Tuscarawas County
Court of Common Pleas

Probate Division

Local Rules

Effective June 14, 2022

Table of Contents

Rule 5.1 Adoption of Local Rules

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 June 14, 2022. 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 $15.00 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.

Rule 6.1 Attorney Registration Number

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.

Rule 8.1 Court Appointments of Attorneys

(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.).

Rule 9.1 Court Security Policy & Plan

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.

Rule 11.1 Recording of Proceedings

(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.

Rule 12.1 Broadcasting & Photographing Court Proceedings

(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.

Rule 45.1 Court Records – Public Access

(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, Room 203, New Philadelphia, OH 44663.

(C) The Court's General Index Books may be accessed online anytime at www.co.tuscarawas.oh.us by choosing "Offices," "Courts," "Probate," "About Probate Court" and "Record Books." These books contain all of the Court's cases filed between 1808 and 1990, except marriage licenses.

(D) The Court's online index, a continuation of the General Index Books, 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 or the Court's record room is 25 cents per page and must be paid at the time the copy is received. There will be no charge accounts.

(G) The cost for a certified copy of a marriage record is $3.00.

(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.

Rule 45.2 Court Records – Public Access to Sealed Documents

(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.

Rule 48.1 Court Appointments of Guardians ad Litem

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 on the Court's website: http://www.co.tuscarawas.oh.us/Probate/Forms.htm.

Rule 53.1 Hours of the Court; Accepted Methods of Payment

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.

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, check, money order, credit card or debit card for payment of any fee. However, those using a credit card or debit card will be assessed an additional fee by the payment processing company.

Rule 53.2 Hours of the Court for Marriage License Applications

(A) Marriage licenses are issued **via appointment only** during the Court's regular business days (Monday through Friday except for government holidays) and from 9 a.m. to 3:30 p.m.

(B) The marriage license application, the fee and copies of all required documents must be turned in to the Court at least two weeks before the wedding date. Once the documents are received, the Court's marriage license clerk will call the parties to schedule an appointment. The appointment will be held at the Court's office, 101 East High Avenue, Room 203, New Philadelphia. Only the two applicants are permitted to attend the appointment.

(C) A marriage license may be issued to a couple who reside out of state but only if they are getting married in Tuscarawas County. If the couple resides in Ohio, at least one party must be a Tuscarawas County resident in order for the license to be issued here. For county residents, the license is valid anywhere in the state of Ohio for 60 days.

(D) Generally speaking, the Probate Court will not issue marriage licenses to anyone under age 18. However, in very limited circumstances, the Juvenile Court can decide whether a 17-year-old has the capacity of an 18-year-old to enter into the marriage contract. This involves a hearing in which testimony is taken. The couple also must receive premarital counseling.

(E) The cost for a couple to apply for a marriage license is $70. If, for any reason, an application is not approved or a license is not used, the couple will not receive a refund.

(F) All applicants shall employ the following procedure to apply for a marriage license:

1. Print out the two-page application "marriage license request form" under the picture on the Court's marriage license page at https://www.co.tuscarawas.oh.us/courts/marriage-licenses

2. Complete the application by neatly printing the information requested in ink.

3. Prepare photocopies of all of the required documentation. Any missing or unreadable documents will result in your appointment being delayed.

a. photo ID

b. birth certificate

c. Social Security card or a military record or tax record that contains the applicant's complete Social Security number. If an applicant is a citizen of another country and does not have a United States Social Security number, that requirement is waived.

d. proof of current address IF the photo ID does not reflect the applicant's current address.

e. proof of divorce or dissolution IF either party has had his or her previous marriage terminated via divorce or dissolution. A decree of dissolution or divorce signed by a judge or a certificate of divorce or dissolution are to be used. If either of the parties have been married and divorced more than once, the documentation relating to the most recent divorce or dissolution must be provided.

4. Place the completed application, the $70 fee (cash or money order) and the copies of your records in a large envelope. Seal the envelope.

5. Drop off the envelope to the Court office and wait for the marriage license clerk to call and schedule the appointment.

(G) The act of obtaining a marriage license does not make you married.

(H) No one in the Courthouse performs marriage ceremonies.

(I) You must make your own arrangements to be married. You can be married by any minister who is registered with the State of Ohio or by a mayor of any city or village. There may be additional costs associated with the actual marriage ceremony.

(J) To obtain a certified copy of a previously issued marriage certificate ($3), you may either call the Court at (330) 365-3244 OR you may print out and complete the "Marriage Record" request form found under the picture on the Court's marriage license page at https://www.co.tuscarawas.oh.us/courts/marriage-licenses

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.

(D) Attorneys shall ensure their clients are either present for all hearings or available by telephone.

(E) All parties, attorneys of record, witnesses, and Guardians ad Litem shall appear in-person for all scheduled hearings.

(F) Any request for permission to appear by the Court's videoconferencing software shall be made by written motion at the earliest possible time, but no later than ten (10) working days prior to the hearing, and shall include the approval of all parties.

(G) Appearance in person shall be presumed by the Court unless otherwise ordered by the Court.

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 prepaid.

(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 neatly printed or typewritten filings. 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 only documents the Court will accept via facsimile machine are those protected by the Health Insurance Portability and Accountability Act (HIPAA).

(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) The Court will not return file-stamped copies by mail unless copies are provide along with a postage-paid, self-addressed envelope.

(E) 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.

(F) Any pleading, filing or other document which by law requires the fiduciary's signature shall contain the fiduciary's signature. The attorney for the fiduciary may not sign for the fiduciary.

Rule 57.2 Email Filings

(A) Email filing is available for the convenience of all parties and their attorneys.

(B) Definitions

1. "Email transmission" means a method of exchanging digital messages between computer users.
2. "Source document" means the document transmitted to the Probate Court Clerk by email.
3. "Effective original document" means the printed copy of the source document received by the Probate Court Clerk and maintained as the original document in the Court's file.

(C) Procedure

1. Pleadings and other documents may be filed with the appropriate Probate Court Clerk by email transmission to that clerk's county email address OR by email transmission to the Court's general email address: probate@co.tuscarawas.oh.us.
2. A document filed by email shall be accepted as the effective original document.
3. The original document filed by email shall be maintained by the person making the filing until the case is closed and all opportunities for post-judgment relief are exhausted.
4. The Court will **not** accept via email the documents needed to open or initiate a case.
5. The Court will **not** accept via email any final filing, such as a final account.
6. The Probate Court Clerk may, but need not, acknowledge receipt of an email transmission.
7. The risk of transmitting a document by email to the Probate Court Clerk shall be borne entirely by the sending party. Anyone using email filing is urged to verify receipt of such filing by the Probate Court Clerk.

(D) The Court will accept via email a signed source document.

(E) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the Court shall order the filing stricken.

(F) The Court will **not** accept any filing via email that has an exhibit attached that cannot be accurately transmitted via email. Any filing that has an exhibit that cannot be emailed must be filed either in person or by regular mail.

(G) Subject to the provisions of these rules, all documents sent by email and received by the clerk shall be considered filed with the Probate Court Clerk as of the date the clerk receives the document, as opposed to the date, if different, of the email transmission. Emailed filings that are received by the Clerk on or before 4:30 p.m. on any business day will be stamped as being received that day.

(H) The Probate Court Clerk will assess a fee of $2 per email filing and $1 per page pursuant to ORC 2303.20(Y). Said fees will be assessed as court costs.

Rule 57.3 Electronic Signatures

A. PURPOSE

These rules are established to allow the use of electronic signatures by the Judge, Magistrates and Court Personnel, to address the authenticity of a signature. If it is established that a document was electronically signed without authority, the Court shall be immediately notified. The Judge shall order the Clerk to strike the unauthorized document from the record.

B. SIGNATURE OF JUDGE

Documents may be signed by a Judge or Magistrate with an electronic signature. All orders, decisions, entries, permits, judgments and other documents signed in this manner shall have the same force and effect as if the Judge or Magistrate had affixed his or her signature in a conventional manner. To ensure the electronic signature is authentic, the signer must use a user name and password to log into the court's secured network to access the document to be signed. No Judge or Magistrate shall share these passwords with users except for the electronic records manager.

C. SIGNATURE OF COURT PERSONNEL

Electronic signatures in case records will be limited to Court personnel. To ensure that the electronic signature is authentic, the signer must use a user name and password to log into the court's secured network to access the document to be signed. No personnel shall share these passwords with others except for the electronic records manager.

Rule 58.1 Deposits for Court Costs

(A) Deposits in the amounts listed below shall be provided for filings and applied as necessary. Deposits must be prepaid prior to the opening of any type of case. 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	$200
3.	Release of estates	$150
4.	Summary release of administration	$75
5.	Re-open an estate	$50
6.	Tax only	$40
7.	Will for record only or for probate and tax	$73
8.	Deposit of will for safekeeping	$25
9.	Application to distribute unclaimed funds	$10
10.	Guardianship (incompetent)	$275
11.	Guardianship (minor)	$200
12.	Conservatorship	$140
13.	Minor's settlement/minor's claim	$65
14.	Release of guardianship	$65
15.	Adoption (step-parent/grandparent)	first child $555; 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	$25
31.	Application to release information	$15

(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 $25. Wills shall be kept in a locked 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 provided to the Court at the time the estate is filed, but the trust will not be filed. 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) Pursuant to Ohio Revised Code Sec. 2109.04(A)(2), if the instrument dispenses the giving of bond, the Court will appoint a fiduciary without bond, unless the Court is of the opinion that the interest of the estate or trust demands it. In order for the Court to be able to make this determination, the Court may schedule a hearing on the waiver of bond; but may dispense with the hearing and appoint the fiduciary without bond if:

1. Upon application for appointment or prior to a scheduled hearing, the fiduciary files with the Court Acceptances of the Waiver of Bond (in a format approved by the Court) signed by all the vested beneficiaries named in the decedent's will as identified on the Form 1.0, or for a testamentary trust, by all the current beneficiaries named in the testamentary trust; or

2. The named fiduciary is the sole beneficiary of the estate/trust or if the named co-fiduciaries are the only beneficiaries of the estate/trust.

(B) If the Court determines a bond is necessary the Court will generally require the applying fiduciary to post a surety bond of two times the probable value of the personal estate or such other level as determined to be appropriate by the Court; however, if the fiduciary is an attorney, the Court will generally require a surety bond equal to the probable value of the personal estate.

(C) In lieu of the bond, the Court may authorize a depository in lieu of bond or restricted financial account arrangement to hold financial assets of the estate/trust, with such account being subject to the further order of the Court prior to the release of the restricted assets.

(D) Attorneys shall not act as sureties in any case, nor are they permitted to become sureties on the bond of any fiduciary.

(E) Where a bond is required, the Court will not accept personal sureties.

(F) 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.

(G) 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.

(H) 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.

(I) 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.

(J) 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.

(K) All applications for estate administration SHALL include a copy of the decedent's death certificate.

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 and qualified appraisers for the specific subject matter for all appraisals. These appraisers may include 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 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.

(H) All tangible personal property, household goods and furnishings of a decedent shall be returned on the Inventory with an appraisal, except as provided herein:

1. Unless otherwise ordered by the Court, tangible personal property, household goods and furnishings of the decedent, passing to the surviving spouse may be returned on the Inventory without appraisal.

2. Unless otherwise ordered by the Court, where no Ohio estate tax return is required to be filed, tangible personal property, household goods and furnishings of the decedent may be returned on the Inventory without appraisal if all beneficiaries entitled to receive such property consent to the waiver of an appraisal.

3. Unless ordered by the Court, 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 $4,000, the 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, the fiduciary shall obtain a formal appraisal of the ward's household goods and furnishings prior to the hearing on such exception.

(I) A fiduciary, beneficiary, or creditor of a decedent's estate may file a written request with the Probate Court not later than five (5) days prior to the date set for hearing on the Inventory and Appraisal pursuant to Section 2115.16 of the Revised Code that any property deemed to be appraised by readily ascertainable value shall be appraised by a suitable and disinterested appraiser.

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 Personal Property

(A) 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.

(B) 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 guideline form;

b. receipt for attorney fees or waiver of fees;

c. fiduciary fee guideline 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;

h. receipts for specific items bequeathed and received;

i. settlement statement from the sale of any real estate or personal property auction;

j. payment of any final court costs due; and

k. 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 or the Court's Social Security Report form (SSR) in lieu of an account. This report will be filed but will generate no costs.

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.

(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, receipts, statements, etc. filed in support of any trust 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.

3. Actual trust accounts may be destroyed after 12 years from the date of account approval pursuant to Rule 26. 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 14 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 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 14 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 as well as the Guardianship Guidebook provided by the Ohio Judicial College. The books will provide the guardian with general information on the guardian's duties and responsibilities.

(G) All guardians shall complete the Ohio Supreme Court Guardian Education Program. This program consists of an initial 6-hour "Fundamentals of Adult Guardianship" course and annual 3-hour "Continuing Education" courses.

(H) 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.

(I) 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.

(J) 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.

(K) 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.

(L) The examination of the ward or proposed ward by an expert shall not have occurred more than three months prior to the filing of the Statement of Expert Evaluation which accompanies the Application for Appointment of Guardian or an Incompetent.

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) Each Application for Emergency Guardianship shall be reviewed by the Court upon its submission. The Court shall decide whether the situation is an emergency and if so, will direct the Clerk to file said application and set it for immediate hearing.

(C) The examination of the ward or proposed ward by an expert shall not have occurred more than three months prior to the filing of the Statement of Expert Evaluation which accompanies the Application for Appointment of Guardian or an Incompetent.

(D) 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.

(E) In all cases, the emergency guardian must prove that he or she has served upon the ward a copy of the appointment of 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.

(F) 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.

(G) 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 66.4 Guardian Complaints

The Court's guardianship clerk shall accept all complaints/comments relating to the performance of guardians appointed by the Court. All complaints/comments shall be in writing and shall be submitted in person, by mail or by email and directed to said guardianship clerk.

All complaints/comments and related documents shall be filed in the corresponding guardianship case file unless the Court decides otherwise. Copies of all complaints/comments and related documents shall be kept by the Court in a separate file designated for this purpose and organized by guardian names.

The Court shall provide a copy of said complaint/comment to the subject of the complaint/comment. The subject of the complaint/comment shall have 10 business days to respond in writing to the Court. Upon receipt of said complaint/comment, the Court shall have 7 business days to rule on said complaint/comment. The Court shall either issue a decision in writing disposing of said complaint/comment or issue a notice setting the matter for hearing.

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 $25,000 or more. The "net amount of settlement" is the amount the minor will receive after attorney fees and expenses are paid.

(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 unless, for good cause show, the minor is excused. 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;

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. Attorney fees must be reasonable and beneficial to the estate. 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 fee guideline, 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 consents are to be presented in the form of signed Attorney Fee Consent forms (local Form AFC).

2. Attorney Fee Consent forms from beneficiaries obtained through the process described in **(B)(1)** are to be filed at the same time as the fee application. Via that consent, the attorney and fiduciary are certifying to the Court that, prior to the beneficiary giving consent, the beneficiary was given the complete fee 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 Form AFC for possible use, and a Notice of Non-oral Hearing on Application for Attorney Fees, or after consultation with the judge or magistrate, a Notice of

Oral Hearing on Application for Attorney Fees, unless hearing is dispensed with by the judicial officer pursuant to **(C)** below.

(C) Consideration of fee applications may be given without an 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 guideline 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 guideline and a reasonable fee derived from Prof. Cond. R. 1.5(a) factors. A fee generated by the guideline must produce a fee that is reasonable under Prof. Cond. R. 1.5(a).

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.

4. Where the attorney on an application to the Court prior to or during administration requests a fixed fee, the court, if it deems appropriate and after appropriate notice to the interested parties, will then fix a reasonable fee for services beneficial to the administration of the estate.

(E) The Court continues to use a fee guideline, contained in **(F)** as an alternative method of determining a reasonable fee. The fiduciary and beneficiaries are not to be advised that the guideline 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 fee guideline. The attorney cannot use the time-sheet method for calculating part of the work of estate administration and use the fee guideline 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. No fee is generated upon non-probate assets if the **(F)** fee guideline 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 that beneficiary 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 $125 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 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 guideline which may be used if it provides just results and a reasonable fee is as follows:

		VALUE	FEE
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 $800 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.		$ _____
	TOTAL GROSS VALUE & FEE	$ _____	$ _____

(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).**

(I) If a disparity or injustice results by reason of the application of the above percentages to values of assets, said disparity or injustice may be reviewed upon the Court's own motion no matter that the compensation has been reflected in an account or upon exceptions to such account.

(J) 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.

(K) 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.

(L) Attorney fee requests filed in guardianships shall consist of Local Form G/AF (attorney fees in a guardianship), 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.

(M) 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.

(N) 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.

(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 calculated using the following guidelines of the Application/Computation of Fiduciary Fee (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: $_____

Rule 73.1 Guardian's Compensation

(A) Requests for guardian's fees shall be calculated using the following guidelines of the Application/Computation of Guardian Fee (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 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.

(D) No guardian's fees are to be paid without Court approval.

(E) A guardian's application for compensation in a veteran's administration case must comply with Ohio Revised Code Chapter 5905, which relates to the Department of Veterans Affairs.

Rule 74.1 Trustee's Compensation

(A) Requests for trustee's fees shall be calculated using the guidelines of Application/Computation of Trustee Fee (Form ACTF):

a. **FOR 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. Fee guidelines are to be furnished to the Court on the 1st day of January of each year and whenever a change in fees is made within any calendar year.

3. A separate computation of the trustee's compensation shall be set forth in the trustee's account as a condition of its approval.

b. **FOR INDIVIDUAL TRUSTEES (except where the trust instrument makes its own provisions for compensation):**

(1) A trustee shall be allowed a principal fee of the market value of the principal held by the trustee.
Total value for this computation: $ _____
Fee on same at the rate of $2 per 1M $ _____

(2) A trustee shall be allowed an income fee for the income accrued during the accounting period.
Total value for this computation: $_____
Fee on same at the rate of 5% $_____

(3) A trustee shall be allowed a distribution fee for the distributions made during the accounting period.
Total value for this computation: $_____
Fee on same at the rate of 1% $_____

TOTAL TRUSTEE FEE ALLOWED: $_____

(B) Corporate trustees may use the Individual Trustee's compensation guideline.

(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 guidelines of financial institutions 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 guideline 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. Notice of inventory shall be served on all vested beneficiaries in a testate estate and all those entitled to inherit in an intestate estate. All assets shall have a verification of value attached.

(B) The hearing on the inventory will be non-oral unless the court orders an oral hearing. The hearing on the inventory, whether oral or non-oral, will be set not less than fourteen (14) days after the inventory is filed, nor more than thirty (30) days after such filing, per R.C. 2115.16. There will no longer be any legal notices of the filing of the inventory given in newspaper publications.

(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.

(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.

Rule 79 MEDIATION

Rule 79.1 Purpose of Mediation

The Court establishes mediation in order to increase access to justice; to increase parties participation in the court processes and their satisfaction with the outcome; to allow cases to settle more quickly with less expense to the parties; and to expand dispute resolution resources available to the parties.

The purpose of mediation is to promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution for Tuscarawas County Probate cases through the use of mediation. To accomplish this goal, the Tuscarawas County Mediation program has been established.

Through Local Rule 79 the Tuscarawas County Probate Court incorporates by reference Chapter 2710 “Uniform Mediation Act” (UMA) and Rule 16 of the Supreme Court of Ohio Rules of Superintendence.

Rule 79.2 Definitions

All definitions found in the "Uniform Mediation Act" (UMA) R.C. 2710.01 are adopted by this Court through Local Rule 79, including, but not limited to the following:

(A) "Mediation" means any process in which a mediator facilitates communication and negotiation between the parties to assist them in reaching a voluntary agreement regarding their dispute.

(B) "Mediator" means an individual who conducts a mediation.

(C) "Mediation Communication" means a statement, whether oral, in a record, verbal or non-verbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.

(D) "Proceeding" means either of the following:

1. Judicial, administrative, arbitral or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery;

2. A legislative hearing or similar process.

(E) "Party" means a party who participates in a mediation and whose agreement is necessary to resolve the dispute.

Rule 79.3 Mediation Referral

The Court may refer a case to mediation on the motion of any party, on the agreement of the parties, or on its own order.

(A) Referral Process: The Court, on its own motion, or the motion of any of the parties may refer disputed issues to mediation in whole or in part by "Notice of Scheduled Mediation" which shall, at a minimum indicate the date, time, place and contact information of the mediation.

(B) Domestic Violence: All parties and counsel shall advise the judge of any domestic violence allegations known to them to exist or to have existed in the past, or which become known to them following entry of the order but before conclusion of all mediation proceedings, which allegations involve any two or more persons whose attendance is required by the referral order.

(C) Eligibility of Cases: The Court will determine the eligibility and appropriateness of each referral prior to the commencement of the mediation process and may decline any referral(s) deemed inappropriate.

(D) Outside Referrals: If a dispute involves such issues as mental health, mental retardation, developmental disability, or aging adults, but a guardianship case has not been filed, a party may file a motion to refer the matter to mediation. A case shall be referred to mediation if mediation is likely to resolve the dispute as a less restrictive alternative to guardianship.

Rule 79.4 Selection and Assignment of Mediator

The Court shall determine the mediator for any given case by any of the following methods:

(A) Using the current mediation program mediator;

(B) Randomly assigning a mediator to the case from the Court's roster of approved mediators;

(C) Specifically choosing a mediator based upon the qualifications, skills, expertise, and caseload of the mediator in addition to the type, complexity and requirements of the case or

(D) Approving a mediator chosen by the parties from the Court's roster of approved mediators.

Rule 79.5 Mediation Procedure

(A) In accordance with all applicable provisions of this rule, if a case is deemed appropriate by the Court, mediation will be scheduled. A mediator may meet with the parties individually prior to bringing the parties together for any reason including, but not limited to, further screening. A mediator may schedule multiple mediation sessions if necessary and mutually acceptable for the resolution of the issues in part or in their entirety.

(B) The Court shall utilize mediation 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/or

d. In determining the penalty for violation of a protection order.

Rule 79.6 Participation

(A) Parties who are ordered into mediation shall attend scheduled mediation sessions. The Court may order parties to return to mediation at any time.

(B) A judge and/or mediator may require the attendance of the parties' attorneys at the mediation sessions if the mediator deems it necessary and appropriate.

(C) Party representatives with authority to negotiate a settlement and all other persons necessary to negotiate a settlement, including insurance carriers, must attend the mediation session.

(D) In the event the parties and/or their attorneys and/or the insurance representatives do not attend the mediation sessions, the mediator shall report the non-compliance to the Judge.

(E) If counsel for any party to the mediation becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but has not yet been joined as a party in the pleadings, counsel shall promptly inform the mediator as well as the judge.

(F) If the opposing parties to any case are 1) related by blood, adoption, or marriage; 2) have resided in a common residence, or 3) have known or alleged domestic violence at any time prior to or during the mediation, then the parties and their counsel have a duty to disclose such information to the mediator and have a duty to participate in any screening required by the court.

(G) Any entity or person who participates in mediation as a nonparty participant as defined by R.C. 2710.01(D) agrees to be bound by this rule and submits to the court's jurisdiction to the extent necessary for enforcement of this rule. Any nonparty participant shall have the rights and duties under this rule attributed to parties except as provided by R.C. 2710.03(B) (3) and 2710.04(A) (2).

Rule 79.7 Confidentiality/Privilege

(A) 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).

(B) 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 and the Rules of Evidence and any other pertinent judicial rule(s).

(C) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation are not subject to discovery or admissible in evidence, and shall remain confidential and are protected from disclosure, except as otherwise provided by law.

(D) The mediator shall be prohibited from being called as a witness in any subsequent legal proceeding, (Except as to the terms of the settlement agreement.).

Rule 79.8 Mediator Conflicts of Interest

(A) In accordance with R.C. 2710.08(A) and (B), the mediator assigned by the Court to conduct a mediation shall disclose to the mediation parties, counsel, if applicable, and any nonparty participants any known possible conflicts that may affect the mediator's impartiality as soon as such conflict(s) become known to the mediator.

(B) If counsel or a mediation party requests that the assigned mediator withdraw because of the facts so disclosed, the assigned mediator should withdraw and request that the Judge appoint another mediator from the list of qualified mediators that is maintained by the Court. The parties shall be free to retain the mediator by an informed, written waiver of the conflict of interest(s).

Rule 79.9 Termination

If the assigned mediator determines that further mediation efforts would be of no benefit to the parties, he or she shall inform all interested parties and the Court that the mediation is terminated using the procedure required by this Court.

Rule 79.10 Stay of Proceedings

(A) All remaining court orders shall continue in effect.

(B) No order is stayed or suspended during the mediation process except by written court order.

(C) Mediation shall not stay discovery, which may continue through the mediation process in accordance with applicable rules, unless agreed upon by the parties and approved by the judge.

Rule 79.11 Continuances

(A) It is the policy of this Court to determine matters in a timely way.

(B) Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date has been determined.

(C) The case may be continued only by the Judge.

(D) Except as authorized by the Court, the existence of pending motions shall not be good cause for a continuance and no continuance will be granted unless the mediation can be scheduled prior to the final pretrial.

Rule 79.12 Mediation Case Summary

(A) At least five (5) days before the mediation, the parties shall submit to the mediator a short memorandum stating the legal and factual positions of each party, as well as other material as each party believes would be beneficial to the mediator, including but not limited to a summary of material facts, legal issues, injuries and damages, status of discovery, and a summary of settlement attempts to date, including demands and offers.

Rule 79.13 Mediation Memorandum of Understanding

(A) The assigned mediator, parties or counsel, if applicable, as agreed by the parties, may immediately prepare a written memorandum memorializing the agreement reached by the parties. The Mediation Memorandum of Understanding may be signed by the parties and counsel.

(B) If the Mediation Memorandum of Understanding is signed, it will not be privileged pursuant to R.C. 2710.05 (A) (1)). The Mediation Memorandum of Understanding may become an order of the court after review and approval by the parties and their attorney, if applicable.

(C) No oral agreement by counsel or with parties or an officer of the court will be regarded unless made in open court.

Rule 79.14 Mediator Report

(A) 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;

3. Attendance of the parties;

4. Future mediation sessions(s), including date and time.

(B) If full agreement is reached, the report shall indicate the parties' agreement as to who shall be responsible for outstanding court costs and who will prepare any necessary journal entries.

Rule 79.15 Miscellaneous provisions

If any individual ordered by the Court to attend mediation fails to attend mediation without good cause, the court may impose sanctions which may include, but are not limited to, the award of attorney's fees and other costs, contempt or other appropriate sanctions at the discretion of the Judge.

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.