be made based on the conference:
1. a discovery schedule;
 2. a date for exchange of expert witness reports;
 3. deadlines for summary judgment motions and responses;
 4. whether there will be a final pre-trial; and
 5. the date for the trial.
- (C) Pre-trial motions must be filed at least thirty days prior to trial. The motion is to be accompanied by a request for oral hearing, if oral hearing is requested, and the matters expected to be presented upon the motion must be specified.

Rule 78.6 Court Records Management & Retention

- (A) **Retention of Exhibits Submitted During Evidentiary Hearings.** While a case is pending, documentary and photographic exhibits are customarily retained in the case file in a manila envelope, marked by date of hearing. Inspection of exhibits in an exhibit envelope can be made at a reasonable time when Court personnel can monitor the inspection to assure that there is no tampering with introduced, admitted or proffered exhibits. Larger items or voluminous documents may be retained in a sealed envelope or box, and marked by case number, case name, and date of hearing and kept, pending final disposition in an area designated by the chief deputy clerk.
- (B) After final resolution of the contested issue for which exhibits have been offered, including any appeal of such issue, the exhibits will be retained by the Court for a period of 90 days. Court personnel may begin the destruction of no-longer-needed exhibits after this 90-day period. The party who has introduced an exhibit in evidence, or proffered introduction of an exhibit, may seek return of the exhibit by motion or other written request. The Court may delay return of the item pending determination that its further retention serves no purpose in cases of a continuing nature, like guardianships or cases involving trusts. Any other party involved in the case may be consulted informally to determine if there is objection.

- (C) Parties are encouraged to substitute copies, when permitted by the Rules of Evidence, for photographs and records having sentimental value. Parties are encouraged to promptly seek return of exhibits they want returned after final disposition of the case, such as objects, articles of clothing, books, jewelry and other heirlooms or articles of sentimental attachment.

- (D) This local rule has no applicability to vouchers, proofs, or other evidence offered in support of expenditures or distributions within an account, wills offered for probate, birth records, records of adoption, marriage license application or estate tax return filings for which there are sufficient instruction for preservation or destruction with Sup. R. 26(D). This local rule pertains to exhibits offered into evidence in evidentiary proceedings before the probate court, which would relate also to *exceptions* to an inventory or account as well as in guardianship, adoption, name change, and estate administration proceedings.

Rule 78.7 Transcripts upon Magistrate’s Decisions

A transcript of proceedings is not required when objection is made to a magistrate’s decision if there is no objection to the magistrate’s fact-finding, but there is objection as to how magistrate construed the applicable law and issued an inequitable or unjust result or one which is counter to law.

Rule 78.8 Compliance with the Americans with Disability Act

Individuals with disabilities, special needs or the need for an interpreter shall make requests to the Court for reasonable accommodations no later than seven days prior to any scheduled hearing.

JURY MANAGEMENT PLAN

The jury management plan of the Tuscarawas County Court of Common Pleas, General Trial Division, shall apply to proceedings in the Probate Division except to the extent that by their nature they would be clearly inapplicable.

