

COURT OF COMMON PLEAS  
PROBATE DIVISION  
TRUMBULL COUNTY, OHIO

IN RE: )  
COUNTY LOCAL PROBATE RULES )  
OF THE PROBATE COURT OF )  
TRUMBULL COUNTY, OHIO )

**JUDGMENT ENTRY**

It is hereby ORDERED, ADJUDGED, AND DECREED that the following shall constitute the County Local Probate Rules of the Probate Court of Trumbull County, Ohio:

**COURT APPOINTMENTS**

RULE 8.1           Persons appointed by the Court to serve as appraisers, fiduciaries, attorneys, special master commissioners or magistrates, investigators, guardians ad litem, arbitrators, mediators, and trustees for suit, may be selected from lists maintained by the Court.

Appointments will be made from the lists taking into consideration the qualifications, skill, expertise, and caseload of the appointee in addition to the type, complexity, and requirements of the case.

Court appointees will be paid a reasonable fee with consideration given to the factors contained in DR-2-106 of the Code of Professional Responsibility, the Ohio Revised Code and the Local Rules of Court relating to fees.

The Court shall review Court appointment lists at least twice annually to ensure the equitable distribution of appointments.

All appointees shall maintain professional liability insurance or other insurance coverage acceptable to the Court, unless otherwise ordered by the Court.

The Court may require background checks of all appointees.

The Court may order the parties to submit an advance deposit of costs to compensate professional or other appointees.

RULE 8.2 Upon application and for good cause shown, the Court may appoint a special master commissioner for the limited purpose of disposing of the decedent's cremated remains.

#### **RECORDING OF PROCEEDINGS**

RULE 11.1 The Court will make an audio recording of proceedings before a Magistrate that shall serve as the record of the Court. Parties or other interested persons who desire to have a transcript of the proceedings shall request the transcript in writing from the court reporter and are required to make a deposit. The requesting party shall pay the full cost of the transcription upon completion.

Tapes of proceedings may not be removed from the Court.

RULE 11.2 The Court may assess a court cost of \$25.00 to make a record of any proceeding before the Court.

#### **CONDITIONS FOR BROADCASTING AND PHOTOGRAPHING COURT PROCEEDINGS**

RULE 12.1 No radio or television transmission, voice recording device, other than a device used by a court reporter making a record in a proceeding, or the making or taking of pictures shall be permitted without the prior express consent of the Court and pursuant to Sup. R. 12.

RULE 12.2 The use of cell phones, for any purpose, by non-court personnel is prohibited without prior authorization of the court. Any violation of this rule will result in the phone being confiscated by court security. A confiscated phone may be picked up at the court security desk at the close of the business day. No photographs shall be taken at any time without prior authorization of the court.

### HOURS OF THE COURT

RULE 53.1 The Court and its offices will be open for the transaction of business from 8:30 a.m. to 4:30 p.m. daily, except Saturday, Sunday, and legal holidays, unless otherwise determined by the Court.

### EXAMINATION OF PROBATE RECORDS

RULE 55.1 Court records shall not be removed from the Court, unless authorized by judgment entry.

RULE 55.2 Copies of open records may be obtained at the cost per page set forth on Appendix A.

RULE 55.3 Confidential files shall not be inspected, unless authorized by judgment entry.

RULE 55.4 For purposes of maintaining the efficient operation of the Court and protecting court records, the use of copying equipment brought into the Court for purposes of duplicating court documents may be reasonably limited by the Court.

RULE 55.5 Prior to filing or submitting a document with the Court, all personal identifiers shall be redacted from the document. When personal identifiers are redacted from a document, the filer shall submit that information on standard form 45(D) Confidential Disclosure of Personal Identifiers. No Inventory or Account shall be approved and no fees shall be paid upon the failure to file form 45(D) unless otherwise ordered by the Court.

### FILINGS AND JUDGMENT ENTRIES

RULE 57.1 An applicant shall include the applicant's e-mail address, and Driver's License Numbers on papers, pleadings, and other documents, as required by the Court.

RULE 57.2 Ohio Supreme Court Registration Numbers assigned to attorneys representing all parties to proceedings and the attorney's e-mail address, shall be included on papers, pleadings, and other documents, as required by the Court. All filings must be signed by the individual attorney as the

attorney of record for a party and not as a legal entity. A person who is not the attorney of record shall not sign on behalf of the attorney of record.

RULE 57.3 Papers, pleadings, and other documents that are incomplete, or not of sufficient quality to be imaged, microfilmed, or stored electronically may be refused for filing, or, if filed, may be stricken from the files. In the event of a dispute regarding filings made via U.S. mail or other postal carrier, the Court may require filing in person to a deputy clerk. All briefs or memoranda of law shall comply with the Supreme Court Rules for Reporting of Opinions unless otherwise ordered by the Court. Copies of all opinions previously referred to as "unpublished" that are not posted on the Ohio Supreme Court website under rule 3 of the Supreme Court Rules for Reporting of Opinions shall be attached as appendices unless otherwise ordered by the Court.

RULE 57.4 Upon the filing of any legal action that affects an estate, a trust, or a guardianship, the fiduciary shall file a notice of litigation with the Court. The notice may conform to the form attached as Appendix B.

#### **FACSIMILE FILING**

RULE 57.5 Pursuant to Civil Rule 5(E), the Court in its discretion may allow facsimile filing during regular business hours of the Court as set forth in Local Rule 53.1. Any documents received after regular business hours shall be deemed filed the following business day. Only documents subsequent to the initial pleading may be filed with the probate court by facsimile, subject to the following provisions:

(A) A document filed by facsimile shall be accepted as the effective original document and shall be filed by the party or their attorney of record. All risks of transmission

- shall be borne by the sender.
- (B) All filings by facsimile shall be accompanied by a cover page that states all of the following information:
    - (1) The date of transmission;
    - (2) The name, telephone number, and facsimile number of the person transmitting the document;
    - (3) The case number and caption of the case in which the document is to be filed;
    - (4) The title of the document to be filed;
    - (5) The number of pages being transmitted.
  - (C) Any signature on documents transmitted by facsimile shall be considered that of the attorney or party that it purports to be for all purposes. If it is established that the documents were transmitted without authority, the Court may order the filing stricken.
  - (D) The filing date of any documents transmitted by facsimile during regular business hours shall be the time and date the document was received by the Court's facsimile machine.
  - (E) Any document filed by facsimile that requires a filing fee may be rejected unless the filer has complied with the mechanism established by the Court for the payment of filing fees.
  - (F) The dedicated fax number for the Trumbull County Probate Court is (330) 675-3024. Filings faxed to any other number will not be accepted unless otherwise authorized by the Court.
  - (G) Papers, pleadings, and other documents that are incomplete may be refused for filing, or, if filed, may be stricken.

**ELECTRONIC FILING OF DOCUMENTS**

RULE 57.6

Documents subsequent to the initial pleading may be filed with the Probate Court by electronic means subject to the following provisions:

- (A) A document filed by electronic means shall be accepted as the effective original document and shall be filed by the party or their attorney of record. All risks of transmission shall be borne by the sender.
- (B) Any signature on electronically transmitted documents shall be considered that of the attorney or party that it purports to be for all purposes. If it is established that the documents were transmitted without authority, the Court may order the filing stricken.
- (C) The filing date of any electronically transmitted documents shall be the time and date the document was received by the Court's receiving device. This time and date shall serve as the Court's time stamp for the document.
- (D) Any document filed electronically that requires a filing fee may be rejected unless the filer has complied with the mechanism established by the Court for the payment of filing fees.
- (E) Electronically transmitted documents may be received during regular business hours of the Court as set forth in Local Rule 53.1. Any documents received after regular business hours shall be deemed filed the following business day.
- (F) Papers, pleadings, and other documents that are incomplete may be refused for filing, or, if filed, may be stricken.

RULE 57.7

The Trumbull County Probate Court does not accept filings via electronic mail. No electronic mail received and sent from the Trumbull County Probate Court is retained except the following:

- E-notices
- Archive requests
- E-filing confirmations
- Case specific correspondence that is copied to the official Court file

CONSENT AND WAIVER OF SERVICE BY TRUMBULL  
COUNTY BAR ASSOCIATION MAILBOX

RULE 57.8        The maintenance by counsel of a Trumbull County Bar Association "mailbox" shall be deemed an explicit consent by counsel to receive in counsel's bar association "mailbox" held in counsel's individual name or firm's name any and all service by this Court, at the Court's option: counsel acknowledges that such bar association "mailbox"; and further, the maintenance by counsel of a bar association "mailbox" shall also be deemed to constitute a waiver of any alleged imperfections of service. "Service" as denoted under this Local Rule shall be deemed to apply only as to service by this Court upon counsel in counsel's representative capacity as counsel of record, guardian ad litem, or fiduciary in all pending matters before this Court, and not to counsel individually. Notwithstanding anything herein to all contrary, counsel who maintain a bar association "mailbox" may revoke the "consent" and "waiver" of service provisions under the Local Rule by executing a written "Notice of Revocation of Consent & Waiver of Service by Bar Association Mailbox" in a form substantially as follows: "Now comes (name of attorney), who hereby gives notice of his/her revocation of the consent to and by Bar Association Mailbox" in a form substantially as follows: "Now comes (name of attorney), who hereby gives notice of counsel's revocation of consent to and waiver of service through counsel's Trumbull County Bar Association "mailbox" pursuant to Local Rule 57.8, and hereby request that all future service be completed by the Court as specifically provided by the Civil Rules or as otherwise provided by law.

**ENTER APPEARANCE AS ATTORNEY OF RECORD**

RULE 57.9        Parties receiving a notice of hearing shall provide a copy of the notice to their attorney so that he or she can enter an appearance and receive notification of future hearings.

**REIMBURSEMENT OF EXPENSES**

RULE 57.10 Any request for reimbursement of costs or other expenses shall be supported by receipts, vouchers Or other proof unless otherwise ordered by the Court.

**DEPOSIT FOR COURT COSTS**

RULE 58.1 The amounts set forth on Appendix A shall be deposited with the Court upon the filing of the respective actions and proceedings.

RULE 58.2 The Court may order the parties to submit an advance deposit of costs for professional or other fees.

Upon the filing of a demand for a jury trial, the party making the demand shall file an advance deposit for costs for juror fees in the amount of \$500.00 or such other amount as the Court may determine.

RULE 58.3 Papers, pleadings, and other documents may be refused for filing, or, if filed, may be stricken for failure to make deposits, or to pay court costs, except for good cause shown.

RULE 58.4 No appointment shall be made if there is a failure of the fiduciary or the fiduciary's attorney to pay court costs.  
Failure of the fiduciary or the fiduciary's attorney to make additional deposits, or to pay court costs, shall be cause for removal.

RULE 58.5 For claims against estates, see Loc. R. 62.1.

RULE 58.6 For the purpose of procuring and maintaining computerized legal research services, an additional fee of One Dollar and fifty Cents (\$1.50) shall be collected as costs in each cause filed in an estate, wrongful death, guardianship, trust, minor settlement, civil action, correction of birth record, registration of birth, change of name, or adoption.

RULE 58.7 A member of the United States Armed Services who died while serving in a combat zone or as a result

of wounds, disease, or injury incurred while serving in a combat zone shall be exempt the following fees as prescribed in R.C. 2101.16:

1. Any fee for or associated with the filing of the decedent's will for probate;
2. Any fee for any services rendered by the probate court associated with the administration of decedent's estate;
3. Any fee for relieving decedent's estate from administration under R.C. 2113.03;
4. Any fee for granting an order for summary release from administration under R.C. 2113.031.
5. Any fee associated with a short form release, pursuant to local rule 75.3(C).

RULE 58.8           The Clerk of the Probate Court may charge a reasonable fee in each action or proceeding filed, including full administrations of estates, trusts, guardianships, conservatorships, civil actions, wrongful death actions, change of name, and adoption proceedings, for the purpose of the resolution of disputes within the jurisdiction of the Probate Court and authorized by the Local Rule of Practice pursuant to R.C. 2101.163. (Eff. 4-8-04).

RULE 58.9           The Clerk of the Probate Court may charge a fee of \$21.50 for each certified copy of a birth record ordered in an adoption or correction of birth record to be forwarded to Ohio Department of Health, Division of Vital Statistics for the issuance of a replacement or corrected birth certificate pursuant to R.C. 3109.14, 3705.24(A) and (B), and 3705.242.

#### **WILLS**

RULE 59.1           If a will confers a power to nominate an executor as described in R.C. 2107.65, the application to probate the will shall include a concise statement setting forth the item number of the will that confers the power, and the name(s) of the holder(s) of the power.

## APPRAISERS

- RULE 61.1           An appraiser must be experienced in appraising property in Trumbull County, Ohio, and shall not be a member of the family, business associate, or client of the fiduciary, the fiduciary's attorney, or other person interested in the estate.
- Rule 61.2           Upon application and good cause shown, the Court may authorize the fiduciary by order, to use the County Auditor's tax value for real property in an estate in lieu of an appraisal.

## INVENTORY

- RULE 100.1           Except for good cause shown, the costs of citations shall be deducted from the fiduciary's compensation.
- RULE 100.2           Except for good cause shown, estate assets shall not be transferred, or distributed until the inventory or inventory and appraisal has been filed and approved by judgment entry.
- RULE 100.3           All applications for authority to administer estate, application for appointment for guardian, or trustee shall be accompanied by a bond in the amount required by law unless the applicant files a motion to waive bond pending the filing of the inventory.
- If said motion is granted, bond shall be filed at the time of the filing of the inventory. A motion to continue the waiver of bond may be filed in the fiduciary either completes a criminal background check performed by the Trumbull County Sheriff's Department using the WEBCHECK system, or the assets of the trust, estate or guardianship have been placed in a restricted account with no withdrawals unless authorized by the Court. All unless otherwise ordered by the Court.

## TRANSFER OF STRUCTURED SETTLEMENTS

- RULE 101.1           The person giving independent professional advice to the payee regarding the legal and other

implications of the transfer of a structured settlement pursuant to O.R.C. §2323.583 (C) shall be present at the hearing.

RULE 101.2 Upon application for the transfer of a structured settlement an affidavit shall be filed regarding the status of any child support owed by the applicant.

RULE 101.3 In all transfer of structured settlement matters, a criminal background check of the prospective transferor shall be performed by the Trumbull County Sheriff's Department using the WEBCHECK system, within five days of the filing of the motion. In addition, a criminal background check of the law enforcement agencies shall be performed by an investigator appointed by the Court.

#### **CHANGE OF NAME**

RULE 102.1 Except for good cause shown, before a change of name is granted, a criminal background check of the applicant(s) shall be performed by the Trumbull County Sheriff's Department using the WEBCHECK system. Each applicant shall sign a Consent to Criminal Background Check and appear at the Trumbull County Sheriff's Department for the Webcheck within five days of filing of the application. In addition, the Consent shall authorize the court investigator appointed by the Probate Court to perform a criminal background check of the local law enforcement agencies.

RULE 102.2 The Court, in its discretion, may deny an application for change of name to the following individuals:

- 1) An individual who is in arrears for any child support payment, or
- 2) A Sexual Predator/Offender as defined in the Ohio Revised Code.

#### **CLAIMS AGAINST ESTATES**

RULE 62.1 The amount set forth on Appendix A shall be deposited with the Court upon the filing of a claim pursuant to R.C. 2117.06.

- RULE 62.2 An executor authorized by the will to make a compromise or settlement of a claim against an estate shall apply to the Court for authority to compromise or settle any claim on behalf of the estate.
- RULE 62.3 All fiduciaries shall apply to the Court for authority to compromise or settle any claim on behalf of the estate, including but not limited to personal injury claims of the decedent.
- RULE 62.4 Any electronic transfer of settlement funds shall be preceded by a written consent of the fiduciary filed with the Court. Payment of any settlement funds pursuant to electronic transfer is at the risk of the insurance company until funds are distributed pursuant to judgment entry.

#### **APPLICATION TO SELL PERSONALTY**

- RULE 63.1 The affidavit and report required by R.C. 2109.45 and 2113.42 shall include a statement that the property was not purchased by the fiduciary, by a member of the fiduciary's family, or by an agent of the fiduciary.

#### **ACCOUNTS**

- RULE 64.1 Except for good cause shown, the costs of citations shall be deducted from the fiduciary's compensation.
- RULE 64.2 If a fiduciary is delinquent in filing an account, and no extension of time for filing has been granted, the Court may refuse to appoint the fiduciary to another office of trust.
- RULE 64.3 Every fiduciary shall render an account for each estate, trust, or guardianship at least once each year, unless otherwise ordered by the Court.
- RULE 64.4 A Trustee shall provide a copy of the annual account to all parties interested in the Trustee's account.
- RULE 64.5 A Trustee shall file a current list of the names and addresses of all persons interested in

the trust and the interest of each party in the trust with the Trustee's annual account.

#### **ONLINE BANKING AND REPORTING PROJECT**

RULE 64.6      Fiduciary's participating in the Trumbull County Probate Court Online Banking and Reporting Project may establish an online banking interface for a fiduciary account. This interface may be used to conduct transactions electronically with prior court approval. The Court may authorize individual or repeated periodic payments utilizing the online banking interface.

The fiduciary may submit to the Court an online statement of the fiduciary account as an appendix to the account form. This online statement may be submitted to the court as an alternative to the certification from the financial institution of the balance in the account and may also be submitted to the court as an alternative to other proof or evidence regarding each transaction listed thereon. Submission of the online statement does not excuse the fiduciary from retaining vouchers or other proof of transactions for a time period of three years from the date of filing so they may be used as evidence in the event that any of the financial transactions should be challenged.

#### **LAND SALES**

RULE 65.1      The affidavits required by Sup. R. 65 (A) shall include a statement that the property was not purchased by the complainant, by a member of the complainant's family, or by an agent of the complainant.

RULE 65.2      In all actions to sell real estate, the application to the Court to allow a real estate commission, required by R.C. 2127.28, shall state the specific amount of the commission requested.

#### **GUARDIANSHIPS**

RULE 66.1      Except for good cause shown, an application for the appointment of a guardian shall contain the name of one proposed ward and shall be heard separately from any other application.

- RULE 66.2            Except for good cause shown, the hearing on the application for the appointment of a guardian shall be attended by the applicant and the proposed ward.
- RULE 66.3            Each guardian shall file an annual report with the Court containing the information required by the Court. No guardian shall change the residential placement of a ward without prior application to and approval of the Court. The application shall state the reason for relocating the ward and any recommendation for relocation made by health providers.
- RULE 66.4            An application for the appointment of a guardian of a minor shall not be filed if the only reason for the guardianship is to establish a residency for school purposes. Custody for school purposes is a matter to be heard and determined in the Juvenile Division of the Court of Common Pleas. No guardian of the person of a minor may create a power of attorney pursuant to R.C. 3109.52 transferring the guardian's rights and responsibilities without specific authority of the Court.
- RULE 66.5            Guardianship assets shall not be expended until a written application has been heard by the Court and allowed by judgment entry.
- RULE 66.6            Except for good cause shown, before a guardian is appointed, a criminal background check of the applicant(s) shall be performed by the Trumbull County Sheriff's Department using the WEBCHECK system. Each applicant shall sign a Consent to Criminal Background Check and appear at the Trumbull County Sheriff's Department for the Webcheck within five days of filing of the application. In addition, the Consent shall authorize the court investigator appointed by the Probate Court to perform a criminal background check of the local law enforcement agencies.
- RULE 66.7            Medical and psychological reports are confidential and there shall be no access to these reports without prior order of the court.

### CONSERVATORSHIPS

RULE 66.8 All rules governing Guardians shall govern Conservators unless otherwise provided by law or order of the Court.

### MANDATORY REPORTS

RULE 66.9 (A) Any attorney, guardian, or any person in a fiduciary relationship with a ward of the Court having reasonable cause to believe that the ward is being abused, neglected, or exploited, or is in a condition which is the result of abuse, neglect, or exploitation shall immediately report to the Probate Court.

(B) Any person having reasonable cause to believe that a ward has suffered abuse, neglect, or exploitation may make a report to the Probate Court.

(C) The reports made under this rule shall be made orally or in writing except that oral reports shall be followed by a written report if a written report is requested by the Probate Court. Reports are confidential and there shall be no access to these reports without prior order of the court.

Written reports shall include:

- (1) The name, address, and approximate age of the ward who is the subject of the report;
- (2) The name and address of the individual responsible for the ward's care, if any individual is, and if the individual is known;
- (3) The nature and extent of the alleged abuse, neglect, or exploitation of the ward;
- (4) The basis of the reporter's belief that the ward has been abused, neglected, or exploited.

### ESTATES OF MINORS OF NOT MORE THAN TEN THOUSAND DOLLARS

RULE 67.1 Upon the opening of a court-ordered account under \$10,000 ("restricted account"), the account shall

be titled in the sole name of the minor. All interest and principal shall be impounded. Deposited funds shall not be released until the minor reaches age 18 or upon further order of the Court. The verification of receipt and deposit from the bank filed with the Court shall contain the information required by the Court.

RULE 67.2 Certificates of deposit may be renewed without court order, even if there is a change of interest rate or term. Funds may be moved from savings account to certificate of deposit (or vice versa) without a court order and shall remain a restricted account. A transfer to any other bank product shall require a court order.

RULE 67.3 Funds may be released to the account owner (the former minor) by the bank at the age of 18 without a court order.

Rule 67.4 On an annual basis, the Court will provide a list of restricted accounts to the bank. The bank will provide the balance in each account or give the date that each account was closed. The bank may use the Court's electronic filing system to provide this information.

#### **SETTLEMENT OF INJURY CLAIMS OF MINORS**

RULE 68.1 An application shall be accompanied by a current statement of the examining physician as provided in Sup. R. 68 (B). The presence of the injured minor shall be required at the hearing as provided in Sup. R. 68 (C) except for good cause shown.

RULE 68.2 Upon the opening of a court-ordered account ("restricted account"), the account shall be titled in the sole name of the minor. All interest and principal shall be impounded. Deposited funds shall not be released until the minor reaches age 18 or upon further order of the Court. The verification of receipt and deposit from the bank filed with the Court shall contain the information required by the Court.

RULE 68.3 Certificates of deposit may be renewed without

court order, even if there is a change of interest rate or term. Funds may be moved from savings account to certificate of deposit (or vice versa) without a court order and shall remain a restricted account. A transfer to any other bank product shall require a court order.

RULE 68.4 Funds may be released to the account owner (the former minor) by the bank at the age of 18 without a court order.

RULE 68.5 On an annual basis, the Court will provide a list of restricted accounts to the bank. The bank will provide the balance in each account or give the date that each account was closed. The bank may use the Court's electronic filing system to provide this information.

#### **SETTLEMENT OF CLAIMS OF OR AGAINST ADULT WARDS**

RULE 69.1 A guardian shall not settle the claim of an adult ward without application to and approval by the Court of the settlement.

RULE 69.2 Funds deposited into restricted accounts shall not be released until a written application has been heard by the Court and allowed by judgment entry. All interest and principal shall be impounded.

RULE 69.3 Certificates of deposit may be renewed without court order, even if there is a change of interest rate or term. Funds may be moved from savings account to certificate of deposit (or vice versa) without a court order and shall remain a restricted account. A transfer to any other bank product shall require a court order.

RULE 69.4 The verification of receipt and deposit from the bank filed with the Court shall contain the information required by the Court.

RULE 69.5 On an annual basis, the Court will provide a list of restricted accounts to the bank. The bank will provide the balance in each account or give the date that each account was closed. The bank may use the Court's electronic filing system to provide this information.

## COUNSEL FEES

- RULE 71.1           The allowance of counsel fees as part of the expense for administering a decedent's estate, a trust, or a guardianship shall be based upon the actual services performed by the attorney, and the reasonable value of the services.
- RULE 71.2           (A) An application for allowance of counsel fees for legal services rendered as the attorney for the executor or administrator in the complete administration of a decedent's estate shall conform to the computation form attached as Appendix C or be itemized as described in (B). The Court, in its discretion, may require an application for counsel fees to be itemized as described in (B), or to conform to the computation form attached as Appendix C.
- (B) All other applications for the allowance of counsel fees shall set forth an itemized statement of the services performed by counsel, the date services were performed, the time spent in rendering the services, and the rate charged per hour.
- (C) Counsel shall include a separate itemization for those services rendered by paralegals or other persons as required above in (B).
- (D) Expenses shall be itemized separately and shall be supported by paid receipts or cancelled checks.
- RULE 71.3           (A) Counsel fees shall not be paid by the fiduciary until a written application has been approved by judgment entry.
- (B) Interested parties may waive notice of hearing and sign written consents to applications for approval of counsel fees.
- RULE 71.4           When counsel fees are allowed for services that are normally performed by the fiduciary, the

fiduciary's compensation shall be reduced by the amount allowed to the attorney for those services rendered unless, for good cause shown, the Court finds that such a ruling would be unfair.

RULE 71.5 Counsel fees may be reduced by the Court when the attorney, or a member of the attorney's firm, will receive compensation as the fiduciary.

RULE 71.6 Prior to a fiduciary entering into a contingent fee contract with an attorney for any legal services, an application for authority to enter into the contract shall be filed with and approved by the Court. The application may conform to the form attached as Appendix D. Otherwise, counsel fees may be determined on a quantum meruit basis.

RULE 71.7 At the time of entering into a contingent fee agreement, if there is a fee splitting agreement, the fee split and the identity of all lawyers participating must be disclosed in writing. Counsel shall file with the Court a copy of any fee splitting agreement.

RULE 71.8 Unless otherwise ordered by the Court, applications for the allowance of fees or commissions and other compensation to an attorney, executor, administrator or other fiduciary shall not be set for hearing.

#### **EXECUTOR'S AND ADMINISTRATOR'S COMMISSIONS**

RULE 72.1 (A) An application for allowance of executor's or administrator's commissions for ordinary services rendered in the complete administration of a decedent's estate may conform to the computation form attached as Appendix E.

(B) The Court may set a hearing on an application for allowance of executor's or administrator's commissions, and if a hearing is scheduled, notice shall be given to all parties affected by the payment of commissions, unless otherwise ordered by the Court.

(C) Interested parties may waive notice of

hearing and sign written consents to applications for approval of executor's or administrator's commissions.

RULE 72.2 The itemized statement for extraordinary services required by Sup. R. 72 (A) shall itemize the services performed, the date services were performed, the time spent in rendering the services, and the rate charged per hour.

RULE 72.3 Executor's and administrator's commissions of an ordinary or extraordinary nature shall not be paid from the decedent's estate until a written application has been approved by judgment entry.

#### **COMMISSIONERS**

RULE 72.4 All rules governing Executors and Administrators except those regarding fiduciary commissions shall govern commissioners unless otherwise provided by law or order of the Court.

#### **GUARDIAN'S COMPENSATION**

RULE 73.1 Unless otherwise provided by law, or ordered by the Court, a guardian may charge an annual fee for ordinary services in accordance with the schedule of compensation set forth on Appendix F.

RULE 73.2 (A) An application for allowance of guardian's compensation for ordinary services rendered in the administration of each separate guardianship estate may conform to the computation form attached as Appendix G.

(B) An application for allowance of guardian's compensation shall be submitted to the Court for approval with the annual guardian's account.

(C) Interested parties may waive notice of hearing and sign written consents to applications for approval of guardian's compensation.

RULE 73.3 Where there is a claim for extraordinary services or fees of a guardian of a person, the application shall set forth an itemized statement of the

services performed, the date services were performed, the time spent in rendering the services, and the rate charged per hour.

RULE 73.4 Guardian's compensation of an ordinary or extraordinary nature shall not be paid from the ward's estate until the application has been approved by judgment entry.

#### **TRUSTEE'S COMPENSATION**

RULE 74.1 Unless otherwise provided by the instrument creating the trust, by law, or ordered by the Court, a testamentary trustee may charge an annual fee for ordinary services in accordance with the schedule of compensation set forth on Appendix H.

RULE 74.2 (A) An application for allowance of trustee's compensation for ordinary services rendered in the administration of each separate trust estate may conform to the computation form attached as Appendix I.

(B) An application for allowance of trustee's compensation shall be submitted to the Court for approval with the annual trustee's account.

(C) The Court may set a hearing on an application for allowance of trustee's compensation, and if a hearing is scheduled, notice shall be given to all parties affected by the payment of compensation, unless otherwise ordered by the Court.

(D) Interested parties may waive notice of hearing and sign written consents to applications for approval of trustee's compensation.

RULE 74.3 The application required by Sup. R. 74 (B) shall set forth an itemized statement of the services performed, the date services were performed, the time spent in rendering the services, and the rate charged per hour.

RULE 74.4 Trustee's compensation of an ordinary or extraordinary nature shall not be paid from the trust estate until the application has been approved

by judgment entry.

**MOTIONS AND HEARINGS**

- RULE 75.1
- (A) All motions and responses shall be submitted in writing, accompanied by a memorandum on the related law, and shall include a proposed judgment entry.
  - (B) The Court may rule on all motions based on the pleadings, without a hearing, unless a hearing is scheduled by the Court or granted by the Court upon the request of a party.

**TAX PROCEEDINGS**

- RULE 75.2
- (A) All estate tax filings in the Court shall conform to the requirements of Chapter 5731 of the Revised Code.
  - (B) The Ohio estate tax return should be filed with the Court no sooner than three (3) months from the date of the appointment of the fiduciary.
  - (C) Each attorney, or other person filing an estate tax return, shall also prepare and deliver to the Court the Ohio Estate and additional tax return filing notice.

**RELEASE FROM ADMINISTRATION**

- RULE 75.3
- (A) Notice by publication as provided in R.C. 2113.03 shall be required unless found unnecessary by judgment entry.
  - (B) An appraiser's report as provided in R.C. 2113.03 shall be required unless found unnecessary by judgment entry.
  - (C) The short form release and judgment entry attached as Appendix J may be filed where the assets of an estate are less than \$10,000.00 and there is a surviving spouse and/or minor

children, or where the assets of an estate are less than \$4,000.00 and there is no surviving spouse or minor children and evidence is presented at the time of filing establishing that the funeral expenses have been paid to the extent of the estate priority allowance.

- (D) The Court may require verification of payment of claims in the order of priority outlined in R.C. 2117.25.

#### **ADOPTIONS**

RULE 75.4

- (A) To maintain the confidentiality of adoption records, each adoption petition shall contain the name of one person proposed for adoption.
- (B) The adoption petition shall allege the grounds upon which the Court may find that the consent of a person required to consent to the adoption is not necessary. The adoption petition shall also allege the circumstances under which the person proposed for adoption was placed with the petitioner.
- (C) Each person consenting to an adoption shall sign a separate consent to adopt form which shall be filed with the Court. Except for good cause shown, a consent shall not be signed more than 30 days before filing the petition for adoption.
- (D) A petitioner's account form shall be filed in each adoption proceeding. For good cause shown, the Court may waive some account filings in the adoption proceeding. No fee or retainer shall be taken without prior approval or the Court
- (E) All persons entitled to notice of an adoption hearing shall be served with notice in accordance with the Rules of Civil Procedure even though those persons have signed and filed a written consent to adopt form.
- (F) Except for good cause shown, service by publication in accordance with the Rules of

Civil Procedure shall be made on an unnamed parent or parents.

- (G) The petitioner or the petitioner's attorney shall provide the Court with written instruction for service or an affidavit that service was properly made when any question arises regarding service.
- (H) In all adoption matters, a criminal background check of the petitioner and any person 18 years old or older living in the home must submit to a WEBCHECK performed by the Trumbull County Sheriff's Department using the WEBCHECK system, within five days of the filing of the adoption (or placement) petition. In addition, a criminal background check of the local law enforcement agencies within the county shall be performed by the adoption assessor appointed by the Court.
- (I) If there is a pending proceeding in a juvenile or domestic relations court, the probate court will not proceed on a petition for adoption until the matter is concluded in that juvenile or domestic relations court.
- (J) Upon the filing of a petition, the petitioner shall disclose to the Court in writing whether the petitioner owes any back due child support and whether any back due child support is owed by the birth parents for the proposed adoptee.
- (K) In all private adoptions, a home study shall be completed by a licensed agency and filed with the Court no less than 10 days prior to the hearing.

**GUARDIAN AD LITEM**

RULE 75.5

- (A) A guardian ad litem may be an attorney who is not associated with an attorney of record for the proceeding in which the guardian ad litem has been appointed.
- (B) A guardian ad litem may be appointed upon the motion of either party or on the Court's

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own motion.

- (C) The Court may order a guardian ad litem appointed at any time that it deems necessary and essential to protect the interest of a minor child, to represent an incompetent person or incapacitated adult.
- (D) The guardian ad litem shall be selected and appointed solely by the Court in accordance with the qualifications and guidelines established by this Court.
- (E) Unless otherwise provided, it is the responsibility of each party involved to timely contact the guardian ad litem and to provide the guardian ad litem with information relating to the case.
- (F) Unless otherwise ordered by the Court, upon application and entry, guardian ad litem fees shall be based on a reasonable hourly rate for time expended. Fees may be charged as a court cost. The Court may require an advance deposit for costs.
- (G) All applications for the allowance of guardian ad litem fees shall set forth an itemized statement of the services performed, the date services were performed, the time spent in rendering the services, and the rate charged per hour.
- (H) Unless otherwise directed by the Court, the guardian ad litem shall prepare a guardian ad litem report and deliver the report to the Court with notice to the parties. The guardian ad litem report shall be confidential. There shall be no access without prior application to and approval by the Court.

#### **REGISTRATION OF PARALEGALS**

RULE 75.6

- (A) Paralegals that perform services in matters before this Court must be registered with the Court. The Court recognizes two categories of paralegals: "employee paralegals" who are

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employed exclusively by one law firm and only perform services for that firm as an employee, and "independent paralegals" who operate as independent contract paralegals offering services to more than one firm.

- (B) Registration shall be on the form attached as Appendix K for employee paralegals or Appendix L for independent paralegals.
- (C) Employee paralegals need only register one time unless they no longer work for the single firm they are registered with as an employee. The registration form must identify the firm and shall be signed by an attorney of the firm stating that the paralegal services will be supervised by the attorney of that law firm. The attorney and paralegal shall sign the registration form attesting that the paralegal is qualified through education, training, or work experience to assist an attorney in matters before this Court and this work will be supervised by an attorney who will be held responsible for the work. The law firm shall notify the Court when the paralegal registered with the Court leaves the exclusive employment of the law firm.
- (D) Independent paralegals shall be registered for each case in which the independent paralegal is performing services, identifying the case name, case number and supervising attorney. The supervising attorney and the independent paralegal shall sign the registration attesting that the paralegal is qualified through education, training, or work experience to assist the supervising attorney in matters that will be filed in this Court, and will be supervised by an attorney who will be held responsible for the work.
- (E) Fee statements filed with the Court shall itemize paralegal work separately from services performed by an attorney.
- (F) A paralegal shall not sign any document for

the fiduciary, applicant, or supervising attorney.

- (G) Failure to comply with this rule may result in the disallowance of fees and such other action as the Court may deem appropriate.

**ESTATES WITH LITIGATION**

RULE 75.7

(A) In estates involving litigation, a final and distributive account shall be filed as soon as all assets have been administered and shall indicate that the estate must remain open for litigation purposes.

(B) Upon the filing of a final and distributive account which indicates that an estate must remain open for litigation purposes only, no subsequent accounts shall be required. Yearly status reports shall be filed by litigation counsel.

(C) In estates opened for litigation purposes only, where there are no assets to administer, a motion to waive the inventory and accountings pending receipt of funds into the estate may be filed. Yearly status reports shall be filed by litigation counsel and served on all beneficiaries or next of kin.

(D) In an estate where litigation is anticipated or pending, litigation counsel shall file a notice of appearance and file an annual status report of the litigation. When any litigation has commenced, a notice of litigation form shall be filed.

RULE 75.8

(A) In actions for the transfer of structured settlement payments under R.C. 2323.58 *et seq.* a copy of the annuity and related assignments shall be filed with the application for transfer.

(B) The Court shall grant a transfer of structured settlement payment applications only upon the showing of a compelling reason or circumstance which was not anticipated when the settlement was initially negotiated and agreed upon.

**PRO HAC VICE**

RULE 75.9

An attorney, not licensed to practice law in the State of Ohio, but who is duly licensed to practice law in any other state, District of Columbia, the Commonwealth of Puerto Rico, or territories of the United States may, in the discretion of the Probate Judge, be permitted to represent a party or parties in any matter pending or to be filed in this county after completion of all of the following conditions.

A) The applicant attorney shall be sponsored in writing by an attorney licensed to practice law in the State of Ohio. A motion shall be filed by the Ohio licensed attorney at least seven days prior to the proceeding certifying such applicants' compliance with this rule and the Rules for Government to the Bar;

B) The applicant attorney shall certify in writing that he or she is on active status and in good standing to practice law and is not under any disability. Applicant shall further certify in writing that he or she has familiarized himself or herself with local court rules and will familiarize himself or herself with the appropriate Civil Rules, Rules of Evidence, and the Code of Professional Responsibility;

C) The sponsoring attorney shall submit with the motion and certification, an entry authorizing approval of the motion;

D) The sponsoring attorney, or any other attorney licensed to practice law in the State of Ohio, shall be co-counsel with the attorney admitted pro hac vice.

The continuance of any scheduled trial or hearing date shall not be permitted solely because of the unavailability or inconvenience of the out of state counsel.

## COMPLIANCE

RULE 77.1           The Court may, in its discretion, appoint an attorney and other person(s), answerable to the Court, who shall investigate the circumstances surrounding any failure or apparent failure of a fiduciary or the fiduciary's attorney to comply with the laws, the Rules of Superintendence, or these rules. The appointee(s) shall file a written report with the Court. The compensation for the appointee(s) performing these services shall be fixed by the Court, according to the circumstances of each case, and shall be taxed as costs or charged to the fiduciary.

## SUPERVISION OF ESTATES, TRUSTS, AND GUARDIANSHIPS

RULE 78.1           Certificate of service of notice of probate of will

(A)   Fiduciaries appointed to administer estates of decedents who have died testate on or after January 1, 2002 are required to file certificate of service of notice of probate of will with waivers or certified cards attached, within sixty days of their appointment or be subject to removal proceedings.

- (1)   On the sixtieth day after the appointment, a notice is sent to the attorney for the fiduciary stating that the fiduciary will be removed for failure to file the certificate.
- (2)   If the certificate is not filed within fifteen days, a citation is sent to the fiduciary indicating that removal will occur if the certificate is not filed within fifteen days.
- (3)   If the certificate is filed, the Court records the filing and advances the system to the next statutory filing requirement.

- (4) If the fiduciary fails to file the certificate within the required time period, the fiduciary is removed and a successor fiduciary is appointed.
- (5) Extensions of time for filing the certificate may be granted for good cause shown by judgment entry.

RULE 78.2

Notice to File Inventory in Estates, Trusts or Guardianships

- (A) Notice must be timely sent to the fiduciary to file the inventory.
  - (1) On the ninetieth day from the appointment of the fiduciary in a decedent's estate, a guardianship, or trust, a notice is sent to the attorney for the fiduciary indicating that if an inventory is not filed, removal will occur.
  - (2) If the inventory is not filed within fifteen days, a citation is sent to the fiduciary indicating that removal will occur if an inventory is not filed in fifteen days.
  - (3) If the inventory is filed, the Court records the filing and advances the system to the next statutory filing requirement.
  - (4) If the fiduciary fails to file the inventory timely, the fiduciary is removed and a successor is appointed.
  - (5) Extensions of time for filing inventories may be granted for good cause shown by judgment entry.

RULE 78.3

Surviving Spouse's Right of Election

"After the initial appointment of an administrator or executor of the estate, the probate court shall

issue a citation to the surviving spouse, if any is living at the time of the issuance of the citation, to elect whether to exercise the surviving spouse's rights under Chapter 2106 of the Revised Code, including, after the probate of the will, the right to elect to take under the will or under section 2105.06 of the Revised Code." R.C. 2106.01

RULE 78.4

Accounting by the Fiduciary

- (A) At the time required by R.C. 2109.301 for the filing of an account, a notice is sent to the attorney for the fiduciary to file an account or the fiduciary will be removed.
- (B) If an account is not filed within fifteen days of the notice, a citation is sent to the fiduciary indicating that removal will occur if an account is not filed within fifteen days.
- (C) If the account is not filed, the fiduciary is removed and a successor fiduciary is appointed.
- (D) When a final account is filed and approved, the estate, trust, or guardianship is removed from the system, and the case documents may be microfilmed or digitally stored and disposed.
- (E) Extensions of time for filing accounts may be granted for good cause shown by judgment entry.

RULE 78.5

The Court may require verification of births, deaths or marriages to be filed into the court record.

RULE 78.6

All fiduciaries shall deposit assets in a fiduciary account. Unless otherwise ordered by the Court, the fiduciary account shall be maintained in an institution within the boundaries of Trumbull County, Ohio. All assets shall remain in the state of Ohio unless otherwise authorized by judgment entry.

RULE 78.7

(A) Upon the written consent of the parties, the Court may send all notices and citations via electronic mail.

(B) Electronic proof of service for certified or express mail sent by the Court shall be deemed in compliance with the service requirements of Civil Rule 73 and Civil Rules 4.0 through 4.6 pursuant to authorization from the Supreme Court of Ohio on September 19, 2005.

**CASE MANAGEMENT OF ADVERSARY PROCEEDINGS**

RULE 78.8

Adversary proceedings, as used in this rule, shall include the following actions: Will Contest; Declaratory Judgment; Determination of Heirs; Construction of Will; Complaint for Accounting; Antenuptial Agreement; Concealment of Assets; Land Sales; Complaint to Purchase; Complaint for Judgment Entry Declaring Will Valid; Presumption of Death; Appropriations; and Objections to Inventories and Accounts.

(1) A pre-trial conference should be set thirty days after the answer date. Counsel shall be present and prepared to report on the following:

1. Whether all necessary parties have been joined and served with process;
2. Whether answers, counterclaims and/or crossclaims have been filed;
3. Issue(s) to be litigated;
4. Whether trial is to bench or jury;
5. Anticipated length of trial;
6. Whether settlement negotiations have taken place;
7. Status of discovery;
8. Whether trial subpoenas are expected;

Counsel shall bring their trial schedules and/or calendars and be prepared to schedule the following:

1. Trial date;

2. Discovery cut-off;
3. Identification of expert witnesses and production of documents report;
4. Deadline for filing of pretrial motions and replies;
5. Deadline for witness lists to be exchanged and filed with the Court;
6. Deadline for exhibits to be exchanged and filed with the Court;
7. Deadline for filing objections to exhibits;
8. Deadline for filing of stipulations.

- (2) Notice of the pre-trial conference shall be given to all attorneys of record by mail at least fourteen days prior to pre-trial.
- (3) All requests for continuances of the pre-trial conference shall be by motion. The motion shall indicate whether counsel agrees or opposes the continuance. Counsel shall notify their respective clients and witnesses to any change in the date and time of any trial or pretrial.
- (4) Failure to appear for the pretrial conference or failure to comply with this local rule in any manner, may result in the imposition of sanctions including, but not limited to, monetary sanctions.
- (5) At the conclusion of the pre-trial conference, the Court shall prepare a pre-trial order setting forth:
  - (1) Discovery deadline date;
  - (2) Exchange of witness list deadline date;
  - (3) Pleading and briefing schedules; and,
  - (4) a trial date.

- (6) If a party is represented by multiple counsel, a designation of lead and/or trial counsel shall be filed in the record.

RULE 78.9 Counsel shall provide the Court with copies of all exhibits offered to be admitted to the record.

IT IS SO ORDERED.

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Thomas A. Swift  
Probate Judge