

COMMON PLEAS COURT OF MAHONING COUNTY OHIO

PROBATE DIVISION

JUDGE ROBERT N. RUSU, JR.

LOCAL RULES OF COURT

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INTRODUCTION

Pursuant to Rule 5 of the Rules of Superintendence for the Courts of Ohio, the Mahoning County Probate Court adopts the following local rules of practice to facilitate the expeditious disposition of cases. These rules shall be read in conjunction with rules promulgated by the Supreme Court of Ohio and shall be consistent therewith. As required by Rule 75 of the Rules of Superintendence for the Courts of Ohio, these local rules are numbered to correspond with the numbering of the Rules of Superintendence they are intended to supplement. The Court has determined that certain Rules of Superintendence do not require any supplementation and their omission herein is by design. The Court reserves the right to revise and amend these local rules as required pursuant to Rule 5.

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SUPERINTENDENCE RULE 8
COURT APPOINTMENTS

Loc. R. 8.1 Court Appointments

Persons appointed by the Court to serve as fiduciaries, appraisers, attorneys, masters, investigators, guardians ad litem, trustees for suit or in any other capacities, shall be selected from lists maintained by the Court. Appointments shall be made taking into consideration the qualifications, skills and expertise of the appointee and the type and complexity of the case. Any individual interested in serving in any of the aforementioned capacities shall file their resume with the Court for its consideration.

Loc. R. 8.2 Compensation

Persons appointed herein shall receive reasonable compensation pursuant to the Ohio Revised Code, the local rules of Court pertaining to fees, including any fee schedule established by the Court, and Rule 1.5 of the Ohio Rules of Professional Conduct.

Loc. R. 8.3 Periodic Review

The Court shall review this appointment procedure periodically to ensure the equitable distribution of appointments among persons on each list maintained by the Court.

SUPERINTENDENCE RULE 9
SECURITY PLAN

Local R. 9.1 Security Plan

The Court has adopted a court security policy and procedures plan addressing the provisions of the Ohio Court Security Standards adopted by the Supreme Court of Ohio and shall review the same from time to time.

Local R. 9.2 Confidentiality

Any information contained in the plan and any information resulting from a court security review conducted by a local court or the Supreme Court shall not be a public record.

SUPERINTENDENCE RULE 11
RECORDING OF PROCEEDINGS

Loc. R. 11.1 Recording of Proceedings

The Court shall make an audio recording of proceedings before the Court that shall serve as the record of the Court, unless the Court authorizes the stenographic transcription of the proceedings instead or unless said recording or stenographic transcription is waived by all interested parties present at the proceeding. Parties or other interested persons who desire to have the recording of the proceeding transcribed shall make a written request with the Court. The party requesting the transcript of the audio proceeding shall, upon making the request, provide a nonrefundable deposit of \$25.00 to the Court for the cost and expenses of transferring the audio recording to a compact disc for transcription. If the party is requesting the disc to effectuate objections or an appeal, the Court shall thereupon deliver the compact disc to the Official Court Reporters of the Mahoning County Common Pleas Court, General Division for the transcription. The party requesting the transcript shall be solely responsible to pay the full cost of the transcript charged by the Official Court Reporters upon completion. A transcript that was transcribed by a stenographer other than the Official Court Reporters and offered to record shall be subject to Court approval.

Loc. R. 11.2 Stenographic Transcription

Parties who desire to have a contemporaneous stenographic record of the proceedings must make their own arrangements at least 24 hours prior to the scheduled hearing, for a court reporter to appear at the hearing. The requesting party shall pay the costs associated with the stenographic record unless otherwise ordered by the Court. A transcript filed with the Court shall supersede the audio recording as the official record of the Court.

Loc. R. 11.3 Use of Contents of Recordings

An interested party shall not be allowed 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.

Loc. R. 11.4 Hearing by Audio/Telephone/Video Conferencing

In the judge's discretion and upon Motion any hearing may be conducted using audio, telephone, or video conferencing.

Attendance by audio/telephone/video conference, if authorized by the probate court, shall comply with local rules of court.

In addition to other procedures that may be available, the testimony of a witness that is located outside of the county in which the probate court is located may be offered by deposition or other means allowable in the probate court. The probate court on its own motion may order that the testimony of a witness be taken in another county and may prescribe the manner in which and the terms upon which it is to be taken. The probate court may permit a witness located in another county to be deposed or to testify by telephone, audio conference, video conference, or other electronic means.

Provision shall be made to preserve the confidentiality of attorney-client communications and privilege in accordance with Ohio law.

A record of any proceeding conducted by video conference shall be made in the same manner as customarily recorded by the probate court.

Documentary evidence transmitted from another county to the probate court by technological means that does not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

All exhibits shall be electronically transmitted to the probate court prior to the hearing. Any party may ask the probate court to have a document marked as an exhibit during the hearing for good cause shown within the probate court's discretion. If the party offering the exhibit is in a remote location, he or she may request a recess to allow the attorney to scan and email the exhibit to the probate court. The probate court will print and mark the proposed exhibit.

Any video-conferencing system utilized under this rule must conform to the following minimum requirements:

1. All participants must be able to see, hear, and communicate with each other simultaneously;
2. All participants must be able to see, hear, and otherwise observe any physical evidence or exhibits presented during the proceeding, either by video, facsimile, or other method;
3. Video quality must be adequate to allow participants to observe each other's demeanor and nonverbal communications.

SUPERINTENDENCE RULE 26
COURT RECORDS MANAGEMENT AND RETENTION

Loc. R. 26.1 Court Records Management and Retention

The Court maintains a Schedule of Records Retention and Disposition pursuant to Rule 26 *et seq* of the Rules of Superintendence for the Courts of Ohio.

Loc. R. 26.2 Exhibits

All exhibits offered for admission during a proceeding shall be properly labeled by party name and item identification. If the proceeding is audio recorded, the exhibits shall be filed in the Court case file. If the proceeding is recorded by a stenographer, custody of the exhibits offered for admission shall be given to the custody of the stenographer unless otherwise ordered by the Court. Upon agreement of the parties and approval of the Court, copies of the exhibits may be substituted for the originals.

SUPERINTENDENCE RULE 34
MARRIAGE CEREMONIES

Local Rule 34.1 Marriage Ceremonies

The Court will perform marriage ceremonies during normal business hours on Wednesday afternoon by appointment at the convenience of the Court. A fee of \$50.00 shall be paid, in advance, for this service and said fee will be placed into the general fund per O.R.C. § 2101.27 (C).

SUPERINTENDENCE RULE 45
COURT RECORDS, PUBLIC ACCESS

Local Rule 45.1 Court Records – Public Access

When submitting a case document to the Court or filing a case document with the Clerk of Court, a party to a Probate action or proceeding shall omit personal identifiers from the document. “Personal identifiers” means social security numbers, except for the last four digits; financial account numbers, including but not limited to debit card, charge card, and credit card numbers; and employer and employee identification numbers. (Rule 44 (H) of the Ohio Rules of Superintendence). When personal identifiers are omitted from a case document, the party shall submit or file the omitted information on the Court’s Local Form 45. The responsibility for omitting personal identifiers from a case document submitted to the Court or filed with the Clerk

of Court shall rest solely with the party. The Court or Clerk is not required to review the case document to confirm that the party has omitted personal identifiers and shall not refuse to accept or file the document on that basis. The personal identifiers shall not be disclosed as public records as provided by law.

SUPERINTENDENCE RULE 51
STANDARD PROBATE FORMS

Local R. 51 Standard Probate Forms

Standard Probate forms as promulgated by the Rules of Superintendence for the Courts of Ohio and by the Mahoning County Probate Court are available on the Court website at probate.mahoningcountyoh.gov

SUPERINTENDENCE RULE 52
SPECIFICATIONS FOR PRINTING PROBATE FORMS

Local R. 52.1 Computer Forms

Computer generated forms must comply with the specifications and format outlined by the Rules of Superintendence of the Courts of Ohio. Forms may deviate from the Standard Forms of Local Forms if so required by the particular nature of the case.

Local R. 52.2 Specifications

The font size for the body of all forms filed with the Court cannot be less than ten (10) point nor greater than twelve (12) point. In the event a form or pleading filed with the Court has a reverse side, a space for the case number shall be provided at the top right hand corner on the reverse side. Any subsequent page, after the first page of any form or pleading, shall contain a space for the case number at the top right hand corner of the subsequent page or pages. All exhibits and attachments filed with the Court shall have the case number designated thereon.

SUPERINTENDENCE RULE 53
HOURS OF THE COURT

Local R. 53 Hours of the Court

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

SUPERINTENDENCE RULE 55
EXAMINATION OF PROBATE RECORDS

Local Rule 55.1 Removal of Records

Records shall not be removed from the Court except when approved by the Judge or a Magistrate as evidenced by a removal card. No person may withdraw more than three (3) files at a time. Only attorneys and recognized title examiners are permitted to remove files from the Court.

Local Rule 55.2 Photocopies

Copies of records may be obtained at the cost of Ten cents (\$.10) per page. Copying of records that are confidential by law is strictly prohibited. Inspection of confidential files must be authorized by prior court order.

SUPERINTENDENCE RULE 57
FILINGS AND JUDGMENT ENTRIES

Local Rule 57.1 Electronic Filings

Pursuant to Civil Rule 5, the Court, in its discretion, may allow facsimile and electronic filings during regular business hours of the Court as set forth in Local Rule 53. Any documents received after regular business hours shall be deemed filed the following business day. All pleadings filed electronically (i.e. fax or email) are subject to the following:

- (A) A document filed by facsimile or electronically shall be accepted as the effective original 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 accomplished by a cover page that states all of the following information:
 - a. The date of transmission;
 - b. The name telephone number, and facsimile number of the person transmitting the document;
 - c. The Case Number and caption of the case in which the document is to be filed;
 - d. The title of the document to be filed; and
 - e. The number of pages being transmitted.

- (C) Any signature on documents transmitted by facsimile or electronically 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 or electronically during regular business hours shall be the time and date the document was received by the probate court's facsimile machine or court computer. Any documents received after regular business hours shall be deemed filed the following business day. Technological difficulties will not excuse late filings.
- (E) Any document filed by facsimile or electronically that requires a filing fee may be rejected unless the filer/sender has complied with the mechanism established by the Court for the payment of filing fees.
- (F) The dedicated fax number for the Mahoning County Probate Court to accept facsimile pleadings is (330) 740-2325 and the dedicated email address for the Court to accept emailed pleadings is mcprobate@mahoningcountyoh.gov. Filings faxed to any other number or emailed **to a specific court staff member** 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.
- (H) The following pleadings will not be accepted electronically by the Court:
- a. Initial Estate pleadings with a *Last Will and Testament* including Estates with *Codicil(s)*.
- (I) A *Judgment Entry* or decision issued by the Judge or Magistrate may be signed manually or with an electronic signature. Electronic transmission of a document with an electronic signature by the Judge or Magistrate sent in compliance with the procedures adopted by this Court shall be accepted as a filing of the document for all purposes of the *Ohio Rules of Civil Procedure*, the *Ohio Rules of Superintendence*, and the *Local Rules* of this Court.

Local Rule 57.2 Street Address

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. Upon satisfactory proof that there is no known street address but only a post office box, the Court may permit the use of the post office box only.

Local Rule 57.3 Case Number

All filings, including exhibits and attachments, must have the case number on each page, including the reverse side of two-sided filings.

Local Rule 57.4 Signatures

All filings must contain original signatures except when the Court authorized in Local Rule 57.1. The fiduciary and his or her counsel, if any, shall sign all documents filed with the Court, including but not limited to, applications for counsel fees. In the event there are multiple fiduciaries, the signature of each fiduciary is required on all documents. Counsel may not sign on behalf of the fiduciary. Notwithstanding the foregoing, Counsel may execute and file on behalf of the fiduciary a report of Distribution of Wrongful Death Proceeds with copies of the checks evidencing distribution attached thereto.

Local Rule 57.5 Return Copies

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

Local Rule 57.6 Computer Disks

In addition to filing original documents, the Court may direct that proposed entries, briefs, memoranda, jury instructions or other documents be submitted on a computer disk formatted in a manner which may be utilized by the Court's word processing system.

Local Rule 57.7 Certificate of Notice of Judgment Entry

Any proposed judgment entry submitted which is the subject to Civil Rule 58(B) and Civil Rule 73(I) shall contain a certificate of service including the names and addresses of all parties and other interests persons required to be served.

Local Rule 57.8 Length of Briefs

Briefs shall not exceed fifteen (15) pages in length, exclusive of any supporting documents. Briefs exceeding fifteen (15) pages shall not be accepted without prior leave of Court.

Local Rule 57.9 Social Security Numbers

Social security numbers shall not be filed in any filing that is available for public inspection. Applicants for guardians will provide their social security number and the social security number for the proposed Ward on a form that will not be disclosed to the public. Social security numbers disclosed on marriage license applications and estate tax returns are sequestered as confidential, non-public records.

Local Rule 57.10 Notice of Litigation

Upon the filing of any legal action that affects an estate, trust or guardianship, the fiduciary shall file a Litigation Status Report, Local Form 1.7, with the Probate Court identifying the court or tribunal in which the litigation was filed, the names and addresses of the parties and their counsel, the case number and a brief description of the nature of the litigation and status of the same.

SUPERINTENDENCE RULE 58 **DEPOSIT FOR COURT COSTS**

Local 58.1 Deposits for Court Costs

Deposits for Court costs for all proceedings shall be determined by the Court and the costs schedule shall be made available to the public.

The balance of the costs due shall be paid at the time an accounting or waiver of accounting or a final judgment entry is filed. The Court reserves the right to require additional deposits during the course of a proceeding as the Court deems necessary. The costs shall be paid by cash, money orders, cashier's checks or official bank checks. The Court will accept checks from an attorney, title company or trust company.

Local Rule 58.2 Costs of Publication

The *Daily Legal News* is designated as the law journal in which the calendar of the Court, including such proceedings and notices as required by law or the Court is published. These publication charges shall be charged as costs.

Local Rule 58.3 Deposit for Jury Trial

Upon the filing of a demand for a jury trial, the party making the demand shall file an advance deposit of \$500 or such other amount as the Court may require.

SUPERINTENDENCE RULE 61 **APPRAISERS**

Local Rule 61.1 Appraisals

The fiduciary may name an appraiser or request the Court to name an appraiser to appraise any asset of an estate. Any asset, the value of which is readily ascertainable, is not required to be appraised but shall be included in the Inventory. It is presumed that the County Auditor's valuation of a parcel of real estate, whether improved or unimproved, is a readily ascertainable value and may be used in lieu of a formal appraisal. A copy of the valuation shall be attached to the Inventory. Notwithstanding the foregoing, the Court may, at its discretion, order a formal appraisal of the subject premises.

Local Rule 61.2 Appraisers

An appraiser of real estate must be experienced in appraising Mahoning County property and shall not be a member of the decedent's or ward's family and shall not be a family member, business associate, client or agent of the fiduciary or attorney of record.

Local Rule 61.3 Personal Property Appraisers

An appraiser of personal property must be experienced in appraising the type of personal property being appraised.

Local Rule 61.4 Fees for Appraisals

Appraisers' fees shall be agreed upon between the fiduciary of the estate and the appraiser. Appraisers may file a motion with the Court requesting fees for services rendered.

SUPERINTENDENCE RULE 63
APPLICATION TO SELL PERSONAL PROPERTY

Local Rule 63 Affidavit and Report

The affidavit and report required by R.C. 2109.45 and R.C. 2113.42 shall include a statement that the personal property was not purchased by the fiduciary, a family member, business associate, client or agent of the fiduciary.

SUPERINTENDENCE RULE 64
ACCOUNTS

Local Rule 64.1 Vouchers

For estates wherein the date of death occurs after April 8, 2004, vouchers or receipts evidencing disbursements during the administration of a decedent's estate must be maintained by the fiduciary but shall not be required to be filed with the Court with any accounting. The Court may require vouchers or receipts to be filed with any accounting at its discretion.

Local Rule 64.2 Standard Forms

The standard accounting forms prescribed by the Ohio Supreme Court shall be used when preparing and filing accounts for estates, guardianships, testamentary trusts and wrongful death trusts. Notwithstanding the foregoing, corporate fiduciaries may use their computer generated transaction statements evidencing the administration of the estate, guardianship or trust during the subject accounting period in lieu thereof and shall not be required to transpose the entries to the Ohio Supreme Court standard accounting forms.

Local Rule 64.3 Partial Account(s)

Any *Partial Account* filed for an Estate or Guardianship must also be accompanied by proof of the existence of the intangible personal property assets remaining in the hands of the Fiduciary. Examples of proof of intangible personal property include copies of bank/investment statements, stock certificates, etc.

SUPERINTENDENCE RULE 65
LAND SALES

Local Rule 65.1 Land Sales

A Preliminary Judicial Report or Title Search must be filed with every Complaint to Sell Real Estate at the time the Complaint is filed with the Court.

Local Rule 65.2 Guardian ad Litem

A Guardian ad Litem is only required where there is a conflict between the interests of the Guardian and the Ward. Otherwise, the Guardian may proceed to sell the Ward's property without the appointment of a Guardian ad Litem.

Local Rule 65.3 Appraisals in all Land Sales

The Fiduciary shall utilize the services of a Certified Real Estate Appraiser as defined by Ohio Administrative Code 1301:11-3-01. The Court will not accept an appraisal performed by a licensed real estate agent unless first approved by the Court and then only under special circumstances as determined by the Court on a case by case basis.

SUPERINTENDENCE RULE 66
GUARDIANSHIPS

Local Rule 66 Series Numbering

Due to the manner which the Supreme Court of Ohio has numbered Sup. R. 66.01 through 66.09 by using 4 digits, all of this Court's local rules pertaining to Guardianships shall be similarly numbered.

Local Rule 66.01 Definitions

The terms defined in Sup. R. 66.01 have the same meaning when used in Local Rule 66.

Local Rule 66.02 Applications of Rules

These Local Guardianship Rules apply to all guardianship administered through this Court, unless otherwise indicated in the particular Local Rule, or unless expressly waived by Court Order.

Local Rule 66.03 (A) Emergency Guardianships

This Court has adopted the following process for emergency guardianships.

1. Every application for the appointment of an *ex parte* emergency guardianship shall be accompanied by:
 - a. a “*Statement of Expert Evaluation*” (SPF 17.1) (as supplemented for emergency guardianships with SPF 17.1A) **or** actual testimony of a physician via tele/video-conference or in person with the Court;
 - b. a completed “*Next of Kin form*” (SPF 15.0) including full name and address of each next of kin;
 - c. a narrative statement signed by the applicant setting forth information describing the imminent risk of significant injury to the person or property of the minor or incompetent that justifies an *ex parte* emergency appointment and the action required to prevent such injury;
 - d. a completed “*Application for Appointment of Guardian*” (SPF 17.0) with the word “Emergency” written across the top of the pleading; and
 - e. photo identification of the applicant. In addition, the applicant shall appear at the Court when filing the application for emergency guardianship.

The applicant shall attend the 72-hour hearing to determine whether to extend the emergency guardianship for up to 30 additional days. The applicant is expected to file an “*Application for Appointment of Guardian*” (SPF 16.0 or SPF 17.0, as is applicable) within seven days of the completion of a hearing extending the guardianship beyond the initial 72 hour appointment, if it is expected the need for continued guardianship will exist longer than the emergency guardianship.

Local Rule 66.03 (B) Guardian Comments and Complaints

This local rule is applicable to all guardians appointed by the Court pursuant to O.R.C. § 2111.02. Comments and complaints (hereinafter collectively referred to as “complaints”) received regarding the performance of any guardians and the resulting documents and correspondence are considered to be case documents and accessible to the public, unless otherwise excluded pursuant to Superintendence Rule 44 (C)(2). The Court will note actions with respect to the complaint in the case docket. The Court will communicate complaints about a guardian’s performance to the guardian and/or the guardian’s counsel expeditiously and pursuant to this local rule.

The Court will not accept or act upon an oral or telephonic complaint against a guardian, other than to provide the address to which to hand deliver, fax, e-mail, or mail the written complaint to the following address:

Mahoning County Probate Court
120 Market Street
Youngstown, Ohio, 44503.
Phone: 330-740-2310
Facsimile: 330-740-2325
Email: mcprobate@mahoningcountyoh.gov

The Court will not accept an anonymous complaint. When the Court receives the written complaint regarding a guardian's performance, it will then date-stamp the complaint. Complaints received electronically on days the Court is closed shall be deemed to have been received on the next day the Court is open.

When a complaint is received at the Court by hand delivery or electronic means:

- (A) Within five (5) workdays of receipt of the complaint the Court shall send a letter to the complainant acknowledging the receipt of the complaint and providing a copy of this rule.
- (B) Within ten (10) workdays of receipt of the complaint, the Court shall perform an initial review of the complaint after a study of the guardianship file, and either:
 - (1) Send the complainant and Counsel a letter dismissing the complaint as unsubstantiated/unspecific/insufficient; or
 - (2) If the complaint appears to have validity, send a copy of the complaint to the Guardian and/or Guardian's Counsel and request a response to the complaint within fifteen (15) court days from the date of mailing. The forwarding letter shall advise the Guardian and/or Counsel that a failure to respond will result in a show cause hearing being set with the attendance of the Guardian required. A copy of the forwarding letter shall be provided to the complainant.
- (C) If the Complaint is found to have some validity pursuant to B(2) above, upon the expiration of the period for responsive reports from the Guardian, the Court within five (5) court days shall do one or more of the following:

- (1) Determine the complaint to have been resolved or unsubstantiated and advise the complainant, Guardian and/or Guardian's Counsel accordingly by letter; or
- (2) Refer the matter to mediation under the Court's Mediation Rule (Local Rule 78.10) with a copy of the referral order being sent to the complainant, the Guardian and/or Guardian's Counsel; or
- (3) Set a review conference or a show cause hearing with notice to the complainant, the Ward, the Guardian and/or Guardian's Counsel, and other interested parties; or
- (4) Appoint a Guardian ad Litem to represent the best interest of the Ward; or
- (5) Refer the matter to the Probate Judge for appointment of a Special Master Commissioner to investigate the issues and to report with findings and recommendations pursuant to O.R.C. § 2101.06 with notice to all interested parties. When the commissioner's report is filed, the Court will set for hearing with notice to the Ward, the Ward's Guardian ad Litem, if any, the Guardian and/or the Guardian's Counsel and the complainant.

Except when administratively dismissing a complaint or acting in an emergency, the Court shall not act without a hearing. The Court shall issue findings and conclusions with respect to any hearing held on the complaint. The Court's journalization relating to the Court's Decision will close the complaint. The Court's actions may include dismissal, directives for remedial action, establishing periodic review dates, allocating costs and fees, referral to law enforcement for investigation, sanctions, removal, and any other actions permitted by law.

When the Ward is a Veteran and the Court appointed the Guardian under Revised Code Chapter 5905, notice of the complaint, reports, hearings and actions shall be given to the Administrator of Veterans Affairs of the United States pursuant to Revised Code § 5909.03.

The Court shall maintain a record regarding the nature and disposition of any complaints filed under this rule in the Miscellaneous Court Docket.

Local Rule 66.04 (A) Guardian Background Checks

All Applicants who are applying to be appointed guardian of the person and/or estate of a prospective Ward are required to submit to a criminal background check unless so waived by the Court. Each Applicant shall execute a Consent to Criminal Background Check and shall authorize the Mahoning County Sheriff's Department to perform a criminal background check

on the Applicant using the WEBCHECK system, to have the results sent directly to the Mahoning County Probate Court to become a permanent part of the Court's file and public record and to have the results sent by the Mahoning County Probate Court to the Applicant, counsel for the Applicant and to the Court Investigator. The costs for the background check shall be paid by the Applicant directly to the Mahoning County Sheriff and shall be considered expenses of administration that are reimbursable.

In place of a criminal background check, an Ohio attorney asking to be appointed Guardian, may obtain and submit to the Court a Certificate in Good Standing, issued by the Supreme Court of Ohio in lieu of the Criminal Background Check.

Local Rule 66.04(B) Guardian with Ten or More Adult Wards

On January 31 of each year, a Guardian with ten (10) or more Wards appointed through this Probate Court shall register with the Court, on the local "*Multi-Guardian Annual Registration Form*" (Local Form 5.3), or on a standard form adopted for that purpose by the Ohio Supreme Court. The registration shall include a listing of the names of the Wards that the specific Guardian is responsible for, court case number for each guardianship, addresses of Wards, name of facility where each Ward resides, the Guardian's address work phone number, cell phone number, home phone number, email address, and the name of the Guardian's supervisor with their contact information (if applicable). The Guardian in all cases shall advise the Court of any change in the Guardian's name, address, telephone number and electronic mail address within ten (10) days of the change occurring.

If the Guardian will be seeking compensation from the Guardianship or from the Court, the Guardian shall attach to their Multi-Guardian Annual Registration their fee schedule, if any, which shall differentiate Guardianship services fees from legal fees or other direct services.

A Guardian with ten (10) or more Wards shall include with the annual "*Guardians Report*" form (SPF 17.7), a statement indicating whether the Guardian is aware of any circumstances that may disqualify the Guardian from continuing to serve as a Guardian.

Local Rule 66.05 Guardian Fundamentals Training Requirement

Every Guardian for an adult, who is not a natural parent of the Ward, must meet the Guardianship Fundamentals Training Requirements under Sup. R. 66.06 by completing prior to appointment or within six (6) months thereafter, a six (6) hour Guardian Fundamentals Course provided by the Supreme Court of Ohio, or another entity approved by this Court. Those failing to meet the requirement shall be subject to citation for being in Contempt of Court and subject to sanctions including, but not limited to imposition of a fine, denial of compensation, and removal.

The Guardian is responsible for providing to the Court in a timely manner documentation that establishes compliance with the Guardian Fundamentals Training Requirement.

Local Rule 66.06 Guardian Continuing Education

After completed the Guardian Fundamentals Course, every Guardian of an adult, who are not the natural parents of the Ward, shall annually complete a three (3) hour Guardian Continuing Education Course provided by the Supreme Court of Ohio, or another entity with approval of this Court.

If the Guardian fails to comply with the Guardian Continuing Education Requirement, the Guardian shall not be eligible for further appointment until the requirement is met. The Guardian also may be subject to sanctions and/or removal.

By December 31 or the first calendar year after completing the Guardian Fundamentals Court, or its waiver by Court Order, the Guardian is responsible for providing to this Court documentation demonstrating compliance with this Guardian Continuing Education Requirement, including the title, date, location and provider of the education, or a Certificate of Completion containing such information.

Local Rule 66.07 General Responsibilities of the Guardian to the Court

The person seeking to be appointed as a Guardian is expected to have met with the proposed Ward at least once prior to appearing before the Court for the hearing on the Application, unless the Court has waived the pre-appointment meeting for good cause.

If the Guardian becomes aware of allegations of abuse, neglect or exploitation of the Ward, the Guardian shall immediately report the same to the appropriate law enforcement authorities and this Court in writing.

A Guardian appointed by this Court shall inform the Court as to any change of address for either the Guardian or the Ward. The notification must be made within ten (10) days of the address change. The "*Notice of Change of Address*" form (Local Form 5.2) may be used for that purpose, but it is not required. If the Ward's residence is changed the reason for the change should be indicated. Failure to notify the Court, under this rule, may result in the Guardian being removed and/or the Guardian's compensation being reduced or denied.

The Guardian shall not move the Ward from Mahoning County, Ohio or into a more restrictive setting without prior Court approval, unless a delay in obtaining authorization for the change of residence or setting would affect the health and safety of the Ward.

While a Guardian is generally required to seek **prior** approval of this Court before filing a suit for the Ward, prior approval shall not be required when the suit is being filed in this Court.

The Guardian shall avoid conflicts of interest with the Ward and endeavor to avoid the appearance of impropriety (perceived self-serving, self-dealing or perceived actions adverse to best interests decisions) when dealing with the Ward's assets and needs. A potential conflict for the Guardian may arise if the Guardian's immediate family (parent, spouse, or child) is being employed or contracted by the Guardian. The Guardian shall disclose all conflicts to the Court in a clear and unequivocal manner. Doing so facilitates a determination whether the conflict can be mitigated or eliminated through the use of a Guardian ad Litem, a limitation of the powers of the Guardian, or other actions.

The Guardian shall obey all orders of this Court and shall perform all Guardianship duties in accordance with the State and Federal Laws and Rules and this Court's Local Rules, as all of them may be effective during the Guardianship.

Local Rule 66.08 General Responsibilities of the Guardian to the Ward

The Guardian shall treat the Ward with respect and dignity.

The Guardian shall meet with the Ward at least quarterly throughout the year, and preferably more to promote the best interests of the Ward.

Unless a Guardian is the natural parent of the Ward, the Guardian shall not deliver the Ward direct services, as defined in Sup. R. 66.01(B), without approval of this Court.

The Guardian shall deposit Ward's *Last Will and Testament* (Local Form 5.4) along with other important legal documents such as "Health Care Directives", "Pre-Planned Funeral Arrangements", etc. with the Court for safekeeping pursuant to Local Rule 66.10, if the Will and other important papers are in the possession of the Guardian. If the Ward's Will or other important papers is not in the possession of the Guardian, upon being advised of the location, the Court shall order the holder of the Will or other important papers to deposit the Will with the Court for safekeeping.

Local Rule 66.09 Guardianship of Minors

When proceedings for the appointment of a Guardian of a minor are presented to this Court, the following shall apply:

- (A) A certified copy of the minor’s birth certificate must be displayed to the Court with the “*Application for Appointment of Guardian*” along with “*Custody Affidavit*” (SPF 16.1). A copy will be made by the Court and the original will be returned to the submitter.
- (B) The Court will not establish a Guardianship solely for the purpose of school enrollment.
- (C) The Court will not establish any Guardianship over the person of a minor where another Court has jurisdiction over custody of the minor.
- (D) When the minor has not been in Ohio for six (6) months, the Court will not accept for filing an Application for Guardianship unless it is alleged that the minor has been (1) abandoned (no contact) by the parents for more than ninety (90) days; (2) has a medical emergency; or (3) the minor’s “home state” has declined jurisdiction. (See Ohio’s Uniform Child Custody Jurisdiction Enforcement Act – Chapter 3127).

Local Rule 66.10 Inventory, Fund Release, Expenditures, and Identification of Legal Documents and Guardian’s Account

Within three (3) months of appointment, a Guardian of the Estate shall file an Inventory of the Ward’s assets and income. If the assets include real estate, a legal description of the Ward’s real estate interest should accompany the Inventory along with an appraisal of the real estate or a County Auditor value sheet showing the value of the Ward’s real estate.

Funds in the name of the Ward shall not be released to the Guardian without the approval of an “*Application to Release Funds*” (SPF 15.6) or other specific Court Order. The expenditure of funds by a Guardian shall not be approved until a “*Guardian’s Inventory*” (SPF 15.5) has been filed and an “*Application to Expend Funds*” (SPF 15.7) has been approved.

Every Guardian shall file a “*Guardian’s Account*” (SPF 15.8) on the first anniversary of the date of the issuance of the Letters of Guardianship and annually thereafter.

Local Rule 66.11 Guardians Report

Annually, the Guardian of the person of an adult incompetent shall file the “*Guardians Report*” (SPF 17.7). Unless otherwise ordered by the Court each Guardians Report for an incompetent shall be accompanied by a “*Statement of Expert Evaluation*” (SPF 17.1). If a physician or clinical psychologist states on a “*Statement of Expert Evaluation*”, that it is their opinion that to a reasonable degree of medical or psychological certainty that the Ward’s mental capacity will not improve, the Court may dispense with the filing of subsequent Statements of Expert Evaluation with the Guardians Report.

Pursuant to Sup. R. 66.08(G) the Guardian of the person for an adult who is not related to the Ward by consanguinity (a blood relationship) or affinity (kinship by marriage) shall include with the annual Guardians Report an addendum stating that the Guardian’s goals and plans for meeting the personal needs of the Ward. The Court may request that the Guardian of the Estate of an adult incompetent submit a report identifying the Guardian’s goals and plans for financially meeting the Ward’s needs.

Local Rule 66.12 Deposit of Will by Guardian

The Guardian must deposit with the Court for safekeeping an instrument known to the Guardian and executed by the Ward that would constitute a “Will” under O.R.C. § 2107.01. The Guardian will comply with Local Rule 66.08 when depositing the instrument. The Clerk shall issue to the Guardian a “*Certificate of Deposit of Will*” (Local Form 5.4) as a receipt for the deposited Will.

Local Rule 66.13 Powers of Attorney by Guardian Prohibited

The Court, through this Local Rule, exercises its discretion under O.R.C. § 2111.50(A)(2)(c) and hereby prohibits a Guardian appointed by the Court from executing a Power of Attorney or any other document which purports to appoint an agent to execute any of the duties or responsibilities imposed upon the Guardian by law, rule, or order of the Court, unless otherwise approved by a specific order of the Court.

Local Rule 66.14 Terminations

Except for the termination of a Guardianship of a minor attaining the age of majority or upon the death of the Ward, a termination of a Guardianship shall require notice to all persons designated in O.R.C. § 2111.04 and to any other individuals who received actual notice of the original appointment of the Guardian. It is the responsibility of the Applicant for termination to perfect service pursuant to Civil Rule 73 when a termination is requested. A Certificate of

Service with supporting documentation satisfactory to the Court must be filed prior to the consideration of the Application.

Local Rule 66.15 Indigent Wards

The Applicant or the Guardian must file with the Court an Affidavit of Indigency (Loc. F 5.1), if the waiver of court costs is being requested or payment of compensation from the Indigent Guardianship Fund is being requested along with a completed “*Statement of Expert Evaluation.*”

For purposes of the indigent guardianship fund, an adult ward or alleged incompetent will be rebuttably presumed to be indigent if his or her personal property is less than One Thousand Five Hundred and No/100 Dollars (\$1500.00) and his or her annual income is less than the U.S. Department of Health and Human Services poverty guidelines.

Local Rule 66.16 Veterans’ Guardianships

Veterans’ Guardianships are governed by R.C. Chap. 5905 and to the extent that there are special rules established therein for veterans’ Guardianship, those rules shall apply. In every other respect, the general Guardianship laws and rules shall apply. Veterans’ Guardian compensation fee shall be figured pursuant to O.R.C. § 5905.13.

Local Rule 66.17 Statement of Expert Evaluation

Where a physician or clinical psychologist states on a Statement of Expert Evaluation or the Court determines that to a reasonable degree of medical certainty the Ward’s mental incompetence will not improve, the Court may dispense with the filing of subsequent Statements of Expert Evaluation when filing the subsequent guardian’s reports.

SUPERINTENDENCE RULE 67
ESTATES OF MINORS OF NOT MORE THAN TWENTY-FIVE
THOUSAND DOLLARS

Local Rule 67 Release of Funds at Age of Majority

Upon the minor attaining the age of 18 years, funds shall be released to the former minor by the institution holding the funds unless exigent circumstances brought to the Court’s attention require otherwise. The former minor shall present satisfactory proof of identity and date of birth to the Court which shall issue and deliver to the former minor a Court form authorizing the institution to release the funds to the minor.

SUPERINTENDENCE RULE 68
SETTLEMENT OF INJURY CLAIMS OF MINORS

Local Rule 68.1 Structured Settlements

In the event that parties involved in claims for injuries to minors or incompetents desire to enter into a structured settlement, defined as a settlement wherein payments are made on a periodic basis, the following rules shall apply:

- (A) The application shall include a signed statement from one of the following independent professionals, specifying the present value of the settlement, and the method of calculation of that value: an actuary, certified public accountant, certified financial planner, chartered life underwriter, chartered financial consultant, or an equivalent professional.
- (B) If the settlement is to be funded by an annuity, the application shall include a signed statement by the annuity carrier or the broker procuring the policy stating:
 - (1) The annuity carrier is licensed to write annuities in Ohio.
 - (2) The annuity carrier's ratings from at least two of the following organizations, which meet the following criteria:
 - a. A.M. Best Company: A++, A+, or A;
 - b. Fitch Ratings: AAA, AA+, or AA;
 - c. Moody's Investors Service: Aaa, Aa1, or Aa2;
 - d. Standard & Poor's Corporation: AAA, AA+, or AA;
 - e. Weiss Research Inc: A+ or A.
- (C) In addition to the requirements of Paragraph (B) above, an annuity carrier must meet any other requirement the Court considers reasonably necessary to assure that funding to satisfy periodic payment settlements will be provided and maintained to effectuate the settlement.

Local Rule 68.2 Release of Funds

Upon the minor attaining the age of 18 years, funds may be released to the former minor by the institution holding the funds unless exigent circumstances brought to the Court's attention require otherwise. The former minor shall present satisfactory proof of identity and date of birth

to the Court which shall issue and deliver to the former minor a Court form authorizing the institution to release the funds to the minor.

SUPERINTENDENCE RULE 71
COUNSEL FEES

Local Rule 71.1 Counsel Fees for Decedent's Estate

An application for allowance of counsel fees for legal services rendered as attorney for the fiduciary of a decedent's estate may be made by (1) an itemization of the time expended by date, and a suggested hourly rate; or (2) by attachment of the fee computation schedule (Local Form M.C. Form 4.2) to an application for fees. The factors set forth in Rule 1.5 of the Rules of Professional Conduct shall be considered. The fee computation schedule is merely a guide and will be considered by the Court. Based upon the Court's review of the computation schedule, the Court may approve the fee or order an itemization of time, pursuant to (1) above on a case by case basis. The computation schedule may be used in full estates or in a release from administration, but not in a summary release from administration.

No fees shall be taken until approved by application (signed by counsel and the fiduciary) and judgment entry and until a final account has been prepared for filing, unless otherwise approved by the Court. [Sup. R. 71(B)]

Any application for attorney fees will be ruled upon by the Court without a hearing, unless a hearing is specifically requested by Counsel in the application, or in the event that the Court chooses to set the matter for hearing.

Extra-ordinary fees - an Attorney who performs extra ordinary legal work for an Estate, including but not limited to, an insolvency, a land sale or defending the Estate in another matter, may apply for those extra ordinary legal services in addition to regular legal fees allowed pursuant to the computation fee schedule. The attorney must provide the Court with an itemized time sheet which list the extra ordinary work performed, the amount of time for each item, the dates when the work was performed and a suggested hourly rate for the extra ordinary work.

Local Rule 71.2 Application for Fees for Non-Estate Cases

An application for allowance of counsel fees for legal services rendered in non-estate matters such as Guardianship, Trust, Adoption or any other matter before the Court, shall be based upon an itemization of time expended by date and a suggested hourly rate.

No fees shall be taken until approved by application (signed by counsel and the fiduciary) and judgment entry.

Any application for attorney fees will be ruled upon by the Court without a hearing, unless a hearing is specifically requested by Counsel in the application, or in the event that the Court chooses to set the matter for hearing.

NOTE: An exception to the above applies when the Court approves a contingency fee agreement in a wrongful death proceeding, for example. (See Local Rule 71.5)

Local Rule 71.3 Paralegals

In all applications for fees, counsel shall include a separate itemization of services rendered by paralegals or other professionals who are not lawyers.

Local Rule 71.4 Counsel Serving as Fiduciary of Estate

In the event an attorney serves as fiduciary of an estate, the attorney shall receive the full fiduciary commission as determined in accordance with Revised Code Section 2113.35 and one-half (1/2) the permissible attorney fee pursuant to the Court's attorney fee computation schedule, unless the Court determines that same fees are unreasonable or require adjustment.

Local Rule 71.5 Contingency Fee Agreement

Prior to a fiduciary entering into a contingent fee contract with an attorney for legal services, an application for authority to enter into the contract shall be filed with and approved by the Court. In the event a decedent entered into a contingency fee agreement prior to the death of the decedent, said agreement shall be filed with the Court and the terms of said agreement shall be binding upon the fiduciary of the estate unless the Court determines that the proposed fees are unreasonable.

SUPERINTENDENCE RULE 73 **GUARDIAN'S COMPENSATION**

Local Rule 73.1 Guardian's Compensation

Guardians shall be compensated for their services rendered annually pursuant to the computation schedule prescribed by the Court except for VA Guardianships which fee computation is covered by O.R.C. §5905.13. The Court may permit compensation to be paid on a periodic basis [such as quarterly or semi-annually] upon application by the Guardian.

When a Guardian is applying for compensation as Guardian of the person, the Guardian shall consider the factors set forth in Sup. R. 73 (B). The application for compensation should address each applicable factor (itemization of services, additional compensation, apportionment of aggregate compensation between Co-Guardians, the distinction between legal services and non-legal services and the hourly rates being charged for each).

Local Rule 73.2 Additional Compensation

The Guardian may request additional fees for extraordinary services rendered on behalf of the Ward by filing an Application that shall set forth an itemized statement of the services performed by the Guardian, the date of said services, the time involved in rendering said services, and the hourly rate being charged. In addition, legal services and non-legal services need to be distinguished on the Application for fees.

Local Rule 73.3 Corporate Fiduciaries

Corporate Fiduciaries which are exempt from bond pursuant to Revised Code § 1111.21, may be compensated in Guardianship Cases upon proper application to the Court accordance with their published fee schedule which shall be filed with the Court.

SUPERINTENDENCE RULE 74 **TRUSTEE'S COMPENSATION**

Local Rule 74.1 Trustee Compensation

Except where the instrument creating the trust makes provision for compensation, trustees subject to the Court's jurisdiction may, upon application and entry, be allowed compensation annually for ordinary service in connection with the administration of each separate trust in accordance with the compensation schedule prescribed by the Court. The Court may permit compensation to be paid on a periodic basis [such as quarterly or semi-annually] upon application by the Trustee.

Local Rule 74.2 Additional Compensation

The Trustee may request additional fees for extraordinary services by filing an Application that shall set forth an itemized statement of the services performed by the Trustee, the date of said services and the time involved in rendering said services.

Local Rule 74.3 Corporate Fiduciaries

Compensation for corporate fiduciaries which are exempt from bond pursuant to Revised Code Section 1111.21 may be compensated in accordance with their published fee schedule which shall be filed with the Court. Vested trust beneficiaries affected by the payment of fees shall be notified by the trustee of any changes in its corporate fee schedule.

SUPERINTENDENCE RULE 75 **INTERPRETERS**

Local Rule 75.1 Interpreters

(A) Deaf or Hard of Hearing Persons.

These Rules shall comply with the Americans with Disabilities Act (ADA) for people who are deaf or hard of hearing. The Court shall inquire of the person with a hearing disability the type of reasonable accommodation needed. If a request for an interpreter is not made, but the party or witness could benefit from the services of an interpreter, the Court shall advise the party they have a right to participate in and understand the proceedings and inquire as to the best way to communicate with them. In order to ensure equal access to justice for people who are deaf or hard of hearing, it is strongly recommended that the services of a certified interpreter be used by Counsel. The Interpreter must be qualified under Evidence Rule 604 and Title II of the ADA. Priority shall be given to those interpreters holding a Specialist Certificate: legal (SC:L) from the registry of interpreters for the deaf (RID). If an SC:L interpreter is not available other certifications may be appropriate.

(B) Foreign Language.

The Court shall presume the need for an interpreter when an attorney or *pro se* litigant indicates that a party or witness to the proceeding requests an interpreter because of English language deficiencies. If a request for an interpreter is not made, but it appears a party or witness has limited English proficiency, the Court will determine the need for an interpreter. Interpreters must be qualified under Evidence Rule 604. An impartial certified interpreter shall be used at all times. If a certified interpreter is not available, a candidate to serve as interpreter must have relevant training, specialized skills and knowledge, including familiarity with legal terminology, slang, idioms, and dialectical variations. Being bi-lingual does not qualify a person to interpret, unless the Court so permits.

(C) Prohibited Interpreters.

Family members, personal acquaintances, judges, attorneys and court personnel shall not function as interpreters.

SUPERINTENDENCE RULE 78
CASE MANAGEMENT

Local Rule 78.1 General Procedure

All cases must have a general file number before a civil action may be filed. A status conference and a pretrial conference shall be conducted in all civil actions unless otherwise ordered by the Court. Within thirty (30) days after the final answer day, the case shall be set by plaintiff's counsel for a status conference. Plaintiff's counsel shall give not less than fourteen (14) days notice of the status conference to all counsel of record and/or all parties not represented by counsel who have entered an appearance.

Local Rule 78.2 Estate Relieved from Administration

The Court may waive notice of publication of an application to relieve an estate from administration filed pursuant to Revised Code Section 2113.03 in its sole discretion.

Local Rule 78.3 Inventory

- (A) Decrease in Value of Inventory-in the event the fiduciary determines that an assets was incorrectly included in the original Inventory or the original Inventory included an incorrect valuation that results in a decrease in value of the original Inventory, 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.
- (B) Increase in Value of Inventory-in the event the fiduciary determines that the original Inventory included an incorrect valuation that results in an increase in valuation of the original Inventory, the fiduciary shall amend the Inventory, but a new hearing on the amended Inventory shall not be not required. The fiduciary or counsel shall notify the surviving spouse and beneficiaries of the estate of the change in the Inventory.
- (C) Newly Discovered Asset- 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 asset to the Court pursuant to Revised Code Section 2113.69.
- (D) Notice of Hearing on Inventory-the Court shall serve the Notice of Hearing on Inventory upon the surviving spouse and beneficiaries of the estate and any other interested party the Court or the fiduciary deems necessary.

Local Rule 78.4 Real Estate Trusts

If a testamentary trust is comprised only of real estate, accountings shall be waived by the Court. The trustee shall file a Status Report annually.

Local Rule 78.5 Wrongful Death and Survival Cases

(A) In the event an estate is opened to pursue a wrongful death or survival case, whether there are probate assets to administer or not, in addition to the standard forms to administer an estate, the applicant shall file the following documents at the opening stage of the Estate:

- 1) Litigation Status Report. Local Form 78.5(A).
- 2) Application to approve Contingency Fee Agreement with copy of agreement attached thereto pursuant to Local Rule 71.5.
- 3) Copy of Decedents obituary from newspaper or letter from funeral home indicating decedent's next of kin.

(B) Procedure for Counsel when a Presumed Wrongful Death Beneficiary (P.W.D.B.) survives the decedent, then subsequently passes away.

- 1) Open an Estate of the P.W.D.B. Have the Fiduciary of that Estate accept service and participate in discussions with family regarding distribution.
- 2) If for some reason an Estate has not been opened or there are no plans to open one – Counsel may file a *Motion to Bypass* the Estate of the P.W.D.B.
- 3) That *Motion* should include:
 - i. Date of death of P.W.D.B.
 - ii. Obituary of P.W.D.B.
 - iii. Statement that no Estate has been opened nor are there plans to open one.
 - iv. Statement whether the P.W.D.B. died with or without a *Will*.
 - v. If with a *Will*, a copy should be attached.
 - vi. If no *Will*, who the heirs are of the P.W.D.B.
 - vii. An *Affidavit* attached to the *Motion* signed by an affected family member that the facts as stated in the *Motion* are accurate.
- 4) If no Estate is opened for the P.W.D.B. and a *Motion to Bypass* the Estate of P.W.D.B. is not filed, the proceeds attributable to the P.W.D.B. will be paid to the

Estate of the P.W.D.B., c/o the *Mahoning County Auditor's Office, Division of Unclaimed Funds.*

- (C) If the estate is opened for the sole purpose of pursuing a wrongful death or survival case, the Court will waive bond provided a Motion to Waive Bond is filed and all next of kin sign a Consent to Waive Bond. An Inventory and accountings shall not be required if there are no probate assets to administer; however, the Fiduciary shall file the appropriate Motion with the Court. A Status Report shall be filed annually.
- (D) Counsel for the fiduciary may receive and deposit proceeds of settlements in their IOLTA account. Counsel shall file an application to distribute the wrongful death proceeds from their IOLTA account within thirty (30) days of the accumulated deposited proceeds totaling \$3,000.00. A Report of Distribution shall be filed for each Court ordered application to distribute within thirty (30) days of date of the Court distribution order. The Court will not accept a subsequent Application to Settle Wrongful Death and Survival Claims until the Report of Distribution is filed for the settlement.
- (E) In the event a case is ongoing, such as an asbestos case or other product liability case, and it is anticipated that there will be more than one distribution of settlement proceeds, a hearing shall be conducted on the first application to distribute settlement proceeds and then on every fifth (5th) application (5th, 10th, 15th applications).

Local Rule 78.6 Case Management of Adversarial Proceedings

This rule shall govern adversarial proceedings, which shall include, unless otherwise ordered by the Court, all actions commenced with the filing of a complaint and/or assigned a CI case number, except for land sale proceedings, concealment actions, and any actions where all parties have consented to the relief requested.

- A. The Court will set the matter for a case management conference and an initial pretrial conference after the answer date of the defendant(s). No later than 21 days prior to the date of that conference, all counsel and unrepresented parties shall participate in a planning meeting. At that planning meeting, the Report of Parties' Planning Meeting (**Local Form – M.C. Form 1.14**) and the Discovery Plan (**Local Form – M.C. Form 1.15**) shall be completed. In addition, the parties shall discuss any issues that may exist as to preservation of discoverable information, consider the nature and basis of their claims, and also discuss all possibilities for promptly settling or otherwise resolving the case. The Report of Parties' Planning Meeting and the Discovery Plan shall be filed with the Court no later than 7 days prior to the scheduled conference.

- a. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and attending the planning meeting, for attempting to agree in good faith on the discovery plan, and for completing and filing both the Report of Parties' Planning Meeting and Discovery Plan.
 - b. Parties are required to make the initial disclosures required under Civ.R. 26(B) no later than 7 days prior to the case management conference and initial pretrial conference. If a party wishes to object to any required initial disclosures, it must do so as part of the Report of Parties' Planning Meeting.
 - c. In advance of the case management conference and initial pretrial conference, the Plaintiff(s) is required to make a demand upon the Defendant(s) with a written description and monetary breakdown of all damages claimed.
 - d. Failure to appear at the conference or to participate fully and completely in the parties' planning meeting may result in sanctions.
 - e. Parties shall come to the case management conference and the initial pretrial conference prepared to discuss all matters contained in Civ.R. 16(C)(2), in addition to all matters contained in both the Report of Parties' Planning Meeting and the Discovery Plan.
- B. All requests for continuances of the case management conference, any pretrial conference, a hearing, or a trial 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.
- C. Deposition excerpts or relevant portions of other discovery materials offered in support of or in opposition to a motion are to be filed with the party's memorandum of law and attached as properly identified exhibits thereto. Where deposition excerpts have been attached to a motion, the entire deposition transcript must also be separately, and simultaneously, filed.
- D. Counsel shall provide the Court and all other counsel and unrepresented attorneys with copies of all exhibits to be admitted to the record.

Local Rule 78.7 Pretrial Conference

All counsel must have full authority to enter into binding orders, including settlement orders. Unless otherwise ordered by the Court the following matters shall be addressed at the pretrial conference:

- (A) The Court may rule on pending motions.
- (B) Trial briefs, witness lists, exhibit lists, exhibits ordered by the Court, proposed jury instructions and proposed jury interrogatories shall be submitted.

Pretrial conferences are not required for Land sale proceedings unless so ordered by the Court or requested by a party.

Local Rule 78.8 Miscellaneous

Clients shall be present unless their presence has been excused by the Court. The trial date shall not be continued without good cause and order of the Court.

Local Rule 78.9 Jury Management Plan

Mahoning County Probate Court adopts and incorporates in its entirety by reference the Mahoning County Common Pleas Court Jury Use and Management Plan as amended. In addition thereto, any party requesting a jury demand pursuant to Rule 38 of the Ohio Rules of Civil Procedure shall deposit with the Clerk of this Court the sum of \$500.00 at the time of the demand. In the event the jury demand is withdrawn prior to trial or the case is settled without the need for a jury trial, then said deposit shall be refunded.

Local Rule 78.10 Dispute Resolution Fund (Mediation)

(1) Referral to Mediation and Scope of Mediation

- a. At any time and in any action under the jurisdiction of this Court, a matter may be referred to a mediator. The Judge or Magistrate may refer or order a case to mediation at any point in a case. Any party may request to participate in mediation by filing a motion or joint motion with the Court or by making an oral request for a referral to mediation on the record. In accordance with all applicable provisions of this rule, if a case is deemed appropriate by the Court, the mediation may be scheduled.

- b. The mediator may meet with the parties individually prior to bringing the parties together for any reason, including, but not limited to, further screening.
- c. A party opposed to either the referral to mediation or the appointed mediator must file a written objection with the Court within seven (7) days of receiving notice of the referral or the mediator and explain the reasons for any opposition.
- d. All mediations shall be conducted in accordance with the provisions of the Ohio Uniform Mediation Act under O.R.C. Chapter 2710, which is hereby incorporated by reference.
- e. Mediation shall not be used as an alternative to the prosecution or adjudication of domestic violence; in determining whether to grant, modify, or terminate a protection order; in determining the terms and conditions of a protection order; or in determining the penalty for violation of a protection order. Nothing in this division shall prohibit the use of mediation in a subsequent divorce or custody case, even though the case may result in the termination of the provisions of a protection order.

(2) Required Participants

- a. All parties and all counsel shall attend the mediation conference when referred. In the event of a corporate party, an officer, director or employee with full authority to settle the claim on behalf of the party shall appear. In the event of a governmental agency or entity as a party, a representative with full authority to negotiate on behalf of the entity or agency and to recommend settlement to the appropriate decision making body shall attend.
- b. If geographic distance or physical disability prevents a participant from attending personally, the Court may permit participation by electronic or other means at the Court's sole discretion. A written motion to attend by a means other than in person must be approved prior to the mediation for the party's presence to be excused.
- c. If any party or counsel fails to attend a duly ordered mediation without good cause, the Court may impose sanctions, including, but not limited to, an award of attorney's fees and other costs, contempt, or other appropriate sanctions.
- d. Parties represented by counsel may attend mediation without counsel only with prior approval by the Court.

(3) Domestic Violence

- a. All parties and their counsel have a duty to advise the mediator in writing of any known or alleged domestic violence that occurs between any parties prior to or during the mediation.

(4) Confidentiality

- a. Except as provided in sections 121.22 and 149.43 of the Revised Code, mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code. Parties desiring confidentiality of mediation communications shall advise the mediator in writing as soon as practical and all mediation participants shall execute any confidentiality agreement prior to the start of mediation.
- b. By participating in mediation, a nonparty participant, as defined by R.C. 2710.01(D), submits to the Court's jurisdiction to the extent necessary for enforcement of this rule. Any nonparty shall have the rights and duties under this rule as are attributed to parties, except that no evidence privilege shall be expanded.
- c. The mediator shall not be permitted to testify or otherwise present evidence concerning the substance of mediations. In no event may the mediator be compelled for any purpose to act as a witness, consultant, attorney, or expert in any pending or future actions relating to the dispute, including actions between persons not parties to the mediation process. However, if an agreement is reached in mediation and is made in open court and/or reduced to a signed writing, the mediator may testify as to the terms of the agreement if a disagreement as to the terms subsequently arises. The mediator may file a mediation report with the Court indicating whether the mediation has occurred, whether a settlement was reached, and stating who was in attendance at the mediation. The mediator may also file a report with the Court informing the Court of any misconduct or violations of the rules pertaining to the conducting of mediations on the part of the parties or their counsel.

(5) Mediators

- a. Parties may request leave to select an independent mediator. The Court shall not be responsible for the quality of a mediator selected by the parties without guidance from the Court.

(6) Mediation Reports

- a. Unless otherwise ordered by the Court, a mediation statement shall be submitted directly to the mediator in person or by e-mail at least three (3) court days prior to the mediation. No mediation statement should be filed with the Court. The mediation statement shall indicate whether it is being shared with the other

parties. The mediation statement shall advise the mediator of the status of the party's position, the status of the negotiations between the parties, any pending settlement offers, and any other information that could assist the mediator in mediating the case.

(7) Pending Proceedings

- a. All court orders shall continue in effect during the mediation. No order is stayed or suspended during the mediation process except by written court order. Mediation shall not stay discovery, which may continue through the mediation process in accordance with applicable rules, unless agreed to and approved by the Court by written court order.
- b. It is the policy of this Court to determine matters in a timely way. Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date has been determined. The case may be continued by the Court or by the mediator. Except as authorized by the Court, the existence of pending motions shall not be good cause for a continuance.
- c. A mediator shall not preside over future contested hearings or trials in the case mediated after the mediation has commenced without the consent of the parties. A party who fails to object on the record prior to the commencement of the hearing or trial will be deemed to have consented to the mediator presiding.

(8) Costs

- a. The Court may impose upon the parties fees and costs for mediation.
- b. If there is a fee for mediation, unless otherwise agreed by the parties, the mediation fees shall be shared equally.

(9) Legal Advice and Referrals

- a. The efforts of the mediator shall not be construed as legal advice.
- b. Mediators will maintain resources for mediation participants, encouraging appropriate referrals to legal counsel and other support services, such as Children Services, Adult Protective Services, domestic violence support, counseling, substance abuse and mental health services.

(10) Settlements

- a. No oral agreement made in mediation is binding unless made in open court on the record or subsequently reduced to a writing signed by all parties and/or their counsel.
- b. An agreement reached in mediation is binding upon it being made in open court on the record.
- c. Unless otherwise ordered by the Court, the parties shall submit to the Court an agreed judgment entry addressing the settlement within fourteen (14) days of the settlement.

(11) Comments and Complaints

- a. Any mediation participant may submit to the Judge of the Mahoning County Probate Court any written comments, complaints, or feedback regarding the performance of the mediator.

(12) Public Access

- a. The notes and files maintained by a mediator but not submitted to the Court shall not be available for public access.

Local Rule 78.11 Guardianship Requirements

- a) Every Applicant applying to be appointed as Guardian of the person shall fully complete and file the “*Applicant Questionnaire*,” Local Form 5.6, and file along with their *Application for Appointment of Guardian* (SPF 17.0).

The Court will not accept for filing any *Application for Appointment of Guardian of Alleged Incompetent* unless it is accompanied by the *Applicant Questionnaire* and other required pleadings pursuant to *Ohio Revised Code* and the *Rules of Superintendence* unless waived by the Court.

- b) Unless for good cause shown, the Court will not approve any *Application to Expend Funds*, *Application to Transfer Funds*, or *Application to Close Account(s)* until the Guardian first files a *Guardian’s Inventory*.
- c) Every Guardian of the Estate shall file an *Application to Establish Monthly Budget/Expend Funds* no later than thirty (30) days after their appointment, if applicable.
- d) The Guardian of the Estate shall list on their *Inventory* any asset owned by the Ward in a co-ownership form or in a “Transfer on Death”/“Payable on Death” form. The *Inventory*

shall also include the name of a co-owner and/or “Transfer on Death”/“Payable on Death” beneficiary, their address if known, and relationship to the Ward.

- e) When releasing funds from the Ward’s name, the Guardian shall first use and close individually owned accounts of the Ward and then co-owned/“Transfer on Death”/“Payable on Death” accounts unless for good cause shown. For any co-owned accounts, the Court will not order the release of funds from the Ward’s name unless the Guardian has obtained a written consent from the other co-owner for the release of funds or a hearing has taken place with notice sent to the co-owner.

Upon the establishment of the guardianship of the estate, all co-owned accounts will be placed under restriction by the court with notice being sent to the co-owner. No withdrawals will be allowed, unless by Court order.

When applicable, the Guardian shall withdraw monies from TOD/POD accounts in proportionate amounts from all of the Ward’s accounts so as not to extinguish one account over another.

- f) Medical, psychological and other related reports and records of a Ward are confidential and there shall be no access to these reports/records without Order of the Court.

Local Rule 78.12 Motor Vehicle Valuations

If any Fiduciary utilizes the *Kelley Blue Book*, *NADA*, or any other similar valuation tool in establishing the value of a motor vehicle in any Estate, Trust, or Guardianship, the Fiduciary shall use either “private party” value or “retail” value. The Court will not accept “trade-in” value as an acceptable valuation for any motor vehicle.

Local Rule 78.13 Settlement of All Claims of Decedent

All Estate Fiduciaries (both Executors and Administrators) 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, prior to compromising or settling the claim. The Fiduciary shall submit the following documents with the Court:

1. *Application for Approval of Personal Injury Claim of Decedent*;
2. Application to approve Contingency Fee Agreement with copy of agreement attached thereto pursuant to Local Rule 71.5;
3. Narrative statement of claim; and
4. Copy of proposed distribution statement showing all costs and expenses to be paid from settlement proceeds.

Local Rule 78.14 Short Form Release from Administration

a) In Estates where the assets of the decedent total \$2,500.00 or less and the funeral bill of the decedent has been:

1. Pre-paid by the decedent; or
2. Reimbursement has been waived in a notarized writing by the person who paid the funeral bill; or
3. The person who paid the funeral bill has died; or
4. The Applicant is the person who paid or is obligated in writing to pay the decedent's funeral bill.

Then the Applicant may file a *Short Form Release from Administration* (Local Form 5.12)

b) Applicants of a *Short Form Release from Administration* are required to file:

1. *Short Form Release from Administration* form (Local Form – M.C. 5.12);
2. *Surviving Spouse, Next of Kin, Legatees and Devisees* form (SPF 1.0);
3. Certified copy of the *Death Certificate*;
4. Proof of the funeral bill and who paid it; or who is obligated to pay it;
5. A copy of the decedent's obituary from local paper unless waived by Court;
6. Appraisers Report or other available valuation method showing how the asset was valued (See Local Rule 78.12 for automobiles), if applicable;
7. The original *Last Will and Testament* of the decedent (if applicable); and
8. The filing fee of \$20.00.

c) The Court may require verification of payment of claims pursuant to order of priority as outlined in R.C. 2117.25.

d) The Court, in its sole discretion, may Order distribution directly to a creditor (funeral home, etc.).

Local Rule 78.15 Fiduciary Bond

A. A Fiduciary bond is required for all Estate administrations pursuant to R.C. § 2109.04 unless:

1. the Applicant is an Ohio resident and is nominated in a *Last Will and Testament/Trust* to serve as Fiduciary, and bond is waived for that Applicant in the document; **or**
2. bond is waived pursuant to R.C. § 2109.07-2109.10.

- B. The Court will entertain a *Motion to Waive and Dispense with Bond* [M.C. Form 1.16(a)] for the appointment of a Fiduciary provided that all beneficiaries sign a *Consent and Acknowledgment to Waive Bond* [M.C. Form 1.16(b)] authorizing the Applicant to serve without bond. The decision to waive bond lies within the sole discretion of the Judge of the Court.
- C. The Court will not waive bond unless all beneficiaries sign Local Form *M.C. Form 1.16(b) – Consent and Acknowledgement to Waive Bond*. The Court will **not** accept any other consent form other than Local Form *M.C. Form 1.16(b) – Consent and Acknowledgement to Waive Bond*.
- D. The Court will not appoint an out of state resident as sole Fiduciary or Co-Fiduciary unless the Applicant is nominated in a writing (*Last Will and Testament/Trust*) and a bond is posted. The Court, in its discretion, may waive said bond if:
 - 1. the document waived bond;
 - 2. the Applicant files a *Motion to Waive and Dispense with Bond* [M.C. Form 1.16(a)]; **and**
 - 3. all beneficiaries sign a *Consent and Acknowledgment to Waive Bond* [M.C. Form 1.16(b)].

Local Rule 78.16 Adoptions

a) Notice to Birth Parents

In any adoption proceeding, notice of the hearing on the *Petition for Adoption* shall be served upon the natural parent(s) via certified mail, return receipt requested, with verification signed by the individual the mail was addressed to. Failure of service on the return receipt indicating that the natural parent did not to sign for the notice will require the applicant to personally serve the natural parent personal process service. Unsuccessful personal process service will result in the requirement of the Applicant to publish notice of the hearing on the *Petition* pursuant Civil Rule 4.4.

Any public children’s services board who is the custodial agency of the minor is exempt from the above requirement.

b) Legal fees in Adoption proceedings

All requests for legal fees shall include the following:

- i. An Application to approve legal fees along with an itemized time statement indicating the hourly billing rate of each individual requesting to be paid for their time;

- ii. All fees shall be in compliance with Rules of Professional Conduct Rule 1.5; and
- iii. No fee shall be paid unless first approved by the Probate Court.