

**COURT OF COMMON PLEAS  
PROBATE DIVISION  
ASHTABULA COUNTY, OHIO**

**LOCAL RULES of Ashtabula County Probate Court**

Revised December 5, 2016

**LOCAL RULE 11. Recording of Proceedings**

All hearings before a Magistrate shall be recorded by audiotape or other electronic or digital means in the courts discretion.

The court shall maintain all electronically or digitally recorded proceedings for three years from the date of hearing. All currently existing audiotapes or digital recordings will be maintained for three years from the adoption of these rules. Any interested person desiring to preserve the record beyond the three-year period must make arrangements to have the record transcribed.

Any interested party shall not be permitted to use the contents of a recording in subsequent pleadings or in argument before the court unless a transcript of the entire hearing is filed with the court. A transcript filed with the court shall supersede the digital or electronic recording as the official record of the court.

Transcription of the record shall be made at the expense of the person so requesting. The request for transcription shall be made in writing. A deposit may be required. The requesting party shall pay the full cost of the transcription upon completion.

**LOCAL RULE 52. Computer Forms**

Computer generated forms must comply with the specifications and format outlined by the Rules of Superintendence of the Courts of Ohio, and be generated with the exact wording as well as blank lines as they appear in standard probate forms.

**LOCAL RULE 53. Hours of Court**

The Probate Court shall be open for the transaction of business from 8:00 AM to 4:30 PM, Monday through Friday, except holidays, unless otherwise determined by the court. All pleadings requiring a new case number or payment of court costs shall be filed by 4:00 PM.

**LOCAL RULE 54. Conduct in the Court**

Proper attire is required for admittance to the Probate Court. Shorts, tank tops, halter tops, hats, bare feet, etc., are not acceptable forms of attire at any court hearing.

**LOCAL RULE 55. Examination of Probate Records**

Court records shall not be removed from the court, unless authorized by judgment entry. Copies of records may be obtained at cost. Confidential files may not be inspected unless authorized by judgment entry.

**LOCAL RULE 57. Filings and Judgment Entries**

Pursuant to Civil Rule 73(J) the Court in its discretion, may allow facsimile filing during regular business hours of the court. Generally, all estate filings must contain original signatures.

All motions, applications and exceptions should be typewritten and shall bear an endorsement showing service of a copy upon the adverse party or party's attorney and method of service. Motions must be accompanied by a proposed Judgment Entry.

The Court will accept for filing only those pleadings which are complete.

Any pleading, filing, or other document, which requires the fiduciary's signature, shall have the original signature of the fiduciary. The attorney for the fiduciary may not sign for the fiduciary.

Original wills, codicils and death certificates will not be accepted for facsimile filing.

The Court will not return file stamped copies by mail, unless submitted with a return, self-addressed, stamped envelope.

Any request for reimbursement of costs or other expense shall be supported by receipts, vouchers or other proof.

When required on a court document, an address must be a street address, and, if applicable, any post office box numbers used as a mailing address.

### **LOCAL RULE 58. Deposit for Court Costs**

Deposits for court costs for all proceedings shall be determined by the Court and the cost schedule available to the public. The business of this Court shall be conducted on a cash basis. The Court will only accept cash, money orders, cashiers' checks, attorney, title company, or trust company checks. Credit cards and debit cards are accepted with a \$2.95 convenience fee.

Upon the filing of a demand for a jury trial, the party making the demand shall file an advance deposit for costs for jury fees in the amount of \$500, or such other amount as the court may determine.

The balance of the costs due shall be paid at the time an account or waiver of accounting or a final judgment entry is filed. Failure to pay deposits and court costs shall be cause for removal.

In all cases of decedent's estates, civil actions, complaints to sell real estate and any other matters requiring a deposit, the fiduciary or plaintiffs will be required to maintain a positive balance in the deposit account. Filings presented to the court with insufficient funds may be refused or returned.

### **LOCAL RULE 59. Wills**

The applicant for the admission of a will to probate or other persons listed in ORC 2107.19(A)(4) shall file a Certificate of Service of Notice of Probate of Will (SPF 2.4) within the time prescribed by law. Proof of service will consist of either waivers of notice of admission of the will to probate or the original certified return receipt cards as provided by Civ R. 73 (E)(3). A waiver of notice may not be signed by any minor.

### **LOCAL RULE 60. Applications for Letters of Administration**

All documents necessary to open an estate must be filed at the time the estate is opened. All executors and administrators shall personally sign and file the Fiduciary's Acceptance (SPF 4.0), prior to the issuance of letters of authority.

Applicants for authority to administer an estate who are not represented by an attorney, shall exhibit to the court picture identification and proof of current address, which must be updated within 14 days of any change.

### **LOCAL RULE 61. Appraisers**

An appraiser must be experienced in appraising property in Ashtabula 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. No person who is appointed appraiser shall, during the administration of the estate or within one year of their appointment, directly or indirectly purchase or negotiate the purchase or sale of property inventoried or appraised by them. An appraiser not having an office in Ashtabula County must affirmatively demonstrate their familiarity with the local market.

Upon application and for good cause, 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 a formal appraisal.

Any asset, the value of which is readily ascertainable, is not required to be appraised, but must be included in the inventory. The market value of any motor vehicle as found in the current NADA Official Used Car Guide under the category "Av'g Retail" may be accepted as the readily ascertainable value. A copy of the appropriate page shall be attached to Form 6.1 Schedule of Assets or Form 5.1. Assets and Liabilities to be Relieved from Administration.

### **LOCAL RULE 62. Claims Against Estate**

Any claim against an estate filed with the court pursuant to ORC 2117.06 (A)(1)(b) shall be in the form of a complaint filed as a civil action, and heard not on its merits, but on whether the claim is accepted or rejected.

Insolvency hearings may be held only in full administration and guardianship cases. Insolvency proceedings shall be commenced by the fiduciary filing a representation of insolvency accompanied by a prioritized schedule of claims. The attorney or fiduciary shall indicate the amount of the proposed payment to 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 said receipts to the hearing to be retained in the case file.

### **LOCAL RULE 63. Application to Sell Personalty**

An application to sell personal property shall include an adequate description of the property. Except for good cause shown, an order of sale shall not be granted prior to the filing of the Inventory. An affidavit and report pursuant to RC 2109.45 and RC 2113.42

shall include a statement that personal property was not purchased by the fiduciary, a family member, business associate, client or agent of the fiduciary.

**LOCAL RULE 64. Accounts**

All guardians and trustees of an estate must file their fiduciary accounts each year on the anniversary date of their appointment.

For estates and guardianships, vouchers or receipts evidencing disbursements during the administration of that estate must be maintained by the fiduciary, but shall not be required to be filed with the court with an accounting. The court in its discretion may require vouchers and receipts to be filed. Upon request of the Court, adding machine tapes shall be provided which reflect receipts, disbursements, and balances.

If an estate cannot be closed within 6 months of the fiduciary's appointment, an application to extend administration must be filed pursuant to statute.

**LOCAL RULE 65. Land Sales**

No land sale proceeding shall be approved by the court without the filing of a Preliminary Judicial Report pursuant to RC 163, and RC 2127.

**LOCAL RULE 66. Guardianships** (Adopted February 2, 2016)

- A. All applications for the appointment of a guardian on the grounds of mental incompetency shall be accompanied by a statement of a physician or psychiatrist.
- B. Bond pertaining to estate guardians shall be posted in an amount double the value of the personal property.
- C. Deposit of all ward's cash and liquid assets shall be in an estate account in a financial institution located in Ashtabula County. All withdrawals or requests to expend from said funds shall first be approved by Order of the Court.
- D. All guardians must have the approval of the Probate Court before transferring a ward out of Ashtabula County or the State of Ohio.
- E. Death of a Ward shall require the guardian to notify the Court by written notice of the death within sixty days and any estate account shall be filed within thirty days of that

notice. Failure to comply may disqualify the guardian from collection of compensation.

### **66.1 Guardianships of Minors**

- A. A separate guardianship must be filed and a corresponding case file established for each proposed ward. A certified copy of the minor's birth certificate must be filed with the application. Minors must appear personally in Court for hearing, unless for good cause demonstrated their presence is waived.
- B. The Court will not accept for filing any guardianship for a minor where the sole purpose of the guardianship is to establish a residency for school purposes. Custody for school purposes is a matter to be heard and determined by the Juvenile Division of the Court of Common Pleas. When a non-parent seeks to obtain care, control, and/or custody over a minor child or assets of the minor and at least one parent of the minor child is alive, the action shall also be heard by the Juvenile Division.
- C. Minor's who are not U.S. citizens or resident aliens, are not considered by this Court to be residents or have legal settlements as set forth in Section 2111.02 (A) of the Revised Code.

### **66.2 Emergency Guardianship**

Except for good cause shown, an application for an emergency guardianship shall be filed in person by the applicant and shall contain a current statement of expert evaluation and a supplement for emergency guardian form signed by the physician stating an opinion that an emergency exists, and it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or incompetent, and what action is necessary to prevent injury. Such emergency application shall include a proposed order setting forth the powers sought. Except for good cause shown, the proposed ward shall be notified as soon as possible of the appointment of an emergency guardian.

### **66.3 Comments/Complaints**

Comments and complaints regarding guardians shall be filed in writing, identifying the complainant and their contact information, and made part of the record, unless otherwise ordered by the Court. A copy of the filed comment or complaint shall be provided to the guardian who is the subject of the comment or complaint, unless otherwise ordered by the

Court. Comments and complaints may be addressed by the magistrate or court investigator assigned to guardianship cases. Allegations of abuse, neglect, and or exploitation shall be reported pursuant to RC 5101.61. If deemed appropriate, the matter may be promptly set for hearing or further investigation. If set for hearing, the complainant and the guardian shall be notified of the hearing and shall appear unless otherwise ordered by the court. Upon the conclusion of the hearing or investigation, both the persons making the comment or complaint in the guardian shall be notified of the disposition of the comment or complaint, unless otherwise ordered by the Court.

#### **66.4 Annual Plan**

The guardian of the person shall develop a written guardianship plan setting goals for meeting the ward's needs. The plan should be based on a functional assessment, which identifies the Ward's strengths, needs, and areas the guardian should address. This plan shall be updated and filed with the guardian's annual report to the court. If the ward is institutionalized, the guardian shall review the institution's plan of care for the Ward; In addition to attending the quarterly plan of care meetings.

#### **66.5 Monthly Meetings**

The guardian of the person shall meet with the Ward in person on a monthly basis, or more frequently as needed, to promote the best interests of the ward.

#### **66.6 Guardian's Report, Statement of Expert Evaluation, Account**

All guardians are required to file their Guardian's Report (Form 17.7) as detailed in section 2111.49 of the Revised Code on the first anniversary after the date of the issuance of the Letters of Guardianship, and annually thereafter. The guardian of the person shall on the same anniversary date, annually submit an updated statement of expert evaluation. The guardian of the estate shall yearly on said anniversary date file their Accounting.

#### **66.7 Change of Guardian's Address**

A guardian shall inform the court as to any change of address of the guardian within 30 days of the address change. Failure to notify the Court under this rule may result in the guardian being removed.

## **66.8 Change of Ward's Address**

A guardian shall notify the court of a ward's change of residence and the reason for the change no later than 10 days prior to the proposed change. A Ward's change of residence shall be subject to the court's approval, unless a delay in authorizing the change of residence would affect the health and safety of the Ward. In such event, the guardian shall notify the court in writing within 3 business days indicating the change of residence and the reasons for the change.

## **66.9 Legal Proceedings**

The guardian shall seek prior court approval by judgment entry when filing of a marriage license, a divorce or another extraordinary action concerning the best interest of the Ward.

## **66.10 Sale of Personal Property**

A guardian may not sell any tangible personal property of the Ward without prior court approval. Every application to sell a wards tangible personal property shall be supported by a written appraisal by a suitable and qualified appraiser.

## **66.11 Deposit of Wills**

The guardian must deposit with the court any and all wills of the ward for safekeeping pursuant to section 2107.07 of the Revised Code.

## **66.12 Guardian Mandatory Training**

All guardian applicants must complete at a minimum, the 6 hour guardian, fundamentals course provided by the Ohio Supreme Court; preferably before their appointment hearing but in no event later than 6 months thereafter. In each succeeding year following completion of the mandatory six-hour training a guardian shall successfully complete a continuing guardian education course which is provided by the Ohio Supreme Court and is at least three hours in length. Each guardian shall file proof of compliance with this Court.

## **LOCAL RULE 71. Counsel Fees**

### **71.1 Contingency Fees**

In claims for wrongful death or injuries, for conscious pain and suffering, and in claims for personal injuries to persons under guardianship or to minors, attorney fees must not be in



excess of 33 1/3% of the gross award/amount. Additional compensation, however, may be granted upon a showing of special facts or complexity which must be detailed in an application seeking in excess of 33 1/3% limitation.

### **71.2 Attorney Serving as Fiduciary**

The Court assumes an attorney appointed as a fiduciary has been selected due to the attorney's special knowledge and abilities resulting in a savings of fees to the estate, guardianship, or trust.

### **71.3 Early Payment of Attorney Fees**

Attorney fees for the administration of a decedent's estate shall not be paid in advance from any source until the final account or final closing documents are prepared, unless otherwise approved by the Court upon prior application.

### **71.4 Reasonable Attorney Fees**

When an attorney has been employed in the administration of an estate reasonable fees shall be allowed as part of the expense of administration. Rule 1.5 of the Ohio Rules of Professional Conduct shall govern the reasonableness of fees. In determining the reasonableness of such fees, there shall be considered:

1. The time and effort required;
2. The complexity and difficulty of the estate and the various matters and questions involved, including the determination of Federal and State Income Taxes and Estate Taxes;
3. The degree of skill required to perform the services to the best advantage of the Estate;
4. Fees customarily charged in Ashtabula County for such services;
5. The amount and character of assets, including non-probate assets included in the gross estate for Estate Tax purposes;
6. The benefit resulting from the estate from the services;
7. The experience and ability of the attorney performing the services, as well as all other relevant factors.

## **71.5 Written Application for Attorney Fees**

All applications for the allowance of attorney fees shall include an itemized statement of services performed, the date services were performed, the time spent in rendering the service and the rate charged per hour, and which must be signed by both the fiduciary and counsel.

The court may set a hearing on any application for allowance of attorney fees regardless of the fact that required consents of the fiduciary or other beneficiaries have been provided.

## **LOCAL RULE 78. Case Management**

### **78.1 Status Conference**

All cases must have a general file number before a civil action may be filed. A status conference and pretrial conference shall be conducted in all civil actions, unless otherwise ordered by the Court. Within 45 days after the final answer day a case should be set for a status hearing. A date for pretrial conference shall be set by the Court and shall generally be no more than 14 days before the trial. Trial dates shall be scheduled by the Court

### **78.2 Pretrial Conferences**

All counsel must have full authority to enter into binding orders. The following shall be submitted by the pretrial: trial briefs, witness lists, including addresses, exhibit lists, legal issues which may arise during trial, proposed jury instructions and jury interrogatories. Clients shall be present unless their presence has been excused. The court may rule on any pending motions.

### **78.3 Notice of Litigation**

Upon the filing of any legal action that effects in the state, a trust, or guardianship, the fiduciary or counsel shall file a notice of litigation with the court. The fiduciary or counsel shall so notify the court of significant events as to the litigation and advise the court within 30 days of the conclusion of litigation.

## **LOCAL RULE 94. Inventories**

### **94.1 Decrease in Value of Inventory**

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.

### **94.2 Increase in Value of Inventory**

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.

### **94.3 Newly Discovered Assets**

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 RC 2113.69.

### **94.4 Citations**

If inventories, or other necessary proceedings, are not filed by the fiduciary within the time prescribed by statute the Court may issue a citation, sua sponte, unless the court granted additional time. No extension of time will be allowed within which to file an inventory except for good cause shown.

## **LOCAL RULE 100. Redaction of Personal Information: Applicability of Rules**

Counsel has the duty to redact certain personal information, including bank account numbers except for the last 4 digits, and social security numbers. The Ohio Revised Code also deems adoption, civil commitment and tax documents as confidential, and the Court will not release them from court files.

All pro se persons must follow the local rules.