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**CLERK OF COURT
SUPREME COURT OF OHIO**

RULES OF COURT - PROBATE DIVISION

THE FOLLOWING RULES SHALL APPLY TO PROBATE DIVISION:

RULE 1: Sessions of Court

1. The probate office will be open for transaction of ordinary business from 8:30 a.m. to 4:30 p.m., Monday through Friday, each week.
2. The probate office, at the discretion of the Judge, may be open at other hours for matters of extraordinary importance.

RULE 2: Conduct in the Court

1. Proper decorum in the Court is necessary to the administration of the court's functions, and any conduct which interferes, or tends to interfere, with the proper administration of the court's business is prohibited. Radio or television transmission, voice recording device making a record of a proceeding before the court, or the making or taking of pictures shall be permitted upon written application to the court and authorization by court entry.
2. In order to facilitate the transaction of the court's business, each case shall be assigned, inter alia, a hearing date and time. To the greatest degree possible, the court will adhere to this hearing schedule. It is expected that the attorneys involved in a particular case will be on time for and present in court at the date and time of a scheduled hearing. Failure of a party or counsel to appear at the scheduled time for trial or hearing may, at the court's discretion, be deemed a contempt of court. A fine in the amount of \$50.00 may, at the court's discretion, be imposed and paid, unless suspended by the court, in addition to any other penalties imposed pursuant to law.
3. In order to facilitate the transaction of the court's business, the court shall on its own motion, set cases for pre-trial hearings when deemed appropriate and necessary by the court, notify and require the attendance at said hearings by the parties involved and the attorneys

representing said parties. All attorneys are required to have immediate access to their schedule during all hearings before the Court.

- A. The procedure herein set forth shall apply to all cases, except to the extent that by their nature they would clearly be inapplicable.
- B. Upon the filing of the appropriate case, a status conference shall be scheduled by the Court within a reasonable time. At the status conference, the Court shall discuss with counsel the status of the case, the contested nature of the action, inclusion of necessary and permissible parties, completion of amendment of pleadings and possibility of settlement. The Court shall also set a scheduling order, which shall include the dates of trial, final pretrial conference, hearings on motions, exchange of trial materials, discovery and any other matter deemed necessary by the Court.
- C. Prior to the final pretrial, counsel shall:
 - 1) Amend complaint or other pleadings, if necessary, by filing a motion with copy to opposing counsel. Opposing counsel, upon receipt of such motion,

RULE 3: Failure to Apply for Administration

If a person entitled to administer the estate of an intestate fails without good cause to apply for letters of administration for three (3) months after the death of the intestate his right to priority shall be deemed lost and the court on the motion of any interested party, after the issuance of a citation as provided by Section 2113.06, Revised Code, may commit the administration of said estate to any one of the persons next in order, or, if there are none such, then to some other suitable person.

RULE 4: Bonds and Sureties

1. Neither a practicing attorney nor his wife shall be permitted to become surety on the bond of any fiduciary to be appointed by this court in excess of One hundred (\$100.00) dollars.

2. Private sureties, other than a registered bonding or insurance company, will be permitted for any administrator or executor who resides in Scioto County, or in a county adjoining Scioto County.

3. In any individual matter, the combined value of the Ohio real estate of the private or personal sureties must be equal to double the amount guaranteed. The following standards will be used in determining the value of said real estate:

- a. For Scioto County real estate, twice the County Auditor's appraised value thereof.
- b. For real estate located elsewhere in the State of Ohio, the appraised value thereof as determined by the County Auditor of the county in which said real estate is located. Proof must be submitted to the court of valuation in the case of real estate located outside of Scioto County.

4. Private sureties will not be accepted for any trustee to be appointed by this court, nor for the guardian of an incompetent person, nor the guardian of a minor when by virtue of the age of said minor or minors at the time the guardianship becomes operative it appears that said guardianship will last for a period in excess of five (5) years.

5. Where a will names a fiduciary and requests that no bond be required, none will be required if the fiduciary is the sole heir. In all other cases a bond will be required.

RULE 5: Notice on Wills

When notice is necessary before probate of a will, at least three (3) days notice in writing of the hearing on the application to probate a will shall be given to the surviving spouse and the next of kin of a testator resident of the State of Ohio, unless the surviving spouse or one or more of the next of kin reside more than one hundred road miles from Portsmouth, Ohio, in which case five (5) days notice in writing shall be given.

RULE 6: Preparation and Filing of Papers.

1. All papers prepared for filing in this court **must** be typewritten on the forms provided by or approved by the court. Changes made to the document must also be typed. A document containing erasures or handwritten interlineations changes will not be accepted unless approved by the court.

2. All entries, except those appointing fiduciaries and approving inventories and accounts will be prepared in full prior to submission to the court for approval. No unfilled blanks will be left in either a printed form or a drafted entry. If the same are not appropriate to the proceedings in question, they should be stricken.

3. The court reserves the right to reject any paper not prepared in accordance with this rule.

4. All pleadings are to be clearly titled, i.e. Motion to Continue, Motion for Extension of Time, etc.

5. All filings will be on 8 ½ x 11 paper. Initial papers filed in the Probate Court shall contain the name, Supreme Court number, address, and telephone and facsimile number of counsel representing the fiduciary, and in the absence of such counsel, the name, address and telephone number of the fiduciary. The filing of any paper not containing the above requirement may be refused by the court.

6. Failure of the fiduciary to notify the court of his current address shall be grounds for his removal.

7. Papers containing partial or wholly illegible signatures of counsel, parties or officers administering oaths may be refused for filing, or, if filed, be stricken from the files, unless the typewritten or printed name of the person whose signature it purports to be appears below it.

8. The court does not accept filings via facsimile or the internet. Should a pleading be submitted to the court by either of these methods, the court will accept it for review only and will be accepted for filing only when the original is presented to the court either by personal presentation to the court or through the U. S. Postal Service.

9. The provisions of this rule apply to surety on bonds.

RULE 7: Attorneys of Record.

The application for the appointment of a fiduciary shall contain the name, address and telephone and facsimile number of the attorney, if any, representing the fiduciary. If such attorney shall resign, the attorney and the fiduciary shall notify the court, and the fiduciary shall submit the information required for the successor attorney. Such information shall be in writing. In any instance where an attorney files an application to withdraw as counsel representing a fiduciary, it will be necessary that the matter be set for hearing and that the fiduciary be notified and be present at the hearing, unless notice and hearing is dispensed with by the court.

RULE 8: Attorney's Approval on Instruments Filed.

Each judgment entry presented to this court for filing for and on behalf of any fiduciary, acting by virtue of an appointment by this court, shall have endorsed thereon the approval of the attorney at law designated by such fiduciary to represent him in matters relating to the trust, in the following form:

Approved:

Attorney for Fiduciary, Registration Number
Address
Telephone and Facsimile Number

Such endorsement shall constitute a representation to the court that the same was prepared by and/or examined by the attorney. If such attorney's endorsement is lacking, the same shall be refused and denied filing in this court.

RULE 9: Removal of Papers from Probate Court Files.

1. Pursuant to Ohio Revised Code Section 149.51, the Deputy Clerks shall permit any person to examine and make copies of any pleading or paper on file in any case, except adoption proceedings and mental illness proceedings, in which case permission must first be obtained directly from the Judge.

2. No case file shall be removed from the office of the Clerk of Probate Court without first obtaining permission from the Deputy Clerk or the Judge.

3. All adoption case files and mental illness case files are confidential, and are not open to inspection or copying or removal except as provided by law or with specific permission of the Judge.

RULE 10: Entries.

1. All entries are to be clearly titled, i.e., Entry Approving Inventory, Entry Denying Motion for New Trial, etc.

2. Counsel for the party in whose favor an order, decree, or judgment is announced, shall, within five (5) business days thereafter, unless further time is given by the court, prepare the proper judgment entry and submit the same to counsel for the opposite party, who shall approve or reject it within three (3) days after its receipt. All objections to proposed judgment entries shall be in writing, and may be answered in writing.

3. When approved by counsel, or if no objection is taken by opposing counsel within 10 days, the entry will be approved as submitted to the court. If counsel files objections, the matter shall be submitted to the court for instructions as to the proper entry.

4. A judgment entry or order bearing evidence of erasures or containing longhand interlineations will not be accepted unless approved by the court.

5. Upon failure to comply with this rule, the matter may be dismissed for want of prosecution or such further action as is necessary or required by law.

6. Additionally, the court reserves unto itself the right to prepare and file entries.

RULE 11: Hearings and Continuances.

When an interested party in a proceeding pending before the court desires a hearing by the court, such request shall be by written application by the party or his counsel requesting the court to fix a date for hearing, excepting hearings on accounts and inventories, and, when such date is set by entry, shall give reasonable notice thereof to counsel for the adverse party, if represented by counsel, and, if not, to the adverse party.

Continuances, except on the court's own motion, shall not be granted without reasonable notice to or consent by counsel for the adverse party, if represented by counsel, and, if not, by the adverse party. After such notice, however, failure to object to a continuance shall be deemed a consent thereto.

If a hearing is not to proceed at the time designated, the court must be notified of that fact. Upon unexcused failure to appear the court may proceed to hear the matter upon the evidence submitted, dismiss for want of prosecution, or take any other action authorized by law.

Submission of a matter upon briefs without oral hearing shall be by written stipulation of counsel.

RULE 12: Court Costs. *(See Rule 58.1)*

~~A deposit in the amounts set forth below shall be required upon filing of the following actions and proceedings:~~

ESTATE.....	\$150.00
Motion to reopen	100.00

GUARDIANSHIP.....	500.00
MINOR GUARDIANSHIP.....	250.00
TRUSTS.....	100.00
LAND SALE.....	75.00
OTHER PROCEEDINGS.....	50.00
ADOPTIONS.....	500.00
MENTAL ILLNESS.....	0.00
CORRECTION OF BIRTH.....	90.00
RACE CORRECTION.....	90.00
DELAYED REGISTRATION.....	93.00
MARRIAGE LICENSE.....	43.00
MINOR SETTLEMENT.....	103.00
AUTHENTICATION FILED BY ATTORNEY.....	65.00
NAME CHANGE.....	135.00
WILL INFORMATION.....	33.00
WILL CERTIFICATE OF DEPOSIT.....	18.00
WILL AND TAX.....	48.00
TAX ONLY.....	38.00
TAX FORM 22 ONLY.....	38.00
CREDITORS CLAIM.....	10.00
HUMANE AGENT APPLICATION.....	25.00
VERIFICATION OF MARRIAGE APPLICATION.....	15.00
SINGLE STATUS CERTIFICATION.....	20.00

Authenticated copies are \$10 plus \$1.00 per page

Applications accompanied by an affidavit of the applicant of inability to prepay or give security for court costs shall be accepted without the necessity of such deposit as a condition for filing provided that the applicant shall exert diligent efforts to make funds available from the probate estate for the security deposit and pay the deposit into court as soon as possible.

In any civil proceedings, costs and fees must be paid in full upon completion of such proceedings. The court reserves the right not to accept motions to reopen cases if the original court costs are not paid.

RULE 13: Appraisers' Fees.

1. Appraisers' fees will be determined informally in each case by counsel and the fiduciary, with court assistance if

necessary. The amount should be based upon the time required for the appraisal.

2. The address of each appraiser must be indicated on the inventory.

RULE 14: Wills

With respect to the opening of safety deposit boxes for the purpose of removing the will therefrom and inventorying the contents of said box, the court may authorize the Auditor of Scioto County or his Deputy or any appropriate person to remove the will from said box and transport the same to the office of the Probate Court for safekeeping purposes.

RULE 15: Schedule for Filings.

The time schedule established by law for filing of papers, pleadings, inventories and appraisals, accountings, etc. will be strictly applied and followed in all cases, unless extended by court order upon the timely filing of motion and memoranda.

If any case becomes delinquent for any such filing as required by law, the court shall first notify the attorney of record of such delinquency in writing and the distribution of notice shall be docketed in the case.

If the delinquency is not cured within a reasonable time, not to exceed a month, the court shall send a second notice of delinquency to the attorney of record and the fiduciary whom he represents of such delinquency, and the mailing of such notice shall be docketed in the case.

If the delinquency is still not resolved within a reasonable time of the second notice, not to exceed a month, the court may cite both the fiduciary and attorney into court to explain their failure and to determine a date certain on which such filings shall be made. The court specifically reserves unto itself the right to remove the fiduciary and his attorney for failure to timely file said pleadings, etc., as required by law and further to limit the practice of any attorney who becomes delinquent on filings, etc. In addition, there will be a \$5.00 fee assessed to court costs for each citation issued.

Further, the court at its discretion may grant an extension of time to file such pleadings, etc., upon receipt of an appropriate application which sets forth the reason an extension is desired.

No account will be accepted for filing until the inventory on which such accounting is based has been formally approved.

RULE 16: Relieving Estates from Administration

When an application to relieve an estate from administration has been filed, at least five (5) days notice in writing of the hearing on the application shall be given to the surviving spouse and the heirs at law unless said notices are waived or found unnecessary. Three (3) weeks notice shall also be given to all interested parties by publication, unless waived.

In cases of estates entitled to be relieved from administration, where there is a will, such will shall be presented for probate. If the will is admitted to probate, an application for an order relieving the estate from administration may be filed in lieu of the appointment of the executor named in the will. If probate of the will is denied, an application for an order relieving the estate from administration may be granted and distribution made under the laws of intestate succession. Where no heirs are known to the applicant, the court shall set the application for hearing not less than three (3) weeks from the date of such filing and shall require publication.

Where administration of the estate has commenced, the entry relieving the estate from administration shall contain the words "The filing of a final account is dispensed with the fiduciary and surety, if any, are hereby discharged."

RULE 17: Application to Probate Will

Notice of probate of will--at least three (3) days written notice shall be required when complying with R.C. 2107.19

If a will created a charitable trust which subsequently may be required to be registered with the Attorney General of Ohio under R.C. 109.26, there shall be included in the application to probate the will a concise statement

setting forth the item number of the will which creates such trust, the name of the trustees designated therein, and the general nature of the trust.

RULE 18: Application for Letters of Administration where there is no Surviving Spouse nor known next of kin residents of Ohio

A person who files an application for letters of administration in an estate where there is no surviving spouse nor known next of kin resident of Ohio, shall cause to be served on such spouse and all competent adult next of kin, if any, residing outside of the state, known to the applicant, a written notice of the time and place of the hearing.

The notice shall be served on such person at least ten (10) days prior to the date for the hearing.

If there is no known surviving spouse for next of kin, the notice shall be served upon such persons as are designated by the court.

RULE 19: Appointment and Compensation of Appraisers in Estates and Land Sale Proceedings.

a. When required by law there will be one suitable and disinterested appraiser.

b. Compensation:

Executors or administrators without special application to the court may allow to the appraiser, a compensation for his services, a reasonable amount agreed upon between the fiduciary and the appraiser.

c. Consideration in Determining Fees:

In agreeing upon the amount of compensation, executors or administrators and the appraiser shall take into consideration the amount of time and work reasonably required in appraising the assets of the estate as well as the type and character of the property appraised.

d. Expert Appraisers:

If, by reason of the special and unusual character of the property to be appraised, the fiduciary is of the opinion that the appraisal requires the services of persons expert in the evaluation of such property, such expert opinion may be secured and reasonable compensation paid therefore subject to the approval of the court.

e. Land Sale:

In land sale proceeding the appraiser or appraisers appointed by the court may be compensated for their services in the same manner as provided for estate appraisers, provided that the amount to be paid each appraiser shall be set forth in the entry of distribution and be subject to the approval of the court.

f. Waiver of Fee:

An appraiser may waive all or any part of the compensation to which he may be entitled under this Rule.

g. Application to Court for Allowance:

Where questions arise in the interpretation of this Rule, or the amount of compensation cannot be agreed upon, the fiduciary shall file an application for allowance of compensation to each appraiser

RULE 20: Inventory.

Pursuant to ORC 2115.04 and 2115.16, notice of the filing of inventories shall be given, as required by law, to each person or class of persons entitled thereto, without specifically naming such person or class of persons under the provisions of R.C. 2115.04 and 2115.16.

RULE 21: Schedule of Debts.

When ordered by the court, an executor or administrator shall prepared and file a schedule of all claims against the estate he represents that have been presented to him and all other debts of the estate of which he has knowledge. The schedule shall state the name and address of the claimant as it appears on the claim, the amount claimed, the date of presentation of the claim, the class into which it falls for payment, the security held for it, the date of maturity if not yet due, whether allowed or rejected by executor or administrator and the date of allowance or rejection.

RULE 22: Application to Sell Personalty.

In addition to the requirements of the statutes, the judgment entry and order of sale shall include an adequate description of the property to be sold and shall provide that the sale be had at the best price obtainable in the current market or at a price fixed by the court. Except for good cause shown, an order of sale shall not be granted prior to the approval of the inventory or inventory and appraisalment. No sale shall be confirmed until affidavit is filed as required by R.C. 2109.45 and 2113.42.

RULE 23: Insolvent Estates

When there are presented to an executor or administrator valid claims in excess of the amount of assets in his hands, he shall report in writing to the court that the estate is insolvent, setting forth the facts relating to such insolvency.

Upon filing the schedule of claims in accordance with section 2117.25, Revised Code, and Rule 11, the executor or administrator shall, by application and entry, set for hearing both the determination of insolvency and his application for an order in connection therewith (RC 2117.15).

RULE 24: Accounts.

- a. Final accounts of fiduciaries shall not be accepted for filing before the expiration of the applicable period as required by law.
- b. Extension of time within which to file an account or inventory may be granted on application for good cause shown.

- c. There shall be submitted with the fiduciary's account vouchers or proof supporting disbursement as required by R.C. 2109.30, which vouchers of proof shall be keyed into the account by number, and, after verification by the court with the account, will be returned to the fiduciary. In addition to the requirements of R.C. 2109.30, fiduciaries' accounts shall include all transactions affecting the income or principal account during the accounting period.
- d. If land has been sold by the fiduciary during the accounting period, the account shall show the gross amount of the proceeds of such sale and the distribution thereof, with an itemization of all disbursements in connection with such sale, unless otherwise reported in the land sale proceedings.
- e. Where a guardian is accounting for several minors, his account shall show each ward's proportionate share of the credits and debits and separately state each ward's property at the end of the accounting period.
- f. Receipts for distributive shares signed by persons holding power of attorney will be accepted, provided a photostatic copy of the power is attached to said account.
- g. Exhibiting assets.

Cash balances may be verified by exhibiting a bank statement, passbook or letter from the banking institution in which such funds are deposited certifying as to the funds on deposit to the credit of the fiduciary. Assets held in safe deposit boxes of fiduciaries or by surety companies on fiduciaries' bonds may be exhibited by filing an inventory thereof certified by the manager of the safe deposit box department of the bank leasing such safe deposit box or by a qualified officer of the surety company if such assets are held by such surety. If such assets are held by a bank, trust company or by a brokerage firm, such exhibition may be made by proper certification as to the assets so held. For good cause shown, the court may designate a deputy clerk of the court to make an examination of the assets

located in this county not physically exhibited to the court or may appoint a commissioner for such purpose if such assets are located outside the county. Such commissioner shall report his findings to the court.

- h. No final and distributive account shall be approved until all court costs have been paid and all inheritance or estate taxes have been determined and paid or the estate found not subject to tax. Where there has been a Federal Estate Tax determination, the closing letter shall be filed as soon as practicable.
- i. Notice and Hearing on Accounts.
 - a. Notice of the filing and date and place of hearing of partial and final accounts of all fiduciaries filed in this court will be made by publication as a group once only in a newspaper of general circulation within this county.
 - b. On the day set for hearing the accounts will be examined by the court as provided by law and the court will make such order thereon as it provided by law. If on any account a formal hearing is requested, by exceptions or otherwise, such matters will be continued for formal hearing as provided by law.

RULE 25: Land Sales.

In cases involving public sales, prior to the issuance of an order of sale, a certificate must be filed by the attorney for the plaintiff setting forth that all known parties having a claim, interest or lien on the property have been made parties to said cause, and that the attorney has examined the record title to said real estate from the time said real estate was acquired by the decedent.

RULE 26: Counsel Fees.

- A. Counsel fees for all matters before the court shall be set by the Probate Court and must be upon application made by the fiduciary

and the attorney and upon judgment of the court. Neither compensation for a fiduciary or an attorney shall be paid before a final account is prepared for filing except with court approval of any partial payment of such fees for good cause shown to the court. Fees may be based on the following:

- (1) Hourly rate
- (2) Time expended
- (3) Quantum meruit
- (4) Contractual agreement

Ordinary Minimum Fee \$350.00

Attorney must provide written documentation and/or exhibits supporting the fee.

Apply schedule as set forth above.

- B. In estates requiring the filing of a Federal Estate Tax return counsel shall be entitled to additional compensation provided that he prepare the Federal Estate Tax Return. This compensation shall be determined upon application and based upon the criteria set forth above.
- C. In land sale proceedings or in a proceeding by the surviving spouse to purchase property at the appraised value, the attorney fee shall be established by application and based upon the criteria set forth above.
- D. In instances where the fiduciary is the attorney, the court shall allow only one fee to be taken based upon application and the criteria set forth above.
- E. Counsel fees in a land sale proceeding, or authority to mortgage real estate, instituted by a guardian shall be paid upon application to the court and based upon the criteria above.
- F. Notice of the filing of any requests for payment of attorney fees shall be provide to the fiduciary and/or client unless the fee is approved by said fiduciary and or client.

RULE 27: Guardian and Trustees Compensation and Counsel Fees.

Except for good cause shown, counsel fees will not be allowed to attorneys representing fiduciaries who are delinquent in filing accounts. Except for good cause shown, commissions will not be allowed executors, administrators, guardians or trustees who are delinquent in filing an account.

Counsel fees in the indigent guardianship cases will be paid at the rate of reimbursement for in-court and out-of-court hours currently approved by the Scioto County Commissioners and the Ohio Public Defender's Office for court-appointed counsel.

RULE 28: Estates of Minors and Incompetents of \$10,000 or Less (RC 2111.05).

Application relating to minors shall be by the parent or parents or by the person having custody of such minor and shall be captioned in the name of the parents. A parent who is not the applicant, as well as minors fourteen years of age or over, shall consent in writing to the application.

If either or both parents are deceased, or their whereabouts unknown, such facts shall be noted in the caption. If parents are divorced or separated, and custody has been awarded to the applicant, the application shall so state.

Only one application shall be filed in behalf of all minors of the same parents, and the application shall indicate the amount of money or property to which each minor is entitled, and to whom such money or property shall be paid or delivered.

No allowance for attorney's fees or compensation will be made on the application.

Applications in behalf of incompetents will not be entertained until such time as the incompetent has been adjudicated mentally ill or mentally retarded, and the application shall be captioned, i.e., "In re John Doe Mentally Ill", etc.

RULE 29: Settlement of Claims for Injuries to Minors (RC 2111.18).

Applications involving the payment of \$1,000.00 or less shall be by the parent or parents or by the person having custody of the minor, and shall be captioned in the names of the parents. If either or both parents are deceased, or their whereabouts unknown, such facts shall be noted in the caption. If the parents are divorced or separated, and custody has been awarded to the applicant, the application shall so state. A parent who is not the applicant, as well as minors fourteen years of age or over, must consent to the application in writing.

In any application by a guardian for approval of a settlement or an action for personal injuries to his ward, irrespective of amount, the parent or parents of such ward, if any, living in the county, shall be entitled to ten (10) days notice by certified mail of the hearing on such application. The notice may be waived in writing.

All applications shall be accompanied by a current statement of the examining physician in respect to the injuries sustained, the extend of recovery therefrom and the physician's prognosis.

Except for good cause shown, the presence of the injured minor and parent is required at the hearing on all applications.

All applications shall state what additional consideration, if any, is being paid to persons other than the guardian.

All applications shall state what arrangement, if any, has been made in respect of counsel fees, which fees shall be subject to review by the court.

RULE 30: Settlement of Claims for Wrongful Death.

Application for approval of a settlement of a claim for wrongful death shall contain a concise statement of facts including the amount to be received in settlement of the claim and the amount, if any, to be received in settlement of the right of action for conscious pain and suffering. The statement shall also include the proposed allocation of the compensation to be received in settlement of the action for wrongful death.

The court may require that the application and proposed allocation be set for hearing and written notice thereof be given to all interested parties in the manner required by the court.

The application shall also state what arrangements, if any, has been made in respect of counsel fees, which fees shall be subject to review by the court.

RULE 31: Counsel Fees in Connection with Settlement of Claims for Wrongful Death, Conscious Pain and Suffering, Claims for Personal Injuries to Persons Under Guardianship, and Settlement of Personal Injuries to Minors Under RC 2111.18.

Counsel fees for all matters before the court shall be set by the Probate Court and must be upon application made by the attorney and upon judgment of the court. Compensation for an attorney will not be paid before a final account is prepared for filing except with court approval of any partial payment of such fees for good cause shown to the court. Fees may be based on the following:

- (1) Hourly rate
- (2) Time expended
- (3) Quantum meruit
- (4) Contractual agreement

Ordinary Minimum Fee \$350.00

Attorney must provide written documentation and/or exhibits supporting the fee.

RULE 32: Expenditures, Distribution, or Sale of Property.

1. No expenditures, distribution, or sale of any property, whether real or personal, will be ordered until an inventory and appraisal, or, in an appropriate case, an inventory with appraisal, is first filed.

2. No certificate of transfer for real estate will be issued unless the application therefore is accompanied by a current accounting, unless authorized after personal conference with the judge.

RULE 33: Administration of Real Estate.

1. It is well settled in Ohio that real estate descends to and vests in the heirs and devisees immediately upon the death of ancestor or testator. 17 O.Jur(2d) 529, par 199. Accordingly, until an administrator obtains an order of sale, or an executor takes steps to exercise a power of sale, he has no responsibility or authority over the real estate of which decedent died seized unless he first invokes the provisions of Section 2113.311.

2. The heirs and devisees may agree to having the person who is the administrator or executor function as their agent for the management of real estate during the administration of the estate. As such agent, his authority is derived directly from such heirs or devisees, and not from any letter issued by the court. Any accounting this agent might find it necessary to make concerning his managerial activities with regard to such real estate should be made directly to those persons who have selected him to be their agent, and should not be included as a part of his fiduciary accounting to this court.

RULE 34: Miscellaneous.

1. All attorneys, fiduciaries, commissioners, appraisers, caseworkers, counselors, special advocates, and investigators are officers of the court. As officers of the court, these individuals at all times shall conduct themselves in a professional manner and shall not engage in acts that would impede or demean the administration of justice.

Officers of the court shall dress in appropriate court attire for all hearings before the court.

2. No attorney, fiduciary, or other person shall use or remove or alter the court's "file" stamp or "signature" stamp. It is the duty of the deputy clerks to stamp file all papers presented to the court for filing. Only the deputy clerks and the judge shall use the Judge's signature stamp.

3. The court maintains a mailbox for each attorney and/or their office for distribution of filings and notices. It is the responsibility of the individual attorney and/or their office to check that mailbox daily.

4. A person who cannot read, write and speak the English language shall not be appointed a fiduciary, unless the court for good cause shown directs otherwise.

5. Attorneys shall not act as sureties in any cause, nor shall they be permitted to become surety on the bond of a fiduciary.

6. All papers filed in the court shall contain the name, address and telephone number of counsel representing the fiduciary or other interested persons, and in the absence of counsel, the name, address and telephone number of the fiduciary. The filing of any paper not containing the above requirements may be refused by the court.

7. In the event a fiduciary, represented by an attorney at law in this court, is unable to make a timely filing of an account in accordance with the statutes and the rules of this court, it shall be the duty of the attorney to state the reason and notify the court in writing on or before the date the account is due.

8. In adversary proceedings, a party or parties, at his or their expense, must provide a court reporter to transcribe the proceedings.

The order releasing assets without the appointment of a guardian must recite the name of the institution acting as depository and that the funds shall not be released from deposit until the ward reaches his eighteenth birthday or until further order of the court.

RULE 35: Reasonable Visitation.

The following provisions shall control visitation with minor children in all custody proceedings and will not be modified except upon the showing of good cause.

Whenever "reasonable visitation" for a non-custodial parent appears in an entry, it shall be defined as providing at a minimum for:

1. Infants up to 18 months. Non-custodial parent may visit in custodial home from 2:00 to 5:00 p.m. each Sunday and from 4:00 to 5:00 p.m. twice weekly.

2. From 18 months to 3 years of age. Two weekends per month from 9:00 a.m. Saturday until 5:00 p.m. Sunday and one day per week from 3:00 p.m. to 5:00 p.m.
3. After 3 years of age. Non-custodial visitation shall be as follows:
 - (a) Visitation by the non-custodial parent on alternate weekends from Friday at 7:00 p.m. to Sunday at 7:00 p.m. (the beginning and ending times may be varied to accommodate the work schedule of the parties).

The non-custodial parent shall have one weekday visit per week for a three-hour period as agreed upon by the parties.
 - (b) Mother's Day the children shall be with the mother and Father's Day the children shall be with the father. In the event this provision requires the children to be with the custodial parent when it is the non-custodial parent's normal weekend visitation, the non-custodial parent shall return the children by 9:00 a.m. on Mother's Day or Father's Day. In the event that this provision requires the children to be with the non-custodial parent when it is the custodial parent's normal weekend visitation, said non-custodial parent shall receive the children at 9:00 a.m. on that day and shall return them at 7:00 p.m. on said day.
 - (c) The parents shall have the children on holidays as follows:

EVEN YEARS

Custodial Parent

President's Day - Friday night to Monday night.

Memorial Day - Friday night to Monday night.

Labor Day - Friday night to Monday night.

Christmas - Christmas Eve and Christmas Day until 2:00 p.m.

Non-Custodial Parent

Easter - Thursday night to Sunday night.

4th of July - Night before the morning after except when the 4th falls on Friday, Saturday, Sunday or Monday when the visitation shall commence on Friday night and continue to end of weekend or end of holiday, whichever is later.

Thanksgiving Day - Wednesday night to Sunday night.

Christmas Vacation and New Year's Day - Christmas Day at 2:00 p.m. until night at the end of New Year's holiday.

ODD YEARS

The above schedule shall be reversed as to Custodial Parent and Non-custodial Parent.

Unless otherwise indicated, said holiday visitation shall commence at regular hour as set for the commencement of weekend visitations and shall end at the regular hour set for the ending of weekend visitation. Said holiday visitations shall have precedence over the regular visitation schedule but shall not otherwise modify it (for example, if the holiday granted in any particular year to a non-custodial parent falls between the regular weekend visitation, the non-custodial parent will have visitation three (3) weekends in a row at that particular time).

- (d) the non-custodial parent shall have an extended visitation each summer, however, same shall not exceed four (4) weeks in duration. The non-custodial parent shall notify the custodial parent of the desired time thereof as early as possible, but not later than sixty (60) days in advance thereof.

- (e) Both parties shall be diligent in having the children ready and available at the appointed times and the transporting party shall be prompt in picking up and delivering the children provided however, that the transporting parent for visitation shall have a grace period of fifteen (15) minutes for pick-up and delivery if both parties live within a distance of thirty (30) miles from each other. If the one-way distance to be traveled is in excess of thirty (30) miles, the grace period shall be thirty (30) minutes. In the event the visiting parent exceeds the grace period, the visitation for the weekend is forfeited unless prior notification and arrangements have been made and except in cases where the visiting parent lives in excess of thirty (30) miles away and suffers an unavoidable breakdown or delay en-route and the visiting parent promptly notifies the custodial parent by phone of the delay. Repeated violations by either parent shall be cause for granting a modification of the custody order either by changing custody or curtailing visitation as the case may be.
4. The custodial parent shall send with the children on visitation sufficient clothing and outerwear appropriate to the season to last the period of the visitation. (For a weekend visitation, this shall consist of a minimum of two (2) extra sets of play clothes and one (1) dress outfit in addition to the clothes the children are wearing at the time of the start of the visitation.) In the case of infants, the custodial parent shall send with the child sufficient bottles, formula and diapers to last the visitation period. Continued violations of this requirement shall be deemed sufficient cause for a change of custody.
5. The custodial parent shall encourage free communications between the children and the non-custodial parent and shall not do anything to impede or restrict communications by phone or mail between the children and the non-custodial parent, whether initiated by the children or by the non-custodial parent. The mail between the children and parent shall be strictly confidential between them and that parent and shall not be opened or read by the other parent. This rule applies equally to

the non-custodial parent when the children are on extended visitation with the non-custodial parent.

6. Both parents shall refrain from criticizing or demeaning the other parent in the presence of the children. Both parents shall try to prevent undue influence by grandparents in implementing visitation.
7. Neither of the parties shall attempt to modify the religious practice of the children without first having consulted with each other.
8. The custodial parent shall take the following action with the school authorities of the schools in which the children are enrolled:
 - (a) List the non-custodial parent as a parent of the children.
 - (b) To authorize the school to release to the non-custodial parent any and all information concerning the children.
 - (c) The custodial parent shall promptly, after receipt of same, furnish to the non-custodial parent a photocopy of the child's grade or report card and copies of any other reports concerning the child's status or progress.
9. When a journal entry or divorce decree confers "the right of reasonable visitation" upon the non-custodial parent, this rule shall be considered incorporated into and made a part of the entry or decree.
10. Attorneys shall provide copies hereof to clients involved in child custody litigation.

RULE 36: Magistrates

1. The judge may appoint a magistrate who will be assigned cases by the judge. The magistrate will preside over hearings, pre-trials, trials, and issue any and all magistrate's orders and decisions in accordance with Juvenile Rule 40, Civil Rule 53, Criminal Rule 19 and O.R.C. 2101.01

2. When a request for findings of fact and conclusions of law is made or an objection is made to a magistrate decision, the party requesting the same shall prepare and file a proposed findings of fact and conclusions of law within seven days of the judge's order or the magistrate's decision. Thereafter, the judge or the magistrate will prepare findings of fact and conclusions of law which shall become part of the record.

3. When preparing entries for the magistrate's signature, the attorney shall include Ohio Civil Rule of Procedure 53(E)(3)-- Notice to Attorneys and Parties.

4. All entries submitted from the magistrate's docket shall contain a signature line for the magistrate and a signature line for the judge approving the decision.

ALAN LEMONS
Judge, Court of Common Pleas
Probate Division of Scioto County

Rule 44 – Public Access to Records

(Pursuant to Ohio Supreme Court Superintendent Rule 44 through Rule 47)

(A) The purpose of this rule is to establish a system for public access to court records, to provide the minimum standards for both direct and remote access and the distribution of court records. The adoption of this rule is consistent with the Ohio Supreme Court's Superintendence Rule 44 through Rule 47, and the adoption thereof by the Scioto County Probate and Juvenile Court.

(B) Civil commitment case files, adoption case files, juvenile cases, and other filings and records designated by law or by the Probate Court and Juvenile Court as confidential shall not be examined by any person without the express authorization of the Probate/Juvenile Judge or a Probate/Juvenile Court Magistrate. When authorized, such examination shall take place within the presence of the Probate/Juvenile Judge, a Probate/Juvenile Court Magistrate, or a Probate Court/Juvenile Deputy Clerk.

RULE 58.1. Deposit for Court Costs.

A deposit in the amounts set forth below shall be required upon filing of the following actions and proceedings:

ESTATE	\$200.00
Motion to reopen.....	100.00
GUARDIANSHIP.....	500.00
MINOR GUARDIANSHIP.....	250.00
TRUSTS.....	150.00
LAND SALE.....	75.00
OTHER PROCEEDINGS.....	50.00
ADOPTIONS.....	500.00
MENTAL ILLNESS.....	0.00
CORRECTION OF BIRTH.....	93.00
DELAYED REGISTRATION.....	93.00
MARRIAGE LICENSE.....	43.00
MINOR SETTLEMENT.....	150.00
AUTHENTICATION FILED BY	
ATTORNEY.....	65.00
NAME CHANGE.....	150.00
WILL INFORMATION.....	33.00
WILL CERTIFICATE OF DEPOSIT.....	18.00
WILL AND TAX.....	48.00
WILL AND TAX FORM 22 ONLY.....	43.00
TAX ONLY.....	43.00
TAX FORM 22 ONLY.....	38.00
CREDITORS CLAIM.....	10.00
CITATION HEARING.....	5.00
HUMANE AGENT APPLICATION.....	25.00
VERIFICATION OF MARRIAGE	
APPLICATION.....	15.00
SINGLE STATUS CERTIFICATE.....	20.00

Authenticated copies are \$10 plus \$1.00 per page

Applications accompanied by an affidavit of the applicant of inability to prepay or give security for court costs shall be accepted without the necessity of such deposit as a condition for filing provided that the applicant shall exert diligent efforts to make funds available from the probate estate for the security deposit and pay the deposit into court as soon as possible.

Counsel, or unrepresented parties, shall make an additional deposit, if necessary, to make sure there are funds available to pay all remaining, or additional costs, before the final accounting is approved.

In any civil proceedings, costs and fees must be paid in full upon completion of such proceedings. The court reserves the right not to accept motions to reopen cases if the original court costs are not paid.

RULE 66.1: Emergency Guardianship

- A. The court will consider an emergency guardianship only upon a clear and convincing showing 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 adult incompetent person.
- B. The application must be accompanied by a statement of expert evaluation, form 17.1, along with a supplement for emergency guardian, form 17.1A. Both documents must be completed by either a medical doctor or clinical psychologist.
- C. The application for emergency guardianship, along with the statement of expert evaluation and the supplement for emergency guardian, must be approved by a magistrate or the judge of this court.
- D. Once approved, a judgment entry will issue granting the emergency guardianship for a period of 72 hours.
- E. The attorney/applicant may present a motion with accompanying judgment entry to extend the emergency guardianship for a period of 30 days for approval by the magistrate or judge. Only one (1) 30-day extension will be granted.
- F. A court investigator will serve the respondent ward with notice of the emergency guardianship proceedings and scheduled Probate Court hearings.

RULE 66.2 Complaints and Comments

- A. The following procedure will be followed for submitting and considering comments or complaints regarding the guardian:
 - (1) All complaints must be submitted in writing on the designated form with supporting documentation and affidavits to support their complaint, if any.
 - (2) The form must be accompanied by the appropriate filing fee and will be time stamped and docketed by the court. The complaint will be added to and monitored using the court's database.
 - (3) Upon receipt of the complaint, a notice will be sent to the complainant acknowledging receipt of the complaint and indicating that the complaint is in the process of being reviewed.
 - (4) Upon receipt of the complaint, a copy of the complaint shall be sent to the guardian with a notice indicating that the complaint is in the process of being reviewed.

- (5) The complaint will be promptly delivered to the magistrate or judge who will develop a plan of action for the complaint within 10 days. Plans of action may include any of the following:
 - (a) The matter may be set for hearing, in which case, a hearing notice will be sent to the complainant, the guardian, the ward and any attorney of record.
 - (b) The court may order an investigation of the complaint, after which a written response will be sent to the complainant and the guardian.
 - (c) The court may determine that on its face, the complaint does not warrant further action, in which case, a written response will be sent to the complainant.
- (6) In all cases, the response of the Probate Court will be docketed and the complaint and response maintained in the court's file. The complaint and/or comment are public documents.
- (7) The court database record will be updated to include the disposition of the complaint.
- (B) The review process will include communication with the ward. The ward is not required to use the designated form nor will the ward incur a filing fee.

Rule 66.4 Guardian's Reports

A guardian's report shall be filed bi-annually in all adult guardianships by the guardian of the person. The guardian's report shall include a Statement of Expert Evaluation (Form 17.1) unless dispensed with as set forth below.

When a physician or clinical psychologist states on a previous bi-annual Statement of Expert Evaluation that within a reasonable degree of medical certainty it is unlikely the ward's mental competence will improve, then upon application by the guardian in an Application to Dispense with Subsequent Statements of Expert Evaluation (Form 17.1B), the court may dispense with the further filing of Statements of Expert Evaluation.

IN THE COURT OF COMMON PLEAS, SCIOTO COUNTY, OHIO
PROBATE DIVISION
Local Rules of Court

73.1 Service of Process

Pursuant to Sup R 5 and Civ R 73(C) and 73.(E)(7) the Court hereby adopts the following rule for service by publication. Service by publication may be made in any manner set forth in the Ohio Civil Rules of Procedure 4.4(A)(2). If service by publication is desired by posting and mail, an affidavit shall be filed by the party or party's attorney requesting service pursuant to Civil Rule 4.4(A)(2). The notice shall be posted on the bulletin board inside the Juvenile Court and at any two (2) of the following designated locations:

- 1) Portsmouth Municipal Court (main lobby bulletin board)
728 Second Street
Portsmouth, OH 45662

 - 2) Scioto County Department of Job and Family Services (main lobby bulletin board)
710 Court Street
Portsmouth, OH 45662

 - 3) Portsmouth Public Library (main or any branch bulletin board)
1220 Gallia Street
Portsmouth, OH 45662
- South Webster Branch
496 Webster Street
South Webster, OH 45682
- Vern Riffe Branch
3850 Rhodes Avenue
New Boston, OH 45662
- W. Gordon Ryan Branch
103 St. Rt. 728
Lucasville, OH 45648
- Wheelersburg Branch
666 Center Street
Wheelersburg, OH 45694

The notices shall be posted at the required locations for seven (7) consecutive days, all of which are at least seven (7) days prior to the date of the hearing. The clerk shall cause the summons and accompanying pleadings to be mailed by ordinary mail, address correction requested, to the last known address of the party to be served.

Once this Court establishes a website, the postings may alternatively be made on the Court's website in the section designated for such purpose.

RULE 73.2 Guardian's Compensation

(A) Guardian's compensation for services as guardian of the estate shall be computed annually upon application and entry and shall be supported by calculations and documentation. The following fee schedule shall apply unless extraordinary fees are requested. Extraordinary fee applications shall be set for hearing unless hearing is waived by the Court.

(1) *Income/Expenditure Fee.* Excluding income from rental real estate, four percent (4%) of the first \$10,000 of income received, plus three percent (3%) of the balance in excess of \$10,000, and four percent (4%) of the first \$10,000 of expenditures except expenditures pertaining to rental real estate, plus three percent (3%) of the balance in excess of such \$10,000. If the guardian manages rental real estate, a fee amounting to ten percent (10%) of gross rental real estate income may be allowed. If the guardian receives net income from rental real estate actively managed by others, then the guardian shall treat such net income as ordinary income. No fee shall be allowed to the guardian on expenditures pertaining to rental real estate. As used in this rule, "income" shall mean the sum of income as defined in the Ohio Principal and Income Act, including pension benefits and net gains from the sale of principal. Assets held by the ward at the date of appointment are deemed to be principal and not income.

(2) *Principal Fee.* \$3.00 per thousand for first \$200,000 of fair market value, and \$2.00 per thousand on the balance of the corpus, unless otherwise ordered.

(3) *Principal Distribution Fee.* \$3.00 per thousand on the first \$200,000 of fair market value of corpus distributed upon the termination of the guardianship, and \$2.00 per thousand on the balance of the corpus distributed upon the termination of the guardianship, unless otherwise ordered.

(B) Compensation for services as guardian of the person only shall be set for hearing unless the hearing is waived by the Court.

(C) All motions, including applications for compensation by guardians of veterans, must comply with Ohio R.C. Chapter 5905 and all other rules and regulations of the Department of Veteran Affairs.

75.1(E) Court Appearance by Video Conferencing

At the discretion of the Judge or Magistrate, and upon written request by the respondent or respondent's counsel, an incarcerated respondent party in an adoption proceeding may appear at any hearing by the use of a video imaging connection between the Department of Rehabilitation and Corrections facility and the Scioto County Probate Court. All participants must be able to simultaneously see, hear, and speak with each other except when otherwise directed by the Judge or Magistrate. When proceedings are conducted via video teleconference, it is presumed that all participants will be physically present in the courtroom with the exception of the incarcerated respondent. Counsel for respondent shall be present in the courtroom. Accommodations will be made in the event counsel needs to speak privately with his/her client.

The respondent or counsel for the respondent shall be responsible for scheduling and making all arrangements at the correctional facility and for making sure that the video imaging system at the facility is compatible with the Court's system. The respondent shall arrange a test of the connection 15 minutes prior to the scheduled hearing.

Any costs incurred at the facility are the responsibility of the respondent and must be prepaid.

Rule 75.1(J) Process: Service Refused; Service Unclaimed

The Court within its discretion and upon such terms as are just will reissue any process issued via certified mailed that has been returned by the U. S. Postal Service and marked "refused" or "unclaimed" by regular mail without instruction from the attorney of record, or, if there is no attorney of record, the party at whose instance process was issued. The fact and method of notification shall be entered on the Court's appearance docket.