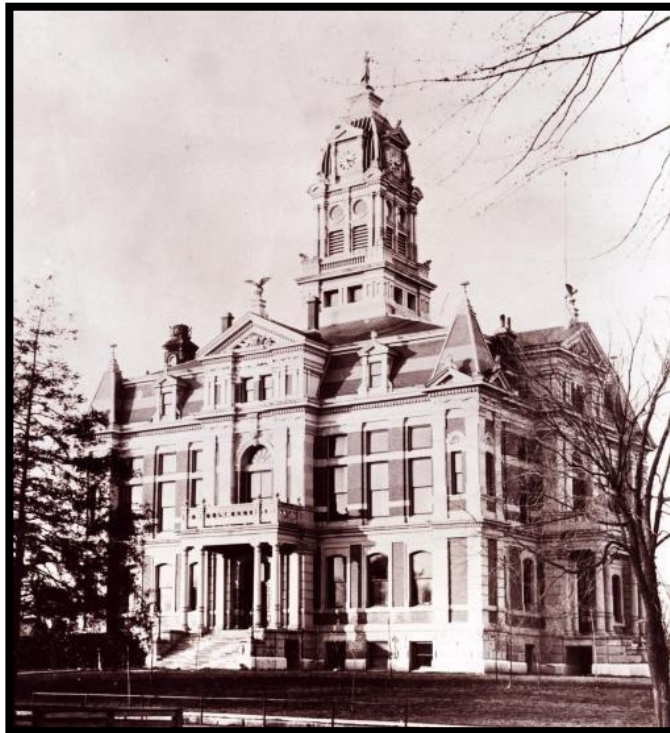


IN THE COURT OF COMMON PLEAS OF UNION COUNTY, OHIO
PROBATE DIVISION

Local Rules of Probate Practice & Procedure



HON. CHARLOTTE COLEMAN EUFINGER, JUDGE

Rules Effective
February 1, 2021

**IN THE COURT OF COMMON PLEAS, UNION COUNTY, OHIO
PROBATE DIVISION**

In the Matter of the
**Local Rules of Practice & Procedure
for the Probate Division**
of the Court of Common Pleas
of Union County, Ohio

Case No. 2021PJ0001

JUDGE EUFINGER

JOURNAL ENTRY

Pursuant to the Ohio Supreme Court Rules of Superintendence for Courts of Common Pleas (Sup. R. 5), it is hereby **ORDERED** and **DECREED** that the rules and appendices hereinafter set forth are adopted as the Local Rules of Practice and Procedure for the Probate Division of the Union County Common Pleas Court.

These rules are intended to supplement and compliment the Rules of Superintendence for the Courts of Ohio, the Ohio Rules of Juvenile Procedure, the Ohio Rules of Criminal Procedure, the Ohio Rules of Civil Procedure, and any controlling statutes of the Ohio Revised Code in their application to and administration of proceedings before this Court. These rules shall be designated Local Rules when cited.

It is further **ORDERED** that these rules are effective February 1, 2021 and that prior local rules of this Court are hereby rescinded, revoked and annulled.

IT IS SO ORDERED.

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PROBATE COURT
UNION COUNTY

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Charlotte C. Eufinger


CHARLOTTE COLEMAN EUFINGER
PROBATE JUDGE

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Please see Appendix Section for Court Costs and Forms

Rule 5.2 – Effective Date.

The effective date of these rules is February 1, 2021.

Rule 8.1 – Court Appointments.

The Probate Court may request practicing attorneys with law offices in Union County to be available for court appointments. Every attorney who practices in Probate Court shall be deemed competent to provide legal services for those who are unable to retain counsel.

The Probate Court shall maintain a list of attorneys who have advised the Court that they are willing to accept appointment. Appointments shall be made to assure an equitable distribution of appointments among all persons on the appointment list, subject to the Court’s consideration of the skill and expertise of the appointee in the designated area of appointment and the management by the appointee of his/her case load. The list shall be reviewed annually for additions or deletions.

Court appointed counsel shall be paid a reasonable fee with consideration given to the factors contained in Rule 1.5 of the Ohio Rules of Professional Conduct, the Ohio Revised Code and these Local Rules. The Court will consider an application for fees in excess of the maximum limit allowed by this Rule when the type, complexity and requirements of the case are such that the maximum is an unreasonable fee. An application for fees accompanied by an itemized statement of services rendered shall be submitted by all Court appointed counsel.

Attorneys serving as guardians for indigents may be compensated at the rate of \$75.00 per hour with a maximum of \$600.00 (8 hours) per case. If the attorney is both guardian and counsel for the guardian, the attorney shall document the time spent in each capacity. **Compensation for representation of indigents in a mental illness case** may be paid at the rate of \$75.00 per hour with a maximum of \$450.00 (6 hours). **Compensation for representation of indigents in an adult protective service cases** may be paid at the rate of \$75.00 per hour with a maximum of \$450.00 (6 hours). **Compensation for court appointed counsel** in all other cases may be paid at the rate of \$75.00 per hour with a maximum of \$375.00 (5 hours) per case. All court appointed counsel shall submit an application for fees supplemented by an itemized statement of services rendered.

In any case where the indigent client receives a pecuniary benefit, the Court shall consider compensation for counsel as if retained and may order the client to pay all or part of the fee. Compensation will also be paid from any cash assets in the estate.

Rule 9.1 – Security Plan.

The Court has developed and implemented a court security plan to help maintain the safety of those using the Court’s facilities.

Rule 11.1 – Recording of Proceedings.

The Court will make an audio recording of the proceedings as the record of the Court. Parties who desire to have a stenographic record of the proceedings must make their own arrangements for a court reporter at least 24 hours prior to the scheduled hearing. The cost of the stenographic record shall be paid by the requesting party unless otherwise ordered by the Court. Arrangements must be made with the Court to have the proceedings transcribed by a stenographer approved by the Court.

Further, arrangements must be made with the Court to have the electronic recordings of the proceedings copied. The cost of the electronic record shall be paid by the requesting party unless otherwise ordered by the Court.

Rule 26.01 – Court Records Management and Retention.

The Probate Court hereby adopts Rule 26 of the Rules of Superintendence for the Courts of Ohio for Court Records Management and Retention.

Rule 26.02 – Court-Devised Records Retention Schedule.

Records not addressed by Rule 26 shall be retained by the Probate Court according to a records retention schedule devised by the Probate Court Judge, Court Administrator, Probate Court Chief Deputy Clerk and the Records Center Manager.

Rule 51.1 – Approved Forms.

Approved Forms for use in the Union County Probate Court are available at the Probate Clerk’s Office.

Rule 52.1 – Computerized Forms.

Computer generated forms must comply with the specifications and format outlined by the Rules of Superintendence. The signature of the applicant or attorney constitutes a certificate that the computer-generated forms comply with the rules.

All computer forms presented for filing must be generated with the exact wording as well as blank lines as they appear in the uniform forms.

Rule 53.1 – Hours of Court.

The Union County Probate Court and its offices shall be open for the transaction of business from 8:30 a.m. to 4:00 p.m. Monday through Friday. The Court shall be closed on Saturdays, Sundays, and legal holidays, and at such other times as may be appropriate.

The Court and its offices, at the discretion and upon order of the Judge, may be open at other times for matters of extra ordinary nature or importance or for the convenience of the public.

Rule 53.2 – Term of Court.

The term of this Court shall be one calendar year beginning January 1, and ending December 31, of each year.

Rule 53.3 – Court Sessions.

Court sessions shall be held at the Union County Courthouse or any annex thereof in such a manner as shall be ordered by the Judge; sessions may be held at such other places in this County as may be approved by order of the Judge from time to time or for special cases as the interest of justice may require.

Rule 54.1 – Conduct in the Court.

- (A) Proper decorum in the Court is necessary for the administration of justice.
- (B) All attorneys appearing before this Court shall dress in a manner consistent with their profession and the dignity and decorum of the Court.
- (C) No radio or television transmission or voice recording other than equipment supplied by the Court for purposes of maintaining a record of proceedings shall be permitted without the express consent of the Court in advance and pursuant to Sup. R. 11.

Rule 55.1 – Examination of Probate Records.

Files are not to be removed from the Clerk's office without permission of the Court.

Adoption, mental illness, mental retardation, and all post November 8, 1990, Ohio Estate tax filings are confidential. Records of those proceedings, and other records that are confidential by statute, may be accessed as authorized by the judge in accord with Ohio law.

Pursuant to R.C. 5122.31(A)(14) civil commitment records and reports relating to a person who has been deceased for fifty years or more are no longer considered confidential. Anyone desiring to examine such records must present proof to the court (death certificate, obituary, etc.) that, in the opinion of the Court, reasonably establishes the identity of the person in question and their date of death before such records are released, unless the Court has already determined the date of death of the person in question. Civil commitment records one hundred and fifty years old or more are not considered confidential and proof of death need not be established.

Copies of any public records may be obtained at the cost of \$.50 per page. Certified copies shall be \$1.50 per page. Certified copies of marriage records are \$2.00 each.

Rev. March 22, 2016.

Rule 56.1 – Continuances.

Continuances or requests for extensions of time for filing various estate, guardian and trust proceedings, such as the inventory and account, may be prepared by the attorney, and shall include the reason for the requested continuance, and further, shall be signed by the fiduciary and the attorney. The judgment entry accompanying a motion for continuance or extension of time may, with prior approval of the Court, contain the new time and date.

Rule 57.1 – Filings and Judgment Entries.

(A) **Facsimile Filings.** Except for the initial filing of the applications to open an estate, trust or guardianship, etc., the Court will accept filings by facsimile transmission. Any filing faxed to and received by the Clerk shall be considered filed with the Court as of the date and time the Clerk time-stamps the document received, as opposed to the date and time of the fax transmission. Any faxed filing received by the Clerk prior to 4:00 p.m. on any business day will be time-stamped and return faxed to the filing party that same business day. The facsimile machine is available to receive documents daily (including weekends and holidays), unless barred by equipment or transmission errors.

After the document has been filed with the Court via facsimile transmission, it is not necessary to file the source document. The document transmitted by facsimile will be considered the original filing for purposes of the court. The source document, which shall contain the original signatures as otherwise required under the applicable rules, shall be maintained by the filer, shall be available for production upon request by the Court and shall be maintained by the filer until the case is closed and all opportunities for post-judgment relief are exhausted.

Images are often made too dark by facsimile transmission. If documents filed via facsimile contain images or photographs that are otherwise too dark to accurately depict the substance of the image, the original pages or portions of the document with the image(s) should be filed with the Court. It is not necessary to refile the entire document.

Facsimile filings shall not exceed fifteen (15) pages in length, excluding the cover page. Each filing must relate to a single case and all filings must conform to Civ.R. 10, Civ.R. 11, and unless clearly not applicable, Civ.R. 57 and Civ.R. 73.

(B) Email Filing Standards. Except for the initial filings in an action, the Court will accept filings by email transmission to probatecourt@co.union.oh.us. Any filing emailed to and received by the Clerk shall be considered filed with the Court as of the date and time a deputy clerk file-stamps the filing, as opposed to the date and time of the email transmission. Any emailed filing received by the Clerk prior to 4:00 p.m. on any business day will be time-stamped and return emailed to the filing party that same business day. Email can be received daily (including weekends and holidays), unless barred by equipment or transmission errors.

(C) Forwarding File-Stamped Copies. The Court will not return file-stamped copies of any pleadings or documents by mail unless submitted with a return, self-addressed, stamped envelope.

(D) Disposition of Exhibits. All exhibits offered for admission during a hearing or trial shall be labeled by party name and item identification. In a proceeding recorded by a Court stenographer, custody of exhibits admitted or proffered shall be given to the stenographer, unless otherwise ordered by the Court. If the proceeding is electronically recorded, exhibits shall be filed in the Court case file, unless otherwise ordered by the Court.

Upon agreement by the parties or order by the Court, copies may be substituted for the original exhibit.

Disposal of exhibits shall be pursuant Sup. R. 26.04.

(E) Microfilm Copies. Microfilmed copies of all cases and other permanent records in this Court shall constitute an original record pursuant to Ohio Revised Code Section 9.01.

(F) Sup. R. 57 (B) Information. The information required by Sup. R. 57 (B) is only required by this Court once, at the time of filing the initial papers in a case, and need not be repeated on every filing unless there is a change of counsel or fiduciary or change in address, phone number, fax number of either, in which event it must be included on the next pleading filed.

(G) Standard Probate Form 1.0. The information required on Standard Probate Form 1.0 need only be filed once unless there is a change, in which event a new form 1.0 should be filed containing the updated information.

(H) Proposed Judgment Entry. In accord with Sup. R. 57 (F), unless the Court otherwise directs, counsel for the party in whose favor a judgment is rendered, shall prepare the proposed judgment entry and submit the original to the Court with a copy to counsel for the opposing party. The proposed judgment entry shall be submitted within seven (7) days after the judgment is rendered. Counsel for the opposing party may sign the proposed judgment entry indicating that the entry correctly reflects the decision of the Court. If counsel for the opposing party does not accept the proposed entry as correctly reflecting the decision of the Court, counsel for the opposing party shall have seven (7) days to submit to the Court objections to the proposed judgment entry. If the party in whose favor a judgment is rendered fails to comply with this division, the matter may be dismissed or the Court may prepare and file the appropriate entry. If the opposing party fails to comply with this division, the Court may approve and accept the proposed judgment entry or the Court may prepare and file the appropriate entry.

The party or counsel submitting a judgment entry in accordance with this rule [Sup. R. 57(F) and Local Rule 57.1(F)], shall include proof of service on the opposing party or counsel, or have the approval of such party or counsel endorsed on the entry, said approval showing that the entry correctly reflects the decision of the Court.

If any party or counsel fails to comply with Local Rule 57.1(F), the Court may, after 14 days of the rendering of the decision, prepare and file the appropriate entry, dismiss the action, or take other appropriate action as the interest of justice may require.

(I) **Withdrawal of Counsel.** Attorneys wishing to withdraw from a case, must first file a Motion to Withdraw with a certificate of service notifying the fiduciary. The Court may or may not set the matter for hearing before rendering a judgment entry to either sustain or overrule said motion.

Amended October 1, 2020.

Rule 57.2 – Death Certificates.

A certified copy of the Death Certificate must be presented to the Clerk when filing a new (full) Estate before the approval of the Inventory unless the filing is extended by order of the Court. A certified copy of the Death Certificate must be presented to the Clerk when filing a new Release from Administration or Summary Release from Administration. The original will be returned to the applicant and a copy will be made for the file.

Rule 57.3 – Redaction of Numbers.

To protect legitimate personal privacy interest, social security numbers, account numbers and other personal identifying numbers shall be redacted from documents as directed by these rules before the documents are filed with the Probate Court. A “Personal Identifiers Omission Form” (Standard Probate Form 45(D)) shall be submitted in each case when a new account, social security or other personal identifying number is introduced into the case file.

The Clerks will not review the documents to confirm that personal identifying numbers have been excluded on the forms. The Personal Identifiers Omission Form will be placed in a separate envelope and will not be for public viewing.

If personal identifying information has been redacted from a document, and the Personal Identifier Omission Form not filed in the case, and the Court finds that the number is necessary for the Probate Court’s determination of the case, the Probate Court may order, upon motion or *sua sponte*, that an un-redacted copy of the documents be filed under seal.

Rule 57.3A – Omission / Redaction of Social Security Numbers.

The following rule shall apply, except with respect to documents that the Court, pursuant to law, maintains under seal.

Filing parties and their counsel shall omit social security numbers from all pleadings, documents and exhibits, unless the Court orders otherwise. The responsibility for redacting social security numbers rests solely with the filing parties and their counsel. The Court will not review documents for compliance with this rule, seal on its own motion documents containing social security numbers, or redact documents. Social Security Numbers should be listed on the Personal Identifiers Omission Form (SPF 45(D)).

Rule 57.3B – Social Security Numbers.

Social security numbers are confidential and shall not be filed in any filing in this court that is available for inspection by the general public. Social security numbers disclosed on marriage applications and estate tax returns are sequestered as confidential, non-public records.

Rule 57.3C – Account Numbers.

All financial asset account numbers in any public record document filed in this court shall disclose only the last four (4) digits of each account number with the full number identified on the Personal Identifiers Omission Form (SPF 45(D)).

Rule 58.1 – Court Costs.

Deposits shall be required upon the initial filing of any action or proceeding. The deposit may be applied as filings occur and additional deposits may be required. The Court shall maintain and make available a current list of costs. (See Appendix, Form LR1.)

Rule 60.1 – Application for Letters of Authority to Administer Estate & Notice of Appointment.

(A) As a general rule, an executor or trustee named in a will who is a non-resident of the State of Ohio will not be appointed. The Court however, will follow Ohio Revised Code Section 2109.21 and may make the appointment if the applicant:

(1) Files an affidavit, contemporaneously with the application for appointment, demonstrating that he/she is either related to the maker of the will by consanguinity or affinity, or resides in a state that has statutes or rules that authorize the appointment of a non-resident person who is not related to the maker of the will by consanguinity or affinity, and;

(2) Gives a surety bond in an amount fixed by the Court, conditioned as provided by law, even though the will nominating him/her may authorize him/her to serve without bond; provided however, the Court shall dispense with the bond if:

- (a) At least one co-executor is a resident of the State of Ohio; or
- (b) The person applying for appointment as executor is the sole beneficiary; or
- (c) The person applying for appointment as executor and the other named executor or executors, constitute the only beneficiaries of the estate; or
- (d) On written motion of the applicant and for good cause shown.

(B) The Court shall, in appointing a non-resident fiduciary, require an affidavit of such fiduciary that no assets in the County at the decedent’s death will be removed from the County without written permission of the Court, prior to distribution of the asset to the proper beneficiary.

(D) In accordance with 2109.21(F), a fiduciary appointed by this Court shall inform this Court as to any change of address of the fiduciary. This notification must be made within 30 days of the address change. Failure to notify the Court under this rule may result in the fiduciary being removed. (*See Local Rule Form LR29.*)

Rule 61.1 – Appraisers & Appraisals.

(A) Real estate appraisals shall be made by licensed real estate agents, brokers, auctioneers, credentialed real estate appraisers, real estate loan officers of local financial institutions, or such other persons who by experience and training are qualified to make real estate appraisals.

(B) Provisions of this rule apply to auctioneers when applicable, as well as appraisers. The fees paid an auctioneer shall not exceed 10% of the total sale price plus expenses in advertising for the sale of personal property, and 3% of total sale price plus expenses in advertising for the sale of real property.

(C) Fees paid by the fiduciary to the appraiser of a residence shall be a maximum of \$300.00 per appraisal as agreed upon by the fiduciary and the appraiser. Fees paid by the fiduciary to the appraiser of a farm shall be a maximum of \$800.00 per appraisal as agreed upon by the fiduciary and the appraiser. Any amount over the stated maximum must be approved by the Court prior to payment, upon the written

application of the fiduciary, setting forth the time spent and work completed by the appraiser as well as the type and character of the property appraised.

Rule 61.2 – Notice of Hearing on the Inventory.

Notice of the hearing on the inventory shall be served by the executor or administrator by regular mail on all persons listed on SPF Form 1.0 unless notice is waived or the names or addresses are unknown and cannot with reasonable diligence be ascertained. A Certificate of Service of Notice of the Hearing on inventory (see Appendix, LR12) along with a copy of the Notice of Hearing provided shall be filed in each decedent's estate prior to approval of the inventory.

Rule 62.1 – Claims Filed with the Court.

(A) No estate, guardianship or trust shall be closed until all claims that have been filed with the Court have been resolved.

(B) **Insolvent Estate.** Insolvency hearings may be held in full administrations and guardianships (R.C. 2111.24). Ohio Revised Code Sections 2117.15 and 2117.17 shall be followed in full administrations and releases from administration. Insolvency proceedings shall be commenced by the fiduciary filing a notice of possible insolvency accompanied by a schedule of claims (using standard probate forms 24.0 through 24.6). The attorney of record shall indicate on the schedule of claims in the footnote column the amount of the proposed payment to each creditor. The clerk shall set a hearing on the insolvency on a journal entry/notice of hearing form prepared by the attorney. The attorney shall notify all creditors of said hearing by certified mail. Prior to or at the hearing, counsel shall provide proof of notice by certified mail returns. These returns shall be retained by the Court in the case file. Counsel shall also provide an affidavit of proof of service pursuant to Ohio Revised Code Section 2117.17(B) that informs the Court what information was provided to the creditors. Upon receipt of the required certified mail returns and the affidavit of proof of service, the Court will approve the journal entry approving insolvency and the journal entry ordering distribution prepared by counsel, making any necessary changes and attaching an amended schedule of claims form only if needed. The Court reserves the right to require counsel to serve additional notice to creditors or submit a drafted journal entry if necessitated by a particular situation.

Rule 64.1 – Accounts.

(A) All accounts must be signed by the fiduciary and contain the full name, current address and telephone number of the fiduciary, if different from the name, address and telephone number listed on the application to administer.

(B) Annual accounts are required for all decedent's estates, all Guardianships and all testamentary trusts.

(C) A final account shall not be accepted for filing until all court costs have been paid.

(D) All vouchers must be filed with a partial or final account, or such account will not be accepted for filing. Vouchers may be photocopies of the front of the cancelled checks, accompanied by a photo copy of the bank statement showing the payment out of the amount of the check. The Court will also accept e-transactions if the name of the company accepting payment appears on bank statement along with the dollar amount and date of transaction. Exceptions to this rule may be made only upon written application to and order of the Court for good cause shown.

(1) If a signed receipt is submitted as proof of disbursement for a partial or final account for property/money received by the heirs/ beneficiaries/ legatees/ devisees, the Court will hold the original receipt in the case file with the Account.

(2) When real estate is sold during the course of an estate, the court shall require a Settlement Statement/HUD Statement to be filed with the Account as an attachment.

(E) Guardianship accounts whether for an incompetent or a minor, shall be filed as a separate account and a separate case file for each ward.

(F) An annual Guardian's Report is required to be filed in all guardianships of the person and the person and estate, including those guardianships in which the Court has dispensed with the filing of an account. In those guardianships in which the Court has dispensed with the filing of an account, a Custodial Year End Report (see Appendix, Form LR16) and/or a copy of the most recent bank statement (if Court permits) must also be filed showing the guardianship assets.

(G) A fiduciary shall exhibit all assets to the Court at the time of the filing of a partial account. The Court will permit cash balances to be verified by a current letter or bank statement from the financial institution in which the funds are deposited, or a broker's current statement of assets held by the brokerage firm in its street account dated at the time of close of the account or at a date not more than 30 days after the close of the account.

(H) At the time of filing of any account, the Deputy Clerk shall inform the person filing the account of the date set for hearing, and the fiduciary or the fiduciary's attorney for a decedent's estate and for a testamentary trust shall be responsible to notify the interested persons, pursuant to Ohio Revised Code Section 2109.33, and shall file a certificate of service of notice with the Court prior to the date set for hearing. For Trusts and Guardianships, the notice and the Certificate of Service of Notice of Hearing on Account shall be upon the forms LR13 (see Appendix, Form LR13). For Estate cases, Only the SPF 13.9 form is required. Either the attorney or the fiduciary may sign the notice and certify to the Court, the sending of the notices. Except when filing final account, the fiduciary or the fiduciary's attorney, may serve such notices by any of the following methods:

(1) Ordinary mail (partial accounts only); or

(2) By certified mail return receipt requested; provided however, that notice of any final account shall be by certified mail, return receipt requested, and return receipts or waivers of notice filed with the certificate of notice.

Notice of hearing on the account for a decedent's estate (SPF 13.5) shall be given to all next of kin in an intestate estate and to all beneficiaries in a testate estate, except corporate or charitable beneficiaries. Notice for a testamentary trust shall be given to all beneficiaries. Notice of hearing on a guardian's account shall be given to all next of kin of the ward who reside in Ohio.

A waiver of notice (SPF 13.7) may be used in lieu of any notice, and it shall be filed prior to the date of the hearing.

On the day set for hearing, the account will be examined by the Court as provided by law and the Court will make such orders thereon as provided by law. If exceptions are filed or a formal hearing is requested in accord with the law, the account will be continued for formal hearing with notice to the fiduciary and the fiduciary's counsel.

(I) A copy of the account shall be provided to each heir of an intestate estate and each beneficiary of a testate estate in accord with Ohio Revised Code Section 2109.32 (B)(1), and a certificate of service (SPF 13.9) shall be filed with the Court.

(J) An application for approval of attorney fees accompanied by a statement of the computation of attorney fees (see Appendix, form LR7) shall be filed with the account or prior thereto when such fees are listed on the account.

(K) In Releases of Administration the report of distribution shall be filed within 60 days after appointment of the commissioner unless an extension of time is granted for good cause.

Rule 65.1 – Land Sales - R.C. Chapter 2127.

(A) In all land sale proceedings, the complainant or attorney for complainant shall designate an attorney to examine the title to the real estate and shall inform this Court who will be examining the title, if known. The designated attorney shall file a Certificate of Title in accordance with Local Rules 65.1C and D. Thereafter, the title attorney must sign and approve all journal entries tendered for filing with the Court involving the land sale proceeding.

(B) The cost of the title examination and Certificate of Title referred to in Local Rule 65.1A shall be based upon the value set forth by the appraiser(s) thereof at the rate of a minimum of \$300.00, plus \$5.00 per thousand in excess of \$10,000.00 with a maximum of \$600.00.

(C) The provisions of this rule with regard to evidence of title shall apply to private as well as public sale proceedings. In all cases, the Preliminary Certificate of Title, specifically stating that all necessary parties are properly before the Court, with all proceedings in conformity to the law and civil rules, shall be filed for the Court's review before any order of sale is submitted to the Court.

(D) The Final Certificate of Title shall be directed to the Court and the buyer, specifically stating that all proceedings in the case are in conformity to the statutes and Rules of Civil Procedure, and that marketable title has been transferred.

Rule 66.1 – Guardianships.

(A) A separate guardianship case must be filed and case file established for each proposed ward. In the case of an incompetent guardianship, the initial statement of expert evaluation must be signed by a licensed physician or licensed clinical psychologist.

(B) Other than a regular allowance such as a monthly allowance, approved by the Court, no guardianship funds may be expended by the guardian unless the guardian files a written application setting forth the proposed expenditure and the reasons therefore (with documentation attached whenever possible) and the Court approves said expenditure by written order. Guardianship funds and property shall be deposited by the guardian in accordance with Ohio Revised Code Section 2109.41. Said depository shall acknowledge in writing that it holds said funds pursuant to the orders of this Court and that it will not permit the guardian or any other person to draw on said funds without a written court order approving the withdrawal of said funds and that it will not permit the funds to be used as a pledge or collateral for a loan to anyone, without a written Court order (see Appendix, Form LR17).

(C) The Court will not accept for filing any guardianship for a minor where the only purpose of the guardianship is to establish a residency for school purposes. Custody for school purposes is a matter to be heard and determined in the Juvenile Division of the Court.

(D) The proposed ward shall personally appear before the Court at the time of the hearing unless evidence is presented that such an appearance would be physically impossible or detrimental to the health and general welfare of said ward. Such evidence may include, but not necessarily be limited to medical certificates, affidavits and/or testimony of family members, nursing home personnel, and other persons having knowledge of the facts.

(E) A guardian appointed by this Court shall inform this Court as to any change of address of the guardian or the ward. This notification must be made within 30 days of the address change. Failure to notify the Court under this rule may result in the guardian being removed. (*See Local Rule Form LR29*)

(F) Upon the termination of a guardianship of the estate of a minor who has reached the age of majority, the fiduciary or the attorney for the fiduciary shall obtain a written receipt from the ward, which shall be filed with the final account. The final account shall be filed within 30 days after completing the administration of the ward's estate.

(G) A guardianship account shall be filed annually. In the cases where the funds are frozen in an account until the minor reaches majority age, a status letter, a Custodial Year End Report (see Appendix, Form LR16) and accompanying bank statement (most recent) showing account balance may be filed in lieu of an account upon filing an application and the Court's approval to do so.

(H) A Guardian's Report shall be filed annually at the same time as the annual account. The Guardian's Report shall be filed in cases of minor wards as well as incompetent wards. A statement of expert evaluation shall be attached to the Guardian's Report for incompetent wards.

(I) When a non-relative applies for the guardianship of a minor, proof of the child's parents must be filed with the Court by the Applicant. If the minor is currently living with the Applicant, then documents must also be provided showing how the child was placed in the home. At the Court's discretion, the Court may request the applicant also submit to a web-check and BCI&I reports before appointment.

Rule 66.3 – Emergency Guardianships/Orders and Comments and Complaints

(A) Process for Emergency Guardianships and Orders

Pursuant to Ohio Revised Code Section 2111.02, emergency guardianships or emergency orders will be granted only if there is reasonable certainty that immediate action is required to prevent significant injury to the person or estate of the individual. The Probate Court recognizes that emergency guardianships or emergency orders should not be granted where another remedy may be appropriate.

Applications for emergency guardianships or emergency orders must include a completed Application (Form LR 33); a completed Affidavit in Support of Emergency Application (Form LR 34); a completed Statement of Expert Evaluation (SPF 17.1); and a completed Supplement for Emergency Guardianship of Person (SPF 17.1A). The Application should also contain any attachments or exhibits that may assist the Probate Court in determining whether to grant an emergency guardianship or emergency orders.

Once the Application has been filed, the Application and any accompanying materials will be reviewed by the Judge or Magistrate.

If the Probate Court declines to grant an emergency guardianship or emergency orders, the Probate Court may, in its discretion, schedule the matter for hearing on an expedited basis.

If the Probate Court approves the request for emergency guardianship or emergency orders, the following will occur:

(1) A Judgment Entry will issue granting emergency guardianship or emergency orders for a period of seventy-two (72) hours.

(2) If a Motion for Extension of Emergency Guardianship or Emergency Orders is filed, a hearing will be scheduled within seventy-two (72) hours in order to determine whether to extend the emergency guardianship or emergency orders for up to thirty (30) days.

(3) If an Application for Appointment of Guardian of Alleged Incompetent in a full guardianship is filed, a hearing will be scheduled on the regular guardianship docket for hearing on the Application for Appointment of Guardian.

(4) As soon as possible after the issuance of the emergency guardianship or emergency order a Probate Court Investigator will visit with the respondent in order to serve notice of the emergency guardianship or emergency order proceedings and any scheduled Court hearings.

(5) After Notice to the respondent and hearing, the Probate Court may extend the seventy-two (72) hour emergency guardianship for a period not to exceed thirty (30) days, in which case a Judgment Entry will issue.

(B) Comments and Complaints

(1) Comments and complaints regarding the performance of guardians appointed by this Court may be submitted in writing by ordinary mail, in person, or by facsimile to the Guardianship Clerk of the Union County Probate Court on the Court's Form LR 38. Persons submitting comments or complaints are encouraged to attach supporting documentation and affidavits to their comments or complaints.

(2) Upon receipt, the comment or complaint will be docketed by the Probate Court Clerk and a copy will be provided to the guardian who is the subject of the comment or complaint.

(3) Upon receipt, the Clerk will log the comment or complaint into the database maintained by the Probate Court for the purpose of monitoring such comments and complaints.

(4) The comment or complaint will be promptly delivered to the Judge or Magistrate, who will develop a plan of action for the comment or complaint within ten (10) days. Plans of action may include any of the following:

(a) The matter may be set for Review hearing, in which case a copy of the comment or complaint will be sent to the guardian and hearing notice will be sent to the person submitting the comment or complaint and the guardian.

(b) The Judge or Magistrate may conduct an investigation into the comment or complaint, which may or may not involve the use of a Probate Court Investigator, after which a written response will be prepared and sent to the person submitting the comment or complaint and the guardian.

(c) The Judge or Magistrate may determine that, on its face, the comment or complaint does not warrant further action, in which case a written response will be prepared and sent to the person submitting the comment or complaint.

(5) In all cases in which the Probate Court generates a response pursuant to Items 4(b) or (c) above, the response of the Probate Court will be docketed and the comment or complaint and the response will be maintained in the Court file.

(6) At the conclusion of the Review Process, the Guardianship Clerk will maintain a separate record regarding the nature and disposition of the comment or complaint.

The above Review Process does not apply to communications received from the ward. Comments or complaints filed by the ward do not need to be on the designated form; do not incur a filing fee; and are set before a Judge or Magistrate subject to the limitations set forth in Ohio Revised Code Section 2111.49(C).

Rule 68.1 – Settlement of Claims for injuries to Minors (R.C. 2111.18)

The presence of the injured minor and the custodial parent(s) shall be required at the hearing on Application under this rule.

Unless otherwise ordered by the Court, all minor settlement applications must be accompanied by a current statement of the examining physician in respect to the injuries sustained, the extent of the recovery, and the physician's prognosis.

If the minor's family does not retain an attorney who will be attending the hearing, the Attorney filing the Minor Settlement shall include an information sheet on how to contact the family (address & phone numbers).

Further, in a situation where the minor and his parents are not represented by counsel, the attorney drafting the pleadings shall be responsible for depositing the funds and for providing the financial institution with a copy of the entry. Said attorney shall obtain a verification of receipt and deposit (SPF 22.3) from the bank and return it to the Court for filing within seven days of the entry's approval.

Sup. R. 68 shall apply to all settlements under this rule.

Rule 70.1 – Settlement of Wrongful Death and Survival Claims.

(A) The application for approval of settlement for wrongful death shall be set for hearing in every case. Interested parties may waive notice of hearing.

(B) After distribution is made in a wrongful death settlement, the applicant or counsel shall file a report detailing the parties to whom distribution was made and the amounts.

Rule 71.1 – Counsel Fees.

(A) This Court hereby adopts and will follow Rule 1.5 of the Ohio Rules of Professional Conduct with respect to approval of all attorney fees. Counsel fees shall be reasonable and beneficial to the estate. An Application for Counsel Fees shall be filed in estates, guardianships, and trusts, and shall include a Schedule of Computation of Fees (see Appendix, Forms LR7 & LR8). Applications for allowance of attorney fees in decedent's estate shall include a statement by the applicant/attorney that said attorney will file the final account within thirty days, unless exception is made by Court order. Counsel fees as set forth below may serve as a guide in determining fees for complete services rendered as attorney for an executor, administrator, guardian, trustee, or other fiduciary accountable to the Probate Court. The schedules, however, are guidelines only, and are not to be considered or represented to clients, as schedules of minimum or maximum fees to be charged.

(B) **Administration of Decedent's Estate.** Counsel fees for the administration of a decedent's estate as set forth below may serve as a guide in determining fees to be charged to the estate for legal services of an ordinary nature rendered as attorney for the fiduciary in the complete administration of a decedent's estate.

(1) Attorney fees herein may be based upon the total estate as determined by the higher value as shown on the inventory, what is or what would be included on a federal tax return, or account. The total estate includes real and personal property as well as probate and non-probate assets. (*rev. 4/15/17*)

In these cases, attorney fees may be based on the following: 6% of the first \$5,000.00 or part thereof; 3% of the balance.

(2) Extraordinary fees may be allowed if they are included on the schedule of computation and a separate itemized statement of services rendered is attached in support thereof.

(3) If the fiduciary acts as his/her own attorney or employs anyone in his/her law firm to represent him/her as fiduciary and based his/her fee upon the above schedule, the amount of the attorney fees so determined shall be reduced by one half of the amount of any commission that he/she receives as fiduciary pursuant to Ohio Revised Code Section 2113.35 and these rules.

(4) The Court may allow the attorney fee requested without hearing, provided the fiduciary and the attorney have signed the application stating the services were necessary and beneficial to the estate and

that the amount requested is reasonable. The Court may on its own motion or that of any interested party set the application for hearing.

(5) An application for allowance of attorney fees must include a certification by the attorney that he/she will file the final account within thirty (30) days of the filing of the application for allowance of fees, unless exception is granted by the Court, upon written application of the attorney (see Appendix, Form LR8).

(6) See Appendix, Forms LR 7 and 8 – Schedule of Computation of Attorney Fees for Decedent’s Estate and Application for Allowance of Attorney Fees for Decedent’s Estate.

(B) Counsel Fees for Guardianships and Trusts. Counsel fees for a guardianship or trust shall be those reasonable and beneficial to the guardianship or trust. The following is a guide in determining fees charged for ordinary legal services in representation of guardianships and trusts. Such schedule is not to be considered as a schedule of minimum or maximum fees to be charged.

(1) Counsel fees for the establishment of the guardianship, filing of inventory may be \$350.00 (one time only). Appointment of testamentary trustee \$200.00 (one time only).

(2) Counsel fees after filing of the inventory may be based on the annual income and principal. Income fee: 5% of the gross income on personal property plus an additional 2% of the gross income attributable to real estate rentals where the fiduciary is managing such real estate, chargeable to income. Principal fee: \$3.00 per thousand on the first \$100,000.00; \$2.00 per thousand on the next \$200,000.00; \$1.00 per thousand on the balance; of the fair market value of the corpus, annually chargeable to principal unless otherwise ordered. Compensation computed on total income will not be allowed on balances carried forward from one accounting period to another.

(3) Extraordinary compensation may be allowed by the Court if a separate itemized statement of services rendered is attached to the schedule of computation detailing such services and the amount charged.

(4) Compensation where an attorney is appointed by the Probate Court to be paid from County funds may be paid in accord with the following schedule:

Mental Illness cases - \$75.00 per hour with a maximum of \$450.00 (6 hours); and

Guardianship Cases - \$75.00 per hour with a maximum of \$600.00 (8 hours).

The Court may also reimburse counsel for reasonable expenses in connection with the case, with a maximum of \$25.00. In order to secure payment for these services, counsel must file an application on a form provided by the Court and attach an itemized statement of services rendered (See Local Forms LR 31, 32, and 33).

Rule 73.1 – Guardian’s Compensation.

Unless otherwise provided by law or ordered by the Court, a guardian may charge annually for his/her ordinary services, an amount computed in accordance with the following schedule.

Income fee: 5% of the gross income on personal property plus an additional 2% of the gross income attributable to real estate rentals where the fiduciary is managing such real estate, chargeable to income.

Principal fee: \$3.00 per thousand on the first \$100,000.00; \$2.00 per thousand on the next \$200,000.00; \$1.00 per thousand on the balance; of the fair market value of the corpus, annually chargeable to principal unless otherwise ordered. The guardian may, with the approval of the Court, be allowed a principal distribution fee upon the final distribution of any part of the corpus of the guardianship property equal to one percent (1%) of the fair value of the part distributed, and the amount shall be charged against and

deducted from such distribution or payment. A minimum annual fee of \$350.00 as per form attached will be allowed in each guardianship.

For purposes of determining compensation based on income the following shall **NOT** be considered income:

1. Receipt of corpus by guardian.
2. Balances carried forward from prior accountings.
3. Investment and reinvestment of corpus, including conversion of corpus to cash.

Additional compensation for extraordinary services or allowance for expenses of a guardian; and the compensation of the guardian of person only may be allowed upon application to the Court. (See Forms LR10 and LR11 – Computation & Application for Guardian’s/ Trustee’s Compensation.)

Rule 74.1 – Trustee’s Compensation.

Except where the instrument creating the trust makes provision for compensation, unless otherwise provided by statute or ordered by the Court, a testamentary trustee may charge annually for ordinary services performed in connection with the administration of each separate trust estate, and amount computed in accordance with the schedule set forth in Local Rule 73.1 above for Guardian’s compensation, except that a minimum annual fee of \$200.00 will be allowed in each trust. (See Appendix, Form LR10 – Computation of Guardian’s/Trustee’s Compensation.)

Rule 75.1 – Local Rules.

The Union County Probate Court hereby adopts this rule for the purpose of listing other local rules of Court that do not logically fall within Sup. R. 51-74.

Rule 75.2 – Adoptions.

No petition for adoption will be heard upon the merits thereof until after an examination of the home of the petitioner(s) and after an investigation as to the character of the petitioner(s) has been made by an assessor appointed by the Court.

In cases of Step-Parent adoptions, the couple shall be married one year prior to filing a Petition for Adoption.

The fee of the assessor, including miles and expenses, shall be taxed as costs unless otherwise ordered by the Court.

In cases of adult adoptions pursuant to Ohio Revised Code Section 3107.02(B), the petitioner(s) shall provide at least four letters of reference from persons who are not related to the petitioner(s), and which shall be filed with the Court prior to final hearing.

Rule 75.3 – Custodial Deposits in Lieu of Bond.

All custodial deposits of personal property, securities and monies must comply with Ohio Revised Code Section 2109.13. All institutions desiring to be a depository must satisfy the Court of their authorization and certification by the State of Ohio. A Verification of Receipt & Deposit in Lieu of Bond for Guardianships (Appendix LR16) must be filed with this Court.

Rule 75.4 – Change of Name.

A certified copy of a birth certificate shall be submitted to the Court for all Change of Name cases (minors and adults). The certified copy may be copied and returned to the Applicant following the hearing. Upon Application, a passport, may be used in lieu of a birth certificate.

Rule 75.5 – Underage Marriages.

A minor child who seeks to marry must first apply in the Juvenile Court for permission to marry in accord with R.C. 3101.01. A certified copy of the judgment entry granting the Juvenile Court’s consent for the minor(s) to marry must be filed with the application for the marriage license.

Rule 78.1 – Case Management and Annual Physical Inventory.

The Court will conduct a physical inventory of and review of all pending cases on or before the 1st of October of each year. The inventory shall list all open cases.