2015 Annual Convention

Best Practices for Busy Attorneys: Probate and Estate Law

Solo, Small Firm, and General Practice Section
Ohio Bar Liability Insurance Company
Young Lawyers Section

1.5 General CLE Hours/1.5 NLT Hours

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April 29 – May 1, 2015 ♦ Sandusky

Speaker Biography

Linde Hurst Webb
Lydy & Moan, Ltd
Sylvania, Ohio

Ms. Webb received her BA from Kent State University and her JD from Case Western Reserve University School of Law. Her professional memberships include the American Inns of Court Foundation (President and Master of the Bench, Morrison R. Waite Chapter), Toledo Bar Association (Board of Trustees), Ohio State Bar Association (Council of Delegates; Litigation Section), Ohio State Bar Foundation, and American Bar Association (Litigation Section; Real Property Section; Probate Section). Ms. Webb is currently in private practice with Lydy & Moan, Ltd., handling cases predominately in the areas of eminent domain, real estate, probate, guardianship, and personal injury claims. She is the recipient of the Arabella Babb Mansfield Award presented by the Toledo Women's Bar Association as the 1994 Outstanding Woman Lawyer, and the recipient of the Catherine S. Eberly Center for Women's 2004-2005 Woman of the Year Award. She is a frequent author and lecturer on topics related to her areas of practice. For additional information, please visit www.lydymoan.com.

Best Practices for Busy Attorneys: Probate and Estate Law

Linde Hurst Webb
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Best Practices for Busy Attorneys: Probate and Estate Law

Probate and Estate Law includes guardianship law, probate estates, estate insolvencies, land sales administration of estates, wrongful death, adoption, testamentary trusts, and any other probate matters

RULES & SOURCES

Local Rules of Probate Court
Rules of Superintendence For the Courts of Ohio – Probate Rules 50-79
Ohio Revised Code –XXI Title 21 Courts-Probate-Juvenile
Seminars by OSBA and local bars
OSBA Estate List Serve

DRAFTING ESTATE PLANNING DOCUMENTS

BEST PRACTICES:

1. Engagement letter/agreement
   - -Who do you represent -the testator or the person who brings them in?
   - -Does it matter who pays the bill?

2. Testamentary Capacity (can be incompetent and yet many have lucid moments)
   - -What should an attorney ask of a person with competency issues?
     - -Do they know their family members?
     - -Do they know approximately how much money they have?
     - -Do they know the US president?

3. If you have misgivings, DO NOT DRAFT DOCUMENTS.

4. Memorialize your concerns contemporaneously.

5. Avoid conflicts.

EXECUTION OF ESTATE DOCUMENTS

BEST PRACTICES

1. Set up a routine.

2. If you ever had to testify about the execution of those documents, you can state that you always have a routine, and that you always follow the routine.

3. Have a checklist, place completed checklist in the file after execution.

4. Check all signature lines, dates, and witnesses signatures right after signing.

5. Execution is done the same way each and every time.

6. Do not send a Will out for execution by the client.

7. Do not give the prepared Will to a third person to take it to the client for execution.

8. Mark all documents DRAFT for review by the client, if sent out prior to execution.

9. Do not prepare a will or other document for a client at the direction of a 3rd party unless you talk to the client, and are going to be present for the signing of that document.

10. You must see the client sign.

11. Do not witness a document brought to you by another attorney, already executed if the person who signed it is not present to attest to the signature.

12. DO NOT WITNESS A WILL IF THE PERSON IS NOT PRESENT.

NOTARY PUBLIC: R.C. §147. While all attorneys may be notaries if admitted in Ohio, they must register and be certified in the Common Pleas Court in the County where they reside for authority.

When you notarize a document, you are attesting to the presence of the witness or signor or both. In many disciplinary cases, amongst other charges, failure to follow notarial rules is commonplace.

BEST PRACTICES:

1. Do not notarize any document that you have not seen the person execute.
2. No short cuts, not for anyone.

ESTATES AND GUARDIANSHIPS

BEST PRACTICE:

1. Be aware of the probate court forms requesting knowledge of criminal acts

- FORM 17.0 – APPLICATION FOR APPOINTMENT OF GUARDIAN (AN ALLEGED INCOMPETENT) states "The Applicant has (not) been charged with or convicted of a crime involving theft, physical violence, or sexual, alcohol or substance abuse except as follows (if applicable, state date and place of each charge or each conviction.)"

2. The Application for Authority to Administer an Estate does not contain a similar clause. Form 4.5. But see local rule below regarding criminal records check.

3. Ask your proposed fiduciary if they have criminal record.

4. Ask your client if they have had bankruptcy/credit problems and may not be eligible for bond.

5. Check local rules. See attached Local Rule Form of the Lucas County Probate Court. LCPC FORM – RRCPF – RELEASE FOR RECORD CHECK ON PROPOSED FIDUCIARY/APPLICANT which is used for both guardianship cases and estate cases.

ESTATE AND GUARDIANSHIP ACCOUNTINGS

INVENTORY – must file within 90 days of appointment
ACCOUNTINGS - Must file within one year of appointment.

BEST PRACTICE:

1. USE A TICKLER SYSTEM:
   -Set a tickler system up
   - Do not use the courts citation to remove attorney and/or fiduciary if not filed within 30 days as your tickler or reminder
   -Tickler on the calendar
   -Tickler on bulletin board

2. ACCOUNTING PROGRAM:
   -Use a computer driven program, like Quicken or Quick books that allows reports on all disbursements-categories whether debt, administration expense etc. for estate accounts or guardianship accounts.

   -Keep the account up to date by balancing the account once a month with quicken and the bank statement

-Categories for Accounting are important, especially when the estate will be insolvent, is it a debt, tax payment, administration expense (court costs, attorney fees, widow's allowance)

-Make sure to see the original bank statements (Lucas County Probate Court accounting practice) –extremely good forger necessitated that practice

-If the court does not have an accounting practice, the attorney should have their own practice of seeing original bank statements.

3. PROBATE SOFTWARE PROGRAMS

-It is critical to have accurate documents.

-The amounts shown in the accounts must balance, and the accountings and assets remaining in the fiduciaries hands must balance.

-Once information is entered into the program, it can be carried over for each account yearly.

-Puritas Software is an inexpensive program to use and provides an accurate accounting for the court (there are other programs).

-The Lucas County Probate Court and other probate courts now provide forms online, which can be filled in via the computer.

FINDING ASSETS IN ESTATE/GUARDIANSHIP

BEST PRACTICE

1. Check Ohio Unclaimed Funds

2. Letter of inquiry to all local banks regarding possible accounts, safety deposit boxes

3. Personally search of all documents, papers, files, and boxes, list of inventoried assets on insurance policies, if available.

4. Tax returns, W-2 and 1099-R can be accessed through the IRS for information of pension benefits and assets

5. Meeting with Ohio Department of Human Services regarding assets.

6. Search of local on-line real estate programs by name or address.

7. Previous estate of spouse, for inventory list and/or estate tax return/income tax return.

8. Ask the bank to print at least 3 months worth of statements

9. Probate Court can issue Subpoena's under authority of guardianship. This is especially helpful where there is a reluctance to reveal information.

10. If the Court has reason to suspect unlawful withholding of assets, the Court can file Actions under R.C. §2111.141. Evidence to support inventory; verification of inventory – giving the court the power to make further inquiry into a Guardian's inventory and report of assets.

NOTICE TO BENEFICIARIES/HEIRS –Form 1.0

BEST PRACTICE

-Gather accurate list of Next of Kin and Heirs

-Accurate addresses of Next of Kin

-Use Internet for addresses unknown, including Google, white pages, yellow pages, Facebook, LinkedIn, Mugshots, obituaries, etc.

-Last known address (envelope returned sometimes has forwarding address on label, sometimes envelope says not deliverable, sometimes it says unknown, forwarding order expired.

-Personally check the envelope if in the probate court for failure of service, and take the time to review any envelope address if returned to law firm.

-If address not found, must file for publication

-PUBLICATION: If you cannot find heir, you may have to publish, and sign Affidavit of efforts made to find the heir. For $100.00-$300.00 most investigative firms, heir hunters, etc. will attempt to find heirs.

PROBATE HEARINGS/CONTINUANCES:

BEST PRACTICE

1. If you need a continuance, you must file a motion. See Rule 56 of Ohio Rules of Superintendence.

2. A telephone call to the court that you cannot make a hearing is not sufficient.

3.The court rules from its docket, and the docket must reflect a continuance via motion.

4. This includes hearings on removal of fiduciary/attorney.

5. File a proposed entry with a blank for the court to set a new date.

6. Let the Court know that you have permission of the other side, or have notified them via Certification.

AGENTS/EMPLOYEES OF ATTORNEY:

BEST PRACTICE:

1. If secretaries/paralegals and other attorney's staff are used to file papers, make sure that your staff is trustworthy.

2. Use checks and balances to make sure that assets are what are reported and are accurate.

3. **VERIFY VERIFY.** If there is theft in your attorney office staff, you are responsible.

4. Verity IOTLA TRUST ACCOUNT BALANCES, and ALL GUARDIANSHIP ACCOUNTS, ESTATE ACCOUNTS.

5. Verify Accounts each month.

ATTORNEY AS JOINT SIGNATORY ON ESTATE AND GUARDIANSHIP ACCOUNTS.

Some years ago, all attorneys and banks encouraged the attorney and guardian to sign checks, to protect the estate or the estate of the ward. That was done to insure that the estate checks were to be written under the eye of the estate attorney. That practice is now gone, and no bank would accept the signature of a non-appointed person on an estate account. That practice of dual signatures used to be the BEST PRACTICE to insure no unauthorized expenditures.

However, the Ohio Revised Code forbids an attorney for a guardianship to co-sign a check when the attorney represents a guardian of a ward. In contrast – letters of authority seem to give the probate court the power to order an attorney as co-signatory for an estate in lieu of bond, to keep the assets within the State of Ohio. See attached Letters of Authority, Lucas County Probate Court.

R.C.§ 2111.091 [Effective1/13/2012] Restrictions on attorney representing guardian

No attorney who represents any other person and who is appointed as a guardian under this chapter or under any other provision of the Revised Code shall do either of the following:

(A) Act as a person with co-responsibility for any guardianship asset for which the guardian is responsible;

(B) Be a cosignatory on any financial account related to the guardianship, including any checking account, savings account, or other banking or trust account.

(Amended by 129th General Assembly File No. 52, SB 124, § 1, eff. 1/13/2012).

BEST PRACTICES:

1. Many attorneys require that the estate and/or guardianship checkbook stay with the attorney, however, counterchecks are possible and are used by fiduciaries to make unauthorized expenditures.

2. Direct the Bank checking account statements be sent to the law firm once a month that will alert the attorney to a problem.

3. Direct the Bank to permit Internet access to estate or guardian account to the attorney.

GUARDIANSHIP EXPENDITURES. In guardianship cases, the court must approve all expenditures before spending.

BEST PRACTICE:

1. Apply for authority to expend funds as a budget for the year, based upon prior expenses or knowledge, which would include an allowance, gifts, utilities, repair, insurance etc.

2. Apply for authority to expend funds each succeeding year, using the previous actual expenditures as a guideline.

3. If you do not have specific authority for expenditure, file a retroactive Motion to approve funds for expenses already spent, but not previously approved.

-Every time a separate Motion to Expend Funds is filed, more costs and delay.

GUARDIANSHIP & POWERS OF ATTORNEY: Guardianship filing does not automatically terminate a Durable Power of Attorney or Health Care Powers. If you want to terminate it, it must be filed as a Motion to Terminate Powers of Attorney.

PROBATE COURT STAFF

BEST PRACTICES:

1. Clerks working at the probate court are very helpful, but do not practice law.

2. Clerks can help you with procedures but they cannot practice law.

3. The magistrates in probate court also cannot give you legal advice, and cannot take a side in an adversarial situation.

4. The Magistrates can help with procedural matters.

5. **Do your own research** – do not ask the court to do it for you.

6. Probate Court staff are very helpful but DO NOT not blame your own staff or the staff at the court for your problem, and certainly not in a legal malpractice case or grievance filed against you.

CONFLICTS IN REPRESENTATION – ESTATE & GUARDIANSHIP

Who do you represent in the Estate? Fiduciary

Do you owe a duty to beneficiaries?

Who do you represent in a contested Guardianship Hearing?

QUESTION: Attorney shows up at contested guardianship hearing having been contacted by relative or friend of the proposed ward, and ward asked the court to appoint an attorney. Be sure whom you represent at the hearing.

QUESTION: Can you file as a guardian against your own client who is having diminished capacity?

QUESTION: What happens then when the client requests counsel for contested guardianship and you have filed for the guardianship under diminished capacity?

-The Court must appoint a guardian if requested by the proposed ward, your client.

QUESTION: What do you do when you feel you have a client with diminished capacity, and they may be a danger to themselves (forgetting to pay bills, giving away money, losing their home through foreclosure?)

BEST PRACTICE

1. Consult with Rules of Professional Conduct, Rule 1.14, Client with Diminished Capacity - particularly the comments.

2. If there is no POA or family member available, and if it is an emergency situation, seek guidance from an attorney experienced in disciplinary cases.

3. Always have a fee contract or conflict agreement when there is some confusion about representation.

ATTORNEY FEES

Local Probate Court rules regarding fees for attorneys

-Some probate courts in Ohio do not want an invoice with hourly rate, as they encourage the percentage calculation minimum fee schedule.

-Some probate courts do not allow invoice with hourly rate, unless you file "extraordinary fee" application if the invoice exceeds the local rule suggested fiduciary or attorney fee.

-Some probate courts do not consider a fee for real estate closing to be part of the probate estate fee, and thus permit a fee on the HUD document without court approval.

-Some probate courts do not permit a fee on the HUD, and the attorney must file for "extraordinary fees" for that time, as the time and service is included in the local rule for attorney fees.

-Some probate courts will not allow any fiduciary fee/attorney fee if there is a removal of the fiduciary or attorney, and the local rules state as much.

BEST PRACTICE

1. Do not charge attorney fees to correct probate court papers you filed, if it was your mistake.

2. Do not charge for preparing the Invoice for Attorney fees, or for the Fee Application.

3. Must have Probate Court Approval for attorney fees prior to paying them.

4. Never accept a retainer for an estate or guardianship.

5. Always, always look under local rules for attorney and/or fiduciary fees prior to applying for them.

6. Never sign a contingency fee contract for an estate or guardianship. See Rules of Professional Conduct Rule 1.4.

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ATTACHMENTS:

Rules of Professional Conduct Rule 1.5 – Fees and Expenses

Rules of Professional Conduct Rule 1.14-Client with Diminished Capacity

Lucas County Probate Court Form RRCPF – RELEASE FOR RECORD CHECK ON PROPOSED FIDUCIARY/APPLICANT.

FORM 17.0 – APPLICATION FOR APPOINTMENT OF GUARDIAN (AN ALLEGED INCOMPETENT

LCPC_FORM 4.5 (modified) – ENTRY APPOINTING FIDUCIARY; LETTERS OF AUTHORITY

R.C. §2111.141 Inventory to be Supported by Evidence

Ohio Rules of Superintendence Probate Rules 50-78

RULE 1.5: FEES AND EXPENSES

(a) A lawyer shall not make an agreement for, charge, or collect an *illegal* or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a *reasonable* fee. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

(b) The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in *writing*, before or within a *reasonable* time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in *writing*.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by division (d) of this rule or other law.

(1) Each contingent fee agreement shall be in a *writing* signed by the client and the lawyer and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement shall clearly

notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

(2) If the lawyer becomes entitled to compensation under the contingent fee agreement and the lawyer will be disbursing funds, the lawyer shall prepare a closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under the agreement. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyer's fees with a lawyer not in the same *firm*, as required in division (e)(3) of this rule. The closing statement shall be signed by the client and lawyer.

(d) A lawyer shall not enter into an arrangement for, charge, or collect any of the following:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support, or property settlement in lieu thereof;

(2) a contingent fee for representing a defendant in a criminal case;

(3) a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is simultaneously advised in *writing* that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule.

(e) Lawyers who are not in the same *firm* may divide fees only if all of the following apply:

(1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client;

(2) the client has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation;

(3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule;

(4) the total fee is *reasonable*.

(f) In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration.

Comment

Reasonableness of Fee

[1] Division (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in divisions (a)(1) through (8) are not exclusive. Nor will each factor be relevant in each instance.

Nature and Scope of Representation; Basis or Rate of Fee and Expenses

[2] The detail and specificity of the communication required by division (b) will depend on the nature of the client-lawyer relationship, the work to be performed, and the basis of the rate or fee. A writing that confirms the nature and scope of the client-lawyer relationship and the fees to be charged is the preferred means of communicating this information to the client and can clarify the relationship and reduce the possibility of a misunderstanding. When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be established promptly. Unless the situation involves a regularly represented client, the lawyer should furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee, and whether and to what extent the client will be responsible for any costs, expenses, or disbursements in the course of the representation. So long as the client agrees in advance, a lawyer may seek reimbursement for the reasonable cost of services performed in-house, such as copying.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of division (a) of this rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(e). A lawyer may accept property in payment for services,

such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

[5A] If all funds held by the lawyer are not disbursed at the time the closing statement required by division (c)(2) is prepared, the lawyer's obligation with regard to those funds is governed by Rule 1.15.

Prohibited Contingent Fees

[6] Division (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of spousal or child support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support or other financial orders because such contracts do not implicate the same policy concerns.

Retainer

[6A] Advance fee payments are of at least four types. The "true" or "classic" retainer is a fee paid in advance solely to ensure the lawyer's availability to represent the client and precludes the lawyer from taking adverse representation. What is often called a retainer is in fact an advance payment to ensure that fees are paid when they are subsequently earned, on either a flat fee or hourly fee basis. A flat fee is a fee of a set amount for performance of agreed work, which may or may not be paid in advance but is not deemed earned until the work is performed. An earned upon receipt fee is a flat fee paid in advance that is deemed earned upon payment regardless of the amount of future work performed. When a fee is earned affects whether it must be placed in the attorney's trust account, see Rule 1.15, and may have significance under other laws such as tax and bankruptcy. The reasonableness requirement and the application of the factors in division (a) may mean that a client is entitled to a refund of an advance fee payment even though it has been denominated "nonrefundable," "earned upon receipt," or in similar terms that imply the client would never receive a refund. So that a client is not misled by the use of such terms, division (d)(3) requires certain minimum disclosures that must be included in the written fee agreement. This does not mean the client will always be entitled to a refund upon early termination of the representation [*e.g.*, factor (a)(2) might justify the entire fee], nor does it

determine how any refund should be calculated (e.g., hours worked times a reasonable hourly rate, quantum meruit, percentage of the work completed, etc.), but merely requires that the client be advised of the possibility of a refund based upon application of the factors set forth in division (a). In order to be able to demonstrate the reasonableness of the fee in the event of early termination of the representation, it is advisable that lawyers maintain contemporaneous time records for any representation undertaken on a flat fee basis.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial lawyer. Division (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. Within a reasonable time after disclosure of the identity of each lawyer, the client must give written approval that the fee will be divided and that the division of fees is in proportion to the services performed by each lawyer or that each lawyer assumes joint responsibility for the representation. Except where court approval of the fee division is obtained, closing statements must be in a writing signed by the client and each lawyer and must otherwise comply with division (c) of this rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rules 1.1 and 1.17.

[8] Division (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes between a client and a lawyer, such as an arbitration or mediation procedure established by a local bar association, the Ohio State Bar Association, or the Supreme Court of Ohio, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

[10] A procedure has been established for resolution of fee disputes between lawyers who are sharing a fee pursuant to division (e) of this rule. This involves use of an arbitration or mediation procedure established by a local bar association or the Ohio State Bar Association. The lawyer must comply with the procedure. A dispute between lawyers who are splitting a fee shall not delay disbursement to the client. See Rule 1.15.

Comparison to former Ohio Code of Professional Responsibility

Rule 1.5 replaces DR 2-106 and DR 2-107; makes provisions of EC 2-18 and EC 2-19 mandatory, as opposed to aspirational, with substantive modifications; and makes the provisions of R.C. 4705.15 mandatory, with technical modifications.

Rule 1.5(a) adopts the language contained in DR 2-106(A) and (B), which prohibits illegal or clearly excessive fees and establishes standards for determining the reasonableness of fees. Eliminated from Rule 1.5(a) is language regarding expenses.

Rule 1.5(b) expands on EC 2-18 by mandating that the nature and scope of the representation and the arrangements for fees and expenses shall promptly be communicated to the client, preferably in writing, to avoid potential disputes, unless the situation involves a regularly represented client who will be represented on the same basis as in the other matters for which the lawyer is regularly engaged.

Rule 1.5(c)(1) also expands on EC 2-18 and R.C. 4705.15(B) by requiring that all contingent fee agreements shall be reduced to a writing signed by the client and the lawyer. Rule 1.5(c)(2) directs that a closing statement shall be prepared and signed by both the lawyer and the client in matters involving contingent fees. It closely parallels the current R.C. 4705.15(C).

Rule 1.5(d) prohibits the use of a contingent fee arrangement when the contingency is securing a divorce, spousal support, or property settlement in lieu of support. It finds its basis in EC 2-19, which provides that "Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relations cases are rarely justified." Rule 1.5(d)(2) prohibits the use of contingent fee arrangements in criminal cases and parallels DR 2-106(C).

Rule 1.5(d)(3) prohibits fee arrangements denominated as "earned upon receipt," "nonrefundable," or other similar terms that imply the client may never be entitled to a refund, unless the client is advised in writing that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund so the client is not misled by such terms. The rationale for this rule is contained in Comment [6A].

Rule 1.5(e) deals with the division of fees among lawyers who are not in the same firm. Rule 1.5(e)(1) restates the provisions of DR 2-107(A)(1), with the additional requirement that in the event the division of fees is on the basis of joint responsibility, each lawyer must be available for consultation with the client. Rule 1.5(e)(2) clarifies DR 2-107(A)(2) and Advisory Opinion 2003-3 of the Board of Commissioners on Grievances and Discipline regarding the matters that must be disclosed in writing to the client.

Rule 1.5(e)(3) is a new provision directing that the closing statement contemplated by Rule 1.5(c)(2) must be signed by the client and all lawyers who are not in the same firm who will share in the fees, except where the fee division is court-approved. Rule 1.5(e)(4) is a restatement of DR 2-107(A)(3) regarding the requirement that the total fee must be reasonable.

Rule 1.5(f) is a restatement of DR 2-107(B) requiring mandatory mediation or arbitration regarding disputes between lawyers sharing a fee under this rule.

Comparison to ABA Model Rules of Professional Conduct

Model Rule 1.5 is amended to conform to Disciplinary Rules and ensure a better understanding of the relationship between the client and the lawyers representing the client, thereby reducing the likelihood of future disputes. Also, the comments are modified to bring them into conformity with the proposed changes to Model Rule 1.5 and clarify certain aspects of fees for the benefit of the bench, bar, and the public.

Although ABA Model Rule 1.5(a) directs that a lawyer shall not charge "unreasonable" fees or expenses, the terminology in DR 2-106 (A) prohibiting "illegal or clearly excessive" fees is more encompassing and better suited to use in Ohio. Charging an "illegal fee" differs from charging an "unreasonable fee" and, accordingly, the existing Ohio language is retained.

Model Rule 1.5(c), while dealing with contingent fees, is expanded and clarified. The closing statement provisions of the Model Rule are expanded to bring them in line with existing R.C. 4705.15(C). Additionally, the Model Rule is divided into two parts, the first dealing with the lawyer's obligations at the commencement of the relationship and the second dealing with the lawyer's obligations at the time a fee is earned.

The provisions of Model Rule 1.5(d) are modified to add division (d)(3) and Comment [6A] in light of the number of disciplinary cases involving "retainers."

Model Rule 1.5(e) and Comment [7] dealing with division of fees are modified to bring both the requirements of the rule and the commentary into line with existing practice in Ohio.

RULE 1.14: CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as *reasonably* possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer *reasonably believes* that the client has diminished capacity, is at risk of *substantial* physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take *reasonably* necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian *ad litem*, conservator, or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to division (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent *reasonably* necessary to protect the client's interests.

Comment

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under division (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in division (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then division (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members; using a reconsideration period to permit clarification or improvement of circumstances; using voluntary surrogate decision-making tools such as durable powers of attorney; or consulting with support groups professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests, and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision; variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian *ad litem*, conservator, or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to division (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, division (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety, or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent, or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Comparison to former Ohio Code of Professional Responsibility

There are no Disciplinary Rules that cover directly the representation of a client with diminished capacity. The only comparable provisions are EC 7-11 and 7-12, which discuss the representation of a client with a mental or physical disability that renders the client incapable of making independent decisions.

Rule 1.14 is both broader and narrower than EC 7-12. It is broader to the extent that it explicitly permits a lawyer to ask for the appointment of a guardian *ad litem* in the appropriate circumstance, it explicitly permits the lawyer to take reasonably necessary protective action, and

it explicitly permits the disclosure of confidential information to the extent necessary to protect the client's interest.

Rule 1.14 is narrower to the extent that it does not explicitly permit the lawyer representing a client with diminished capacity to make decisions that the ordinary client would normally make. The rule does not address the matter of decision-making, as is the case in EC 7-12, but merely states that the lawyer should maintain a normal client-lawyer relationship as far as reasonably possible.

Comparison to ABA Model Rules of Professional Conduct

Rule 1.14 is identical to the ABA Model Rule.

PROBATE COURT OF LUCAS COUNTY, OHIO
JACK R. PUFFENBERGER, JUDGE

☐ **CONSERVATORSHIP OF**
☐ **GUARDIANSHIP OF**
☐ **ESTATE OF**
☐ **MISCELLANEOUS**
☐ **NAME CHANGE OF**
☐ **TRUST OF** _____,
_____,

CASE NO. _____

RELEASE FOR RECORD CHECK ON PROPOSED FIDUCIARY

By my signature below, I hereby authorize the release of any and all records or information that your agency may have pertaining to me to the Probate Court of Lucas County, Ohio.

I further understand that my social security number, driver's license number and birthday listed on the attached sheet shall be used for conducting the record check and upon the conclusion of the record check that the attached sheet containing my social security number, driver license number and birth date shall be destroyed.

_____ _____
Date Signature of Fiduciary

_____
Typed Name

CONCLUSION OF RECORD CHECK

☐ Records checked and found to be in order.
☐ Records checked and found not to be in order.
☐ Record Check Information Sheet destroyed.
☐ Record Check Information Sheet returned to attorney.

_____ _____
Date Deputy Clerk

I,_____, Attorney at law hereby certify, that the within instrument was prepared and/or examined by me, and that the same, in my opinion, is correct and proper.

_____
Attorney Ohio Supreme Court Number

RECORD CHECK
INFORMATION SHEET

Name:_____

Address:

Date of Birth:_____

Social Security Number:_____

Driver License Number:_____

PROBATE COURT OF LUCAS COUNTY, OHIO
JACK R. PUFFENBERGER, JUDGE

GUARDIANSHIP OF _____

CASE NO. _____

APPLICATION FOR APPOINTMENT OF GUARDIAN OF ALLEGED INCOMPETENT

[R.C. 2111.03]

Applicant represents to the Court that _____ resides or has a legal settlement at _____, in _____ County, Ohio and that the prospective ward is incompetent by reason of (R.C. 2111.01 (D))

_____.

The proposed ward's date of birth is _____ .

A Statement of Expert Evaluation is attached. (Form 17.1)

A List of Next of Kin of Proposed Ward is also attached. (Form 15.0)

The whole estate of the prospective ward is estimated as follows:

Personal Property	$_____
Real Estate	$_____
Annual Rents	$_____
Other Annual Income	$_____

Applicant represents that the applicant is not an administrator, executor or other fiduciary of the estate wherein the alleged incompetent is interested.

Applicant offers the attached bond in the amount of $_____.

Applicant further represents that a guardian of the alleged incompetent is necessary in order that

☐ the ward ☐ ward's property, may be taken proper care of and asks that a guardian be appointed.

THE TYPE OF GUARDIANSHIP APPLIED FOR IS **[check the applicable boxes]**

☐ non-limited ☐ limited ☐ person and estate ☐ estate only ☐ person only

If limited guardianship is applied for, the limited powers requested are:

CASE NO. _____

The time period requested is: ☐ indefinite ☐ definite to _____.

Applicant's relationship to alleged incompetent is_____.

The Applicant has (not) been charged with or convicted of a crime involving theft, physical violence, or sexual, alcohol or substance abuse except as follows (if applicable, state date and place of each charge or each conviction.)

☐ The Applicant represents that a guardian has been nominated in a writing pursuant to R.C. 1337.09(D) or R.C. 2111.121. The nominated person is _____.

☐ The nominated person's contact information is listed on Form 15.0 (Next of Kin).

☐ A copy of the document which nominates the guardian is attached.

☐ The Applicant represents that the proposed ward had military service.

Military I.D.: _____.

Branch of Service: _____.

Dates of Service: _____.

Applicant represents that the address provided is the applicant's permanent address and acknowledges the requirement that the court be notified of any change of address. Removal may result from a failure to comply with this requirement.

_____
Attorney for Applicant

_____
Typed or Printed Name

_____
Address

_____
City State Zip

_____
Telephone Number (include area code)

Attorney Registration No. _____

_____
Applicant

_____
Typed or Printed Name

_____
Age

_____
Permanent Address

_____
City State Zip

_____
Telephone Number (include area code)

I, _____, Attorney-at-law, hereby certify, that the within instrument was prepared and/or examined by me, and that the same, in my opinion, is correct and proper.

PROBATE COURT OF LUCAS COUNTY, OHIO
JACK R. PUFFENBERGER, JUDGE

ESTATE OF _____, **DECEASED**

CASE NO. _____

ENTRY APPOINTING FIDUCIARY; LETTERS OF AUTHORITY

[For Executors and all Administrators]

Name and Title of Fiduciary _____

_____

On hearing in open Court the application of the above fiduciary for authority to administer decedent's estate, the Court finds that;

Decedent died **[check one of the following]** ☐ testate - ☐ intestate - on _____,

domiciled in _____.

[Check one of the following] ☐ Bond is dispensed with by the Will - ☐ Bond is dispensed with by law - ☐ Applicant has executed and filed an appropriate bond, which is approved by the Court; and ☐ that Attorney _____ agrees to be co-signor on all estate accounts and that estate assets will remain within Lucas County.

Applicant is a suitable and competent person to execute the trust.

The Court therefore appoints applicant as such fiduciary, with the power conferred by law to fully administer decedent's estate. This entry of appointment constitutes the fiduciary's letters of authority.

_____ _____

Date Judge Jack R. Puffenberger

CERTIFICATE OF APPOINTMENT AND INCUMBENCY

The above document is a true copy of the original kept by me as custodian of the records of this Court. It constitutes the appointment and letters of authority of the named fiduciary, who is qualified and acting in such capacity.

_____

Probate Judge/Clerk

[Seal]

By _____

_____

Date

2111.141 Inventory to be supported by evidence.

The court, by order or rule, may require that any inventory filed by a guardian pursuant to section 2111.14 of the Revised Code be supported by evidence that the inventory is a true and accurate inventory of the estate of the ward of the guardian . The evidence may include, but is not limited to, prior income tax returns, bank statements, and social security records of the ward or other documents that are relevant to determining the accuracy of the inventory. In order to verify the accuracy of an inventory, the court may order a guardian to produce any additional evidence that may tend to prove that the guardian is in possession of or has knowledge of assets that belong to the estate of the ward and that have not been included in the guardianship inventory . The additional evidence may include, but is not limited to, the guardian's income tax returns and bank statements and any other documents that are relevant to determining the accuracy of an inventory. The court may assign court employees or appoint an examiner to verify an inventory filed by a guardian. Upon appointment, the assigned court employees or appointed examiner shall conduct an investigation to verify the accuracy of the inventory filed by the guardian. Upon order of the court, the assigned court employees or appointed examiner may subpoena any documents necessary for the investigation. Upon completion of the investigation, the assigned court employees or appointed examiner shall file a report with the court. The court shall hold a hearing on the report with notice to all interested parties. At the hearing, the guardian shall have the right to examine and cross-examine any assigned court employees or appointed examiner who conducted the investigation and filed the report that is the subject of the hearing. The court shall charge any costs associated with the verification of an inventory filed by a guardian against the estate of the ward, except that, if the court determines that the guardian wrongfully withheld, or aided in the wrongful withholding, of assets from the inventory filed by the guardian, the court shall charge the costs against the guardian.

Amended by 129th General AssemblyFile No.52, SB 124, §1, eff. 1/13/2012.

Effective Date: 01-01-1990

RULE 50. Definitions.

As used in Sup. R. 50 to 82 "case" means any of the following when filed in the probate division of the court of common pleas:

(A) A civil complaint, petition, or administrative appeal;

(B) A decedent's estate; a testamentary, inter vivos or wrongful death trust; a guardianship, conservatorship or request for emergency orders pursuant to division (B)(3) of 2111.02 of the Revised Code; an adoption or name change. Each beneficiary of a wrongful death trust, each ward or conservatee, each adoptee and each individual requesting a change of name in those proceedings with multiple interested parties, shall be considered a separate "case."

(C) Any other proceeding for which a case number is assigned including but not limited to the following: tax filings, filings of wills for probate or record, real estate transfers, and filings of foreign records where an estate is not opened; release from administration; minor's settlements; birth corrections; delayed birth registrations; mental retardation or tuberculosis commitments; petition for protective services; petition to compel HIV testing; an application to appoint a guardian, trustee, protector, or conservator of a mentally retarded or developmentally disabled person; acknowledgment of paternity; a petition for release of adoption information; powers of attorney including those for health care; declarations concerning life-sustaining treatment; proceedings to designate heir; applications to disinter or to oppose disinterment; and voluntary assignment for the benefit of creditors.

Commentary (July 1, 1997)

Rule 50 is a new rule that defines "case" as used in the rules applicable to the probate division of the court of common pleas.

Commentary (March 25, 2002)

The March 25, 2002 amendment deleted an obsolete reference to the recording of chiropractic licenses in the probate division of the court of common pleas. See former R.C. 4734.08, repealed in H.B. 506 of the 123rd General Assembly.

RULE 51. Standard Probate Forms.

(A) Applicability. This rule prescribes the format, content, and use of standard forms for designated applications, pleadings, waivers, notices, entries, and other filings in certain proceedings in the probate division of the courts of common pleas.

Where a standard form has not been prescribed by this rule, the form used shall be that required by the Civil Rules, or prescribed or permitted by the probate division of the court of common pleas in which it is being filed.

(B) Effective date; use of standard and nonstandard forms.

(1) This rule takes effect July 1, 1977 and applies to proceedings had on and after that date, including proceedings in pending cases.

(2) The standard forms shall be used on and after January 1, 1978, and nonstandard forms shall be rejected for filing.

(C) Modification of standard forms; pleadings and filings prepared for particular cases.

(1) A printed, blank standard form may be modified by deletion or interlineation to meet the circumstances of a particular case or proceeding, if the modification can be accomplished neatly and conveniently. No court shall require the modification of a standard form as a routine matter. If any allegation, statement, data, information, pleading, or filing is required by an appropriate local rule of court and a standard form does not make provision therefor, it shall be provided in a separate or supplemental filing.

(2) Even though a standard form is prescribed, an original instrument may be prepared for filing. Any such instrument shall be typed on eight and one-half by eleven inch paper. The caption prescribed in Sup. R. 52 shall be used, and the instrument shall follow the format prescribed for the standard forms. Any such instrument may modify the language of the standard form, omit inapplicable matter required by the standard form, and add matter not included in the standard form to the extent required by the circumstances of the particular case or proceeding.

(D) Standard probate forms. The standard forms prescribed for use in the probate division of the courts of common pleas are as follows.

Commentary (October 1, 1997)

This rule is identical to former C.P. Sup. R. 16.

This rule was amended effective December 13, 1989, to add a temporary provision suspending the use of Standard Probate Forms 15.0 through 17.5, the guardianship forms. This was necessitated by the revisions to the guardianship laws embodied in Substitute Senate Bill 46 of the 118th General Assembly, effective January 1, 1990. New guardianship forms were adopted effective September 1, 1991

and the temporary provision was repealed. In addition, additional estate forms were adopted as the result of Amended Substitute House Bill 346 of the 118th General Assembly, effective May 31, 1990. See R.C. 2113.03 and 2113.533.

The December 1989 amendment to this rule also added new Standard Probate Forms 18.0 through 19.1, which are used for adoptions.

RULE 52. Specifications for Printing Probate Forms.

(A) Applicability.

(1) The specifications in this rule govern the reproduction of blank forms intended for, or used in, the administration of decedents' estates, guardianships, and adoptions in this state, including:

(a) Standard forms prescribed in Sup. R. 51;

(b) Commercially prepared blank forms, including standard and nonstandard forms, designed for use in any aspect of the administration of decedents' estates, guardianships, and adoptions;

(c) Blank forms prescribed by local rule of court for use in situations for which no standard form is prescribed.

(2) This rule does not apply to any of the following:

(a) Any pleading, application, entry, waiver, notice, or other filing that is prepared ad hoc for use in a particular case or proceeding, or that is not reproduced in any manner for use as a blank form;

(b) Any routing slip, memorandum index, cost bill, or other form designed solely for internal administrative or clerical use;

(c) Forms intended for use in matters other than the administration of decedents' estates, guardianships, or adoptions;

(d) Estate tax returns, reports, and other forms prescribed by the Department of Taxation.

(B) Size of forms; stock. All forms shall be on paper size eight and one-half by eleven inches, printed on twenty-four pound bond or heavier stock.

(C) Margins. Right and left margins shall be approximately one-half to three-quarters of one inch, and shall be justified. The top margin shall be approximately seven-eighths to one and one-eighth inches, measured from the top edge of the paper to the top of the first line of the caption. The distance between the bottom of the repeat of the main heading at the foot of the first page shall be as required by division (K) of this rule.

(D) Type styles.

(1) All type shall be sans serif. Bold face type shall be used only as required or permitted by division (D)(2) of this rule. Italics shall not be used. Except as provided in division (D)(3) of this rule, all type shall be upper and lower case.

(2) Bold face type shall be used for the main heading immediately following the caption, and for the form number and repeat of the main heading at the foot of the first page. In addition bold face type may be used for:

(a) The caption;

(b) Subheadings;

(c) Directions enclosed in brackets;

(d) Instructions or identification under a blank line, indicating what is to be inserted in the line or identifying the office or status of a signer;

(e) Column headings;

(f) Any matter not covered in division (D)(2)(a) to (e) of this rule, for which the use of bold face type is expressly indicated on a standard form in Sup. R. 51.

(3) The following shall be printed in all capital letters:

(a) The first two lines of the caption;

(b) The main heading immediately following the caption;

(c) All subheadings;

(d) The form number and repeat of the main heading at the foot of the first page;

(e) Any matter not covered in division (D)(3)(a) to (d) of this rule, for which the use of all capital letters is expressly indicated on a standard form in Sup. R. 51.

(E) Type sizes.

(1) The following type sizes shall be used:

(a) Main headings immediately following the caption shall use sixteen-point or larger type;

(b) The first line of the caption, and all subheadings, shall use not smaller than twelve-point nor larger than sixteen-point type;

(c) The last two lines of the caption, the body, and the form number and repeat of the main heading at the foot of the first page, shall use not smaller than eight-point nor larger than twelve-point type;

(d) Instructions or identification under a blank line, indicating what is to be inserted in the line or identifying the office or status of a signer, shall use not larger than eight-point type.

(2) Whatever type size is used with the limitations of division (E)(1) of this rule:

(a) The first line of the caption and all subheadings shall use type at least two points smaller than the main heading immediately following the caption;

(b) The last two lines of the caption, the body, and the form number and repeat of the main heading at the foot of the first page, shall use type at least two points smaller than the subheadings;

(c) Instructions or identification under a blank line, indicating what is to be inserted in the line or identifying the office or status of a signer, shall use type at least two points smaller than the body.

(F) Vertical spacing.

(1) The vertical spacing on all forms shall be in units of one pica, to conform to standard typewriter vertical spacing.

(2) In order to permit optimum placement and promote visual appeal, the main heading and any subheading may be moved up or down within the available area without regard to the vertical spacing of the rest of the form, provided the rest of the form from head to foot maintains vertical spacing in units of one pica.

(G) Centering. The first line of the caption, the main heading, any explanatory information supplementing the main heading and appearing directly below it, subheadings, and the form number and repeat of the main heading at the foot of the first page of a form, shall be centered.

(H) Blank lines; length; vertical spacing in series.

(1) Blanks to be filled in shall be indicated by a printed solid line. Wherever possible, such lines shall be of sufficient length to accommodate comfortably all characters included in any word, phrase, name, date, or other information that might reasonably be expected to be placed in the blank. Spaces and punctuation shall be included in counting characters. It shall be assumed that six pica will accommodate ten characters in calculating the length of a line.

(2) Wherever possible, blank lines shall be a minimum length of:

(a) Eight pica, when the name of a county is to be inserted;

(b) Eighteen pica, when a date is to be inserted;

(c) Twenty pica, when a name or signature is to be inserted;

(d) Eight pica, not counting the dollar sign, when a dollar amount is to be inserted.

(3) One, or two or more blank lines may be used for the insertion of an address. Wherever possible, such lines shall be a minimum length of:

(a) Forty pica when a single line is used;

(b) Twenty pica per line when two or more lines are used.

(4) When a series of signature lines, lines for tabulating particular information, or other blank lines in vertical series are called for in a form, then except where expressly indicated on a standard form in Sup. R. 51, the vertical spacing between lines shall be two pica. This spacing shall be maintained without regard to instructions or identification printed below a line.

(I) Boxes to be checked.

(1) Where a form calls for a "check" or "X" to be inserted, a box shall be used for the purpose. The box shall precede the information to which it refers.

(2) When a series of "checks" or "X's" are called for in the same sentence or paragraph, each box and the information to which it refers shall be set apart visually from the preceding and following information in the same sentence or paragraph. Any device that provides visual separation and minimizes possible confusion may be used, including without limitation space-hyphen-space or a double or triple space, as in the following example:

"[check one of the following] - - [ ]Decedent's will has been admitted to probate in this court - [ ]To applicant's knowledge decedent did not leave a will."

(J) Caption.

(1) Except as provided in division (J)(3) of this rule, the following captions shall be used, respectively, on all forms for the administration of decedents' estates, guardianships, and adoptions:

PROBATE COURT OF _____COUNTY, OHIO

ESTATE OF _____ DECEASED

Case No. _____;

PROBATE COURT OF _____ COUNTY, OHIO

GUARDIANSHIP OF_____

Case No. _____ ;

PROBATE COURT OF _____ COUNTY, OHIO

ADOPTION OF_____
(Name after adoption)

Case No._____.

(2) The first line of the caption shall be centered. The second and third lines shall begin at the left margin and end at the right margin. The vertical space between the first and second lines may be two or three pica. The vertical space between the second and third lines shall be two pica.

(3) The following variations from the caption prescribed in division (J)(1) and (2) of this rule are permitted:

(a) The blank line in the first line of the caption may be replaced by the imprinted name of a particular county.

(b) The caption may be expanded to include the address of a particular court, using type of any suitable size. In such case, the blank lines intended for the court's address in the body of any form and introductory material for the address such as, "the court is located at _____," shall be omitted.

(c) In Standard Decedents' Estates Form 5.5, and in any other decedents' estates form dealing with two or more estates, the last two lines of the caption shall be omitted.

(K) Form number and repeat of main heading.

(1) The main heading of a form, which appears immediately below the caption on the first page of a form, shall be repeated at the foot of the first page. If the form is a standard form, the repeat of the main heading shall be preceded on the same line by the form number.

(2) The form number and repeat of the main heading shall be centered, and located not higher than three-eighths inch above the bottom edge of the form.

(L) Printing front and back. When a standard probate form consists of more than one page, each page shall contain the case number in the upper portion of the page.

(M) Standard forms to govern; variations.

(1) Matters not specifically covered in this rule are governed by the standard forms prescribed in Sup. R. 51. Overall, the format of all printed blank forms, whether standard or nonstandard, shall conform substantially to the standard forms. Except as provided in division (M)(2) of this rule, no additions to, deletions from, or changes in the form, content, or language of the standard forms are permitted when printing blank standard forms.

(2) The following variations from the standard forms in Sup. R. 51 are permitted:

(a) In any form calling for a court's address, the blank lines intended for the insertion of such information may be replaced by the imprinted information itself. If the court's address is imprinted in the caption, the blank lines in the body of the form for the address and introductory material for the address shall be omitted as provided in division (J)(3) of this rule.

(b) The name as well as the title of the probate judge may be imprinted below a judge's signature line on any form.

(c) In any form calling for the attorney's typed or printed name, address, telephone number, and attorney identification number, the blank lines intended for the insertion of that information may be replaced by the imprinted information itself. The signature line for the attorney shall be retained.

(d) In Standard Decedents' Estates Form 4.2, the portion of the form below the date line and principal's signature line, and above the repeat at the foot of the page, may be replaced by the imprinted name and address of a corporate surety, identified in some appropriate manner as the surety on the particular bond, and including a signature line for the attorney in fact. The last paragraph of the body of the form, relating to justification of personal sureties, shall be omitted.

(e) When standard forms are generated by computer, they shall conform to all specifications for standard forms stated in this rule. A court may accept for filing nonstandard computer generated forms for the receipts and disbursements attached to a standard account form or the schedule of assets attached to a standard inventory and appraisal form.

(f) All forms may include suitable coding for optical or magnetic scanning, or similar system designed to aid docketing, indexing, cost accounting, or other administrative or clerical activities.

(g) On all forms, the publisher may add its name, logotype, or other suitable identification. The size, style, and placement shall be such as not to detract from, interfere with, or overpower any part of the form.

(h) Wherever a form contains "19__" or "199__", a blank line shall be substituted to accommodate the correct year.

(N) Effective date.

(1) This rule takes effect July 1, 1977.

(2) On and after January 1, 1978, any pleading, application, entry, waiver, notice, or other filing, prepared using a blank form to which this rule applies, shall not be accepted for filing by the probate division of a court of common pleas of this state unless such blank form complies with the specifications in this rule.

(3) The amendment to division M(2)(h) shall take effect on November 16, 1999.

Commentary (November 16, 1999)

This amendment permits the change of preprinted dates on existing standard probate forms.

Commentary (October 1, 1997)

This rule is unchanged substantively from former C.P. Sup. R. 17.

RULE 53. Hours of the Court.

Each court shall establish hours for the transaction of business.

Commentary (October 1, 1997)

This rule is unchanged from former C.P. Sup. R. 18.

RULE 54. Conduct in the Court.

(A) Proper decorum in the court is necessary to the administration of the court's function. Any conduct that interferes or tends to interfere with the proper administration of the court's business is prohibited.

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

Commentary (October 1, 1997)

This rule is identical to former C.P. Sup. R. 19.

RULE 55. Examination of Probate Records.

(A) Records shall not be removed from the court, except when approved by the judge. Violation of this rule may result in the issuance of a citation for contempt.

(B) Copies of records may be obtained at a cost per page as authorized by the judge.

(C) Adoption, mental illness, and mental retardation proceedings are confidential. Records of those proceedings, and other records that are confidential by statute, may be accessed as authorized by the judge.

(D) A citation for contempt of court may be issued against anyone who divulges or receives information from confidential records without authorization of the judge.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 20 and summarizes local practice and current law. In general, see R.C. 2101.11(A)(1), 2101.12, 2101.13, 3107.17, 5122.31, 5122.34.

Sup. R. 55 has been amended to make the rule grammatically correct and to make the rule applicable to all confidential records as opposed to specific enumerated confidential records.

RULE 56. Continuances.

(A) Motions for continuance shall be submitted in writing with the proper caption and case number.

(B) Except on motion of the court, no continuance shall be granted in the absence of proof of reasonable notice to, or consent by, the adverse party or the party's counsel. Failure to object to the continuance within a reasonable time after receiving notice shall be considered consent to the continuance.

(C) A proposed entry shall be filed with a motion for continuance, leaving the time and date blank for the court to set a new date.

Commentary (October 1, 1997)

Sup. R. 56 is analogous to former C.P. Sup. R. 23 and is the basic continuance rule within Sup. R. 50 through Sup. R. 78.

Sup. R. 56 has been amended to be gender neutral and to require a "proposed" entry as opposed to a "judgment" entry to be submitted to the court with all motions for a continuance.

RULE 57. Filings and Judgment Entries.

(A) All filings, except wills, shall be on eight and one-half by eleven inch paper, without backings, of stock that can be microfilmed.

(B) All filings shall contain the name, address, telephone number, and attorney registration number of the individual counsel representing the fiduciary and, in the absence of counsel, the name, address, and telephone number of the fiduciary. Any filing not containing the above requirements may be refused.

(C) Failure of the fiduciary to notify the court of the fiduciary's current address shall be grounds for removal. Not less than ten days written notice of the hearing to remove shall be given to the fiduciary by regular mail at the last address contained in the case file or by other method of service as the court may direct.

(D) Filings containing partially or wholly illegible signatures of counsel, parties or officers administering oaths may be refused, or, if filed, may be stricken, unless the typewritten or printed name of the person whose signature is purported to appear is clearly indicated on the filing.

(E) All pleadings, motions, or other filings are to be typed or printed in ink and correctly captioned.

(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 days after the judgment is rendered. Counsel for the opposing party shall have seven days to object to the court. 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.

(G) When a pleading, motion, judgment entry or other filing consists of more than one page, each page shall contain the case number in the upper portion of the page.

Commentary (October 1, 1997)

Sup. R. 57 is analogous to former C.P. Sup. R. 24.

Sup. R. 57(A) is unchanged.

Sup. R. 57(B) has been amended to require the attorney's Supreme Court Registration Number on all filings in addition to the name, address and telephone number of the attorney.

Sup. R. 57 (B) and (D) have been amended to substitute the term "filings" for "papers" as being more descriptive of the documents received by the court.

Sup. R. 57(C) has been amended to provide for removal of a fiduciary who fails to keep the court apprised of a current address. Sup. R. 57(C) has also been amended to reflect the notice requirements of R.C. 2109.24 requiring ten days notice upon the removal of the fiduciary. Sup. R. 57(C) has been amended

to allow for service of notice to be by regular mail at the fiduciary's last known address instead of pursuant to Civil Rule 73(E). The amendment is to expedite the removal of dilatory fiduciaries and to timely complete the administration of estates by avoiding the eventual requirement of publication pursuant to Civil Rule 73(E)(6) and the requirement for certified mail notice when such notice is being given by the court.

See, generally R.C. 2109.02, 2109.06, 2109.18, 2109.19, 2109.24, 2109.31, 2109.53.

Sup. R. 57(E) has been amended to reflect recent case law that has noted a distinction between motions, pleadings and filings. The rule now requires all filings to be in ink.

Former C.P. Sup. R. 24(F) and (G) have been combined into new Sup. R. 57(F) since both matters were interrelated. There were no substantive changes made.

RULE 58. Deposit for Court Costs.

(A) Deposits in the amount set forth in a local rule shall be required upon the filing of any action or proceeding and additional deposits may be required.

(B) The deposit may be applied as filings occur.

Commentary (October 1, 1997)

Sup. R. 58 summarizes local practice and is analogous to former C.P. Sup. R. 25.

The reference to R.C. 2101.16 has been deleted as unnecessary in that the statute delegates the amount of the deposit to local rule.

RULE 59. Wills.

(A) Before an application is made to admit the will to probate, to appoint an estate fiduciary, or to relieve an estate from administration, each applicant or the applicant's attorney shall examine the index of wills deposited pursuant to section 2107.07 of the Revised Code. Wills deposited pursuant to section 2107.07 of the Revised Code previous to the will offered for probate shall be filed in the estate proceedings for record purposes only.

(B) Fiduciaries appointed to administer testate estates shall file a Certificate of Service of Notice of Probate of Will (Standard Probate Form 2.4) within two months of their appointment or be subject to removal proceedings. If required by the court, proof of service shall consist of either waivers of notice of the probate of will or certified mail return receipt cards as provided under Civil Rule 73(E)(3), or if necessary, under Civil Rule 73(E)(4) and (5). A waiver of notice may not be signed by any minor, or on behalf of a minor sixteen or seventeen years of age. See Civil Rule 4.2.

Commentary (October 1, 1997)

This rule substantially revises former C.P. Sup. R. 26. The title of Sup. R. 59 has been amended because the subject matter of the rule is more inclusive.

The provisions of former C.P. Sup. R. 26(A) and (D) have been deleted to reflect the repeal of R.C. 2107.13 and 2107.14 and reflect the revised method of admitting a will to probate effective May 31, 1990.

Sup. R. 59(A) has been amended to reflect wills in safekeeping pursuant to R.C. 2107.07. Sup. R. 59(A) imposes a duty upon the applicant or his or her attorney to ascertain before applying to administer an estate if a will is in safekeeping. The purpose of this division is to: (1) make certain that an estate is not administered intestate when a will in safekeeping does exist, (2) make certain the decedent's last will and testament has been offered for probate, and (3) remove all prior wills of a decedent from safekeeping.

Sup. R. 59(B) is amended to require a timely filing of the "Certificate of Service of Notice of Probate of Will" so that the will contest period will expire prior to the time for the filing of the account. The amended rule also confirms that waivers of notice of probate of wills shall conform to Civil Rule 4(D).

Former C.P. Sup. R. 26(C) has been entirely deleted. The requirement of R.C. 109.26 and 109.29 are adequately provided for in Standard Probate Form 2.0.

RULE 60. Application for Letters of Authority to Administer Estate and Notice of Appointment.

(A) Notice of an application for appointment of administrator shall be served at least seven days prior to the date set for hearing. If there is no known surviving spouse or next of kin resident of the state, the notice shall be served upon persons designated by the court.

(B) The administrator shall give notice of the appointment within seven days after the appointment to all persons entitled to inherit, including persons entitled to an allowance for support, unless those persons have been provided notice of the hearing on the appointment or have waived notice.

(C) The probate court shall serve by certified mail the spousal citation and summary of rights required by R.C. 2106.02 to the surviving spouse within 7 days of the initial appointment of the administrator or executor, unless a different time is established by local court rule.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 27. The title to Sup. R. 60 has been amended to be more descriptive of the rule's requirements.

Former C.P. Sup. R. 27(A) and (B) have been joined and incorporated under amended Sup. R. 60(A). Any language changes were merely grammatical and not substantive.

Amended Sup. R. 60(B) is a new division that deals with notice of the appointment of a fiduciary. Sup. R. 60(B) reflects local practice requiring that notice of the appointment be given to all persons interested in the decedent's estate, so that they may properly monitor their particular interests.

RULE 61. Appraisers.

(A) Without special application to the court, a fiduciary may allow to the appraiser as compensation for services a reasonable amount agreed upon between the fiduciary and the appraiser, provided the compensation does not exceed the amount allowed by local court rule. If no local court rule exists, the compensation shall be subject to court approval.

(B) If, by reason of the special and unusual character of the property to be appraised, the fiduciary is of the opinion that the appraisal requires the services of persons qualified in the evaluation of that property, a qualified appraiser may be appointed and allowed compensation as provided in division (A) of this rule.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 28. The title to Sup. R. 61 has been amended to be more inclusive and applies to appraisers in all probate matters. The term "appointment" in the title has been deleted since the rule no longer deals with this issue.

Former law required three disinterested appraisers. Former C.P. Sup. R. 28(A) was intended to clarify the transition from three appraisers to one appraiser. The rule is no longer needed and has been deleted.

Former divisions (B), (C), (D), and (F) attempted to set guidelines for appraiser fees when the court did not set forth a local rule. Division (A) now permits the compensation to be set by agreement of the fiduciary and appraiser unless set by local rule. All disputes shall be settled by the probate court.

Former C.P. Sup. R. 28(A), (B), (C), (D), and (F) are unnecessary since the appraiser's compensation is adequately addressed by R.C. 2115.06.

Former C.P. Sup. R. 28(E) has been redesignated as Sup. R. 61(B) without substantive changes.

RULE 62. Claims Against Estate.

(A) When a claim has been filed with the court pursuant to section 2117.06 of the Revised Code, the fiduciary shall file a copy of any rejection of the claim with the court.

(B) If the court requires a hearing on claims or the fiduciary requests a hearing on claims or insolvency, the fiduciary shall file a schedule of all claims against the estate with the court. The schedule of claims shall be filed with the fiduciary's application for hearing or within ten days after the court notifies the fiduciary of a court-initiated hearing.

Commentary (October 1, 1997)

The rule is analogous to former C.P. Sup. R. 30. The title of Sup. R. 62 has been amended to be more inclusive and descriptive. R.C. 2117.06 neither limits nor requires that claims be filed with the court. Filing with the court is merely one alternative pursuant to R.C. 2117.06(A)(2).

The last sentence of former C.P. Sup. R. 30(A) has been deleted because the issue is adequately addressed by R.C. 2117.06(I).

The statutory reference in Sup. R. 62(B) has been deleted as limiting the former rule. Insolvency hearings have been added to the requirement of Sup. R. 62(B). There is no statutory provisions regarding advising the court of the specific claims in an insolvent estate. The court requires this information and the rule supplements this void.

RULE 63. Application to Sell Personalty.

An application to sell personal property shall include an adequate description of the property. Except for good cause shown, an order of sale shall not be granted prior to the filing of the inventory.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 31. Sup. R. 63 has been amended to delete requirements that are currently required by statute. See, R.C. 2109.45.

The first and last sentences of former C.P. Sup. R. 31 have been deleted as they duplicate the requirements of the statute. The second sentence has been amended to permit an order of sale to issue upon the filing of the inventory as opposed to the previous version, which permitted the order to be granted upon the approval of the inventory. This would expedite the administration by permitting the order to be granted at an earlier date.

RULE 64. Accounts.

(A) The vouchers or other proofs required by section 2109.302 and 2109.303 of the Revised Code and receipts filed or exhibited pursuant to section 2109.32(B)(1)(b) of the Revised Code, shall be referenced to the account by number, letter, or date.

(B) If land has been sold during the accounting period, the account shall show the gross amount of the proceeds and include a copy of the closing statement itemizing all of the disbursements.

(C) Receipts for distributive shares signed by persons holding power of attorney may be accepted, provided the power of attorney is recorded in the county in which the estate is being administered and a copy of the recorded power is attached to the account.

(D) Exhibiting assets.

(1) The court may require that all assets be exhibited at the time of filing a partial account.

(2) Cash balances may be verified by exhibiting a financial institution statement, passbook, or a current letter from the financial institution in which the funds are deposited certifying the amount of funds on deposit to the credit of the fiduciary. Assets held in a safe deposit box of a fiduciary or by a surety company on fiduciary's bond may be exhibited by filing a current inventory of the assets. The inventory shall be certified by the manager of the safe deposit box department of the financial institution leasing the safe deposit box or by a qualified officer of the surety company if the assets are held by a surety. If the assets are held by a bank, trust company, brokerage firm, or other financial institution, exhibition may be made by proper certification as to the assets so held. For good cause shown, the court may designate a deputy clerk of the court to make an examination of the assets located in the county, not physically exhibited to the court or may appoint a commissioner for that purpose if the assets are located outside the county. The commissioner appointed shall make a written report of findings to the court.

(E) A final or distributive account shall not be approved until all court costs have been paid.

Commentary (October 1, 1997)

This rule revises former C.P. Sup. R. 32.

Former C.P. Sup. R. 32(A) and (B) have been deleted. This subject matter is more appropriately addressed in proposed Sup. R. 78, the case management rule.

Former C.P. Sup. R. 32(C) has been changed grammatically and relettered as division (A). The substance has remained the same in that it requires the vouchers to be cross referenced to the account entries. Former divisions (A)(1) to (4) have been deleted in that they describe the parameters of the probate forms created under Sup. R. 52(D) and are therefore superfluous.

Former C.P. Sup. R. 32(D) has been relettered as division (B). The rule has been amended to require a closing statement to be submitted in lieu of the reporting requirements under the former rule.

Former C.P. Sup. R. 32(E) has been deleted to reflect local practice where each guardianship of a minor's estate is administered in a separate case file and a separate corresponding case number.

Former C.P. Sup. R. 32(F) has been relettered as division (C) and amended to require that when a power of attorney is used for the receipt of assets, the instrument must be recorded in the county of the court accepting the account. The previous rule required the instrument to be recorded in the State of Ohio.

Former C.P. Sup. R. 32(G) has been relettered as division (D). The term "safety deposit box" has been amended to "safe deposit box" to parallel Revised Code references. The term "financial institution" has been substituted for "bank" in order to be consistent with the terminology of Title XI of the Revised Code and to be more inclusive.

Former C.P. Sup. R. 32(H) has been relettered as division (E), and no amendments or language changes have been made.

Commentary (April 8, 2004)

This Rule Amendment is necessary because of the adoption of Sub. H.B. 85, effective October 31, 2001.

RULE 65. Land Sales - R.C. Chapter 2127.

(A) In all land sale proceedings, the plaintiff, prior to the issuance of an order finding the sale necessary, shall file with the court evidence of title showing the record condition of the title to the premises described in the complaint and prepared by a title company licensed by the state of Ohio, an attorney's certificate, or other evidence of title satisfactory to the court. Evidence of title shall be to a date subsequent to the date on which the complaint was filed.

(B) The plaintiff shall give notice of the time and place of sale by regular mail at least three weeks prior to the date of a public sale to all defendants at their last known addresses. Prior to the public sale, the plaintiff shall file a certificate stating that the required notice was given to the defendants and the sale was advertised pursuant to section 2127.32 of the Revised Code.

(C) In all private land sale proceedings by civil action, the judgment entry confirming sale, ordering issuance of deed, and ordering distribution shall show the gross amount of the proceeds and include a copy of the proposed closing statement itemizing all of the proposed disbursements.

(D) The court may appoint a disinterested person, answerable to the court, who shall investigate the circumstances surrounding the proposed transaction, view the property, ascertain whether the proposed sale is justified and report findings in writing. The report shall be a part of the record. The compensation for the person performing these services shall be fixed by the court, according to the circumstances of each case, and shall be taxed as costs.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 33 and has been amended to be inclusive and to apply to all land sale proceedings. Former C.P. Sup. R. 33(A) only applied to public land sale, and not private land sale proceedings. The rule has been amended to require that evidence of title prepared by a title company must be prepared by a title company that is licensed in the State of Ohio.

Former C.P. Sup R. 33(B) has been amended to delete the requirement of giving notice by posting the notice of sale upon the premises. This appeared unnecessary since actual notice of the sale must be given to all defendants, and R.C. 2127.32 requires notice by publication to the general public.

Reference to the filing of an affidavit has been amended to refer to a "certificate," to reflect Civil Rule 73(H), which does not require certificates and pleadings to be under oath. An affidavit, by definition, is under oath. The content of the "certificate" has been amended to comply with the amended notice requirements of division (B).

Former C.P. Sup. R. 33(C) has been deleted in that the requirements are unnecessary and adequately covered by R.C. 2127.23 and 2127.35.

Amended division (C) requires that a proposed closing statement be attached to the order of confirmation of sale issued pursuant to R.C. 2127.35. The inclusion of the proposed closing statement provides the court with the details of the costs associated with the land sale proceedings.

Division (D) has been amended in order to be made gender neutral. No substantive changes have been made.

RULE 66. Guardianships.

(A) All applications for the appointment of a guardian on the grounds of mental incompetency shall be accompanied by either a statement of a physician or clinical psychologist or a statement that the prospective ward has refused to submit to an examination.

(B) An Application for Authority to Expend Funds (Standard Probate Form 15.7) shall not be approved until an Inventory (Standard Probate Form 15.5) has been filed.

(C) An application for allowance of care and support of a minor shall allege, if such is the fact, that the father and mother are financially unable to provide the items for which the amount is sought.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 34, and the title has been amended to be more inclusive in that the rule does not only apply to the guardian but also to all issues affecting the guardianship.

Division (A) has been deleted in that it described the parameters of the probate forms created under Sup. R. 51(D) and is therefore superfluous.

Former C.P. Sup. R. 34(B) has been relettered as division (A). The rule required the submission of a statement of a physician upon the filing of an application for guardianship or an application for dismissal of a guardianship or a declaration of competency. The rule has been amended to permit a clinical psychologist to complete the expert evaluation. This amendment recognizes that a psychologist's report is often more thorough than that of the physician and recognizes that the psychologist may complete the expert evaluation for the biennial report. The rule has not been expanded to permit the initial evaluation to be completed by a licensed clinical social worker.

The requirement for an expert evaluation for the dismissal or termination of a guardianship has been deleted due to statutory changes under R.C. 2111.49(C).

Former C.P. Sup. R. 34(C) has been deleted and incorporated in part in amended division (B), which continues the requirement to file an inventory prior to the authorization of any expenditure required in former C.P. Sup. R. 34(C).

Former C.P. Sup. R. 34(D) has been relettered as division (C). Division (C) has been amended to delete the term "parent-guardian" from the rule and to allow the application to be filed by the appointed guardian, who is not in all cases also the parent of the minor ward. With an application to expend funds for support of a minor ward, the rule formerly required a parent-guardian to state whether the parents had the ability to provide the support. The amendment expands the rule to require any guardian to state whether the parents can provide the support when requesting expenditure of the ward's funds for support.

RULE 67. Estates of Minors of Not More than Ten Thousand Dollars.

(A) Each application relating to a minor shall be submitted by the parent or parents or by the person having custody of the minor and shall be captioned in the name of the minor.

(B) Each application shall indicate the amount of money or property to which the minor is entitled and to whom such money or property shall be paid or delivered. Unless the court otherwise orders, if no guardian has been appointed for either the receipt of an estate of a minor or the receipt of a settlement for injury to a minor, the attorney representing the interests of the minor shall prepare an entry that orders all of the following:

(1) The deposit of the funds in a financial institution in the name of the minor;

(2) Impounding the principal and interest;

(3) Releasing the funds only upon an order of the court or to the minor at the age of majority.

(C) The entry shall be presented at the time the entry dispensing with appointment of a guardian or approving settlement is approved. The attorney shall be responsible for depositing the funds and for providing the financial institution with a copy of the entry. The attorney shall obtain a Verification of Receipt and Deposit (Standard Probate Form 22.3) from the financial institution and file the form with the court within seven days from the issuance of the entry.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 35. The title of the rule has been amended to include only the estates of minor wards, since the substantive rules even under former C.P. Sup. R. 35 only spoke of minors. The amended title is more descriptive of the subject matter covered by the rule.

Division (A) has been amended to delete any reference to one application being permitted to be filed on behalf of all minors of the same parent. This amendment is to reflect local practice whereby a separate application and corresponding case number is required for each minor ward. The rationale for the amendment is that the amount of funds received and the dates of majority are rarely the same for each ward. The remainder of the amendments to this division are grammatical and not substantive.

Divisions (B) and (C) set forth the requirements of the judgment entry counsel presents to the court for estates of minors less than $10,000. The words "unless the court otherwise orders" has been added in division (B) to alert counsel to the fact that specific circumstances or local court rule may alter these requirements. In addition, the former version of the rule required the attorney to deposit all funds within seven days of the approval of the entry and to obtain a receipt from the financial institution. As amended the rule requires the receipt to be filed with the court within seven days of the issuance of the entry and references the uniform form number of the receipt. The term "bank" has been changed to "financial institution" to reflect the term utilized in Title XI of the Revised Code and to recognize that funds are invested in institutions other than banks.

RULE 68. Settlement of Injury Claims of Minors.

(A) An application for settlement of a minor's claim shall be brought by the guardian of the estate. If there is no guardian appointed and the court dispenses with the need for a guardian, the application shall be brought by the parents of the child or the parent or other individual having custody of the child. The noncustodial parent or parents shall be entitled to seven days notice of the application to settle the minor's claim which notice may be waived. The application shall be captioned in the name of the minor.

(B) The application shall be accompanied by a current statement of an examining physician in respect to the injuries sustained, the extent of recovery, and the permanency of any injuries. The application shall state what additional consideration, if any, is being paid to persons other than the minor as a result of the incident causing the injury to the minor. The application shall state what arrangement, if any, has been made with respect to counsel fees. Counsel fees shall be subject to approval by the court.

(C) The injured minor and the applicant shall be present at the hearing.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 36 and 37. Former C.P. Sup. R. 36 and 37 dealt with claims to minors and bifurcated the claims into claims brought by the guardian and claims of less than $10,000 where there was no guardian. The former rules were virtually identical and thus the issues relating to minors have been consolidated into Sup. R. 68 to avoid duplication.

Division (A) has been amended to incorporate the provisions of former C.P. Sup. R. 37(A). In addition, the rule has been amended to require notice to the parents of the minor regardless of their county of residence and to increase the notice time requirement to the parents from three days to seven days in order that the notice is more meaningful.

Division (B) has been amended to provide that the statement of the examining physician is mandatory as opposed to discretionary. Former C.P. Sup. R. 36(D) and (E) have been consolidated into division (B)

Division (C) has been amended to make the applicant's and the minor's appearance at the hearing mandatory. This is to comply with prevailing local practice where the court wishes to view the minor in order to evaluate the nature of the injuries. Pursuant to Sup. R. 76, the court has the ability to waive the appearance of the minor for good cause.

RULE 69. Settlement of Claims of or Against Adult Wards.

(A) An application for settlement of a claim in favor of or against an adult ward shall be brought by the guardian of the estate. Notice of the hearing on the application shall be given to all persons who are interested parties to the proposed settlement, as determined by the court. The court may authorize or direct the guardian of the ward's estate to compromise and settle claims as the court considers to be in the best interest of the ward. The court may dispense with notice of hearing.

(B) The application for settlement of an injury claim shall be accompanied by a current statement of an examining physician describing the injuries sustained, the extent of recovery from those injuries, and permanency of any injuries. The application shall state what additional consideration, if any, is being paid to persons other than the ward as a result of the incident causing the injury to the ward. The application shall state what arrangement, if any, has been made with respect to counsel fees. Counsel fees shall be subject to approval by the court.

Commentary (October 1, 1997)

This rule is not analogous to former C.P. Sup. R. 37, which has been incorporated in Sup. R. 68.

Sup. R. 69 is basically a new rule as it applies to all claims of incompetent adult wards. The purpose for the amended rule is to provide the court with information necessary to make an informed decision regarding a proposed settlement.

Division (A) provides for the application to settle a claim to be brought by the ward's guardian. Absent a guardianship, the "ward" is competent to settle the claim without court approval. Division (A) further gives the court discretion to require notice to interested parties or to dispense with notice with court approval.

Division (B) is similar to Sup. R. 68(B), which provides the court with adequate information to make an informed decision. Division (C) is similar to the last sentence of Sup. R. 68 (B) and requires disclosure to the court and approval of the court of counsel fees in pursuing the adult ward's claim.

RULE 70. Settlement of Wrongful Death and Survival Claims.

(A) An application to approve settlement and Distribution of Wrongful Death and Survival Claims (Standard Probate Form 14.0) shall contain a statement of facts, including the amount to be allocated to the settlement of the claim and the amount, if any, to be allocated to the settlement of the survival claim. The application shall include the proposed distribution of the net proceeds allocated to the wrongful death claim.

(B) The fiduciary shall give written notice of the hearing and a copy of the application to all interested persons who have not waived notice of the hearing. Notwithstanding the waivers and consents of the interested persons, the court shall retain jurisdiction over the settlement, allocation, and distribution of the claims.

(C) The application shall state what arrangements, if any, have been made with respect to counsel fees. Counsel fees shall be subject to approval by the court.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 38. The title has been amended to stress the existence and recognition of survival claims in a decedent's estate and to be in compliance with Standard Probate Forms Series 14.

Division (A) has been amended to incorporate the title of the uniform form as the description of the application to which the rule applies. The phase "right of action for conscious pain and suffering" has been changed to "survival claim" as being a more complete description of the personal claim of the decedent. The remaining changes are grammatical and intended to stress the need for an allocation between the survival claim and the wrongful death claim.

Division (A) now requires a copy of the proposed distribution in addition to the notice of hearing to be served upon all interested persons who have not waived notice of the hearing. Those who have waived notice are required to receive a copy of the proposed distribution by the requirements of Form 14.1. The amended paragraph contains instructional language to remind interested persons and counsel that the court retains jurisdiction over the settlement notwithstanding an agreement by the parties as to the distribution.

Division (C) has been amended grammatically. There are no substantive changes.

RULE 71. Counsel Fees.

(A) Attorney fees in all matters shall be governed by Rule 1.5 of the Ohio Rules of Professional Conduct.

(B) Attorney fees for the administration of estates shall not be paid until the final account is prepared for filing unless otherwise approved by the court upon application and for good cause shown.

(C) Attorney fees may be allowed if there is a written application that sets forth the amount requested and will be awarded only after proper hearing, unless otherwise modified by local rule.

(D) The court may set a hearing on any application for allowance of attorney fees regardless of the fact that the required consents of the beneficiaries have been given.

(E) Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing the accounts required by section 2109.30 of the Revised Code.

(F) If a hearing is scheduled on an application for the allowance of attorney fees, notice shall be given to all parties affected by the payment of fees, unless otherwise ordered by the court.

(G) An application shall be filed for the allowance of counsel fees for services rendered to a guardian, trustee, or other fiduciary. The application may be filed by the fiduciary or attorney. The application shall set forth a statement of the services rendered and the amount claimed in conformity with division (A) of this rule.

(H) There shall be no minimum or maximum fees that automatically will be approved by the court.

(I) Prior to a fiduciary entering into a contingent fee contract with an attorney for services, an application for authority to enter into the fee contract shall be filed with the court, unless otherwise ordered by local court rule. The contingent fee on the amount obtained shall be subject to approval by the court.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 40. Divisions (A), (B), (C), (D), (E), (F), and (G) have not been amended substantively.

The second sentence of division (H), pertaining to contingent fee contracts, has been transferred to a new division (I) where it has been combined with former C.P. Sup. R. 39.

Division (I) recognizes that unless a governing instrument has given the power to the fiduciary, the fiduciary has no inherent authority to enter into a contingent fee contract on behalf of the trust. Authority must

be granted by the court. The rule as amended adopts the previous rule which required the fiduciary to file an application to enter into a contingent fee contract prior to the contract becoming enforceable. The rule has been amended to permit courts to establish their own procedure in the contingent fee approval process. The second sentence of division (I) was a portion of former C.P. Sup. R. 39 and restates the court's authority to review the contingent fee contract to ascertain whether it meets with the additional standards of this rule.

RULE 72. Executor's and Administrator's Commissions.

(A) Additional compensation for extraordinary services may be allowed upon an application setting forth an itemized statement of the services rendered and the amount of compensation requested. The court may require the application to be set for hearing with notice given to interested persons in accordance with Civil Rule 73(E).

(B) The court may deny or reduce commissions if there is a delinquency in the filing of an inventory or an account, or if, after hearing, the court finds that the executor or administrator has not faithfully discharged the duties of the office.

(C) The commissions of co-executors or co-administrators in the aggregate shall not exceed the commissions that would have been allowed to one executor or administrator acting alone, except where the instrument under which the co-executors serve provides otherwise.

(D) Where counsel fees have been awarded for services to the estate that normally would have been performed by the executor or administrator, the executor or administrator commission, except for good cause shown, shall be reduced by the amount awarded to counsel for those services.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 41. Division (A) has primarily been amended for grammatical purposes. The term "parties" has been replaced with the more descriptive term "interested person". The manner of service pursuant to Civil Rule 4.1 has been replaced with the more appropriate reference to Civil Rule 73(E), which incorporates by reference Civil Rule 4.1.

Division (B) has been amended to parallel R.C. 2113.35. The rule defines the delinquent filing of inventories and accounts as acts that are included within the phrase "not faithfully discharged the duties of the office".

Division (D) has been amended to be more inclusive and to apply to all counsel fees and not only extraordinary fees. The rule continues to allow the probate court discretion to reduce fiduciary fees by the amount of attorney fees charged in performing fiduciary services. The remaining language changes in the division are grammatical and not substantive.

RULE 73. Guardian's Compensation.

(A) Guardian's compensation shall be set by local rule.

(B) Additional compensation for extraordinary services, reimbursement for expenses incurred and compensation of a guardian of a person only may be allowed upon an application setting forth an itemized statement of the services rendered and expenses incurred and the amount for which compensation is applied. The court may require the application to be set for hearing with notice given to interested persons in accordance with Civil Rule 73(E).

(C) The compensation of co-guardians in the aggregate shall not exceed the compensation that would have been allowed to one guardian acting alone.

(D) The court may deny or reduce compensation if there is a delinquency in the filing of an inventory or account, or after hearing, the court finds the guardian has not faithfully discharged the duties of the office.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 42. Division (A) has been amended to delete reference to Sup. R. 75.

Division (B) has been amended to clarify the requirements and procedure for extraordinary compensation of a guardian of the estate and for compensation of a guardian of a person who is not also the guardian of the estate. The procedure parallels the procedure that previously was in place for extraordinary compensation to an executor or administrator. Division (B) incorporates the requirements of former C.P. Sup. R. 42(C), which has been deleted. The reference to service in accordance with Civil Rule 4.1 has been deleted, since service is controlled by Civil Rule 73.

Division (C) has been relettered and amended grammatically.

Division (D) has been relettered. The first sentence, requiring a computation of the guardian fee to be attached to the account has been deleted in that the computation has often been previously filed thus causing a duplicity of filings. The second sentence has been deleted in that the compensation is set by local rule as required in division (A). The statement requiring the filing of the local rule with the Supreme Court has been deleted in that the filing is required by Sup. R. 5(A) and Sup. R. 75.

RULE 74. Trustee's Compensation.

(A) Trustee's compensation shall be set by local rule.

(B) Additional compensation for extraordinary services may be allowed upon application setting forth an itemized statement of the services rendered and the amount of compensation requested. The court may require that the application be set for hearing with notice given to interested parties in accordance with Civil Rule 73(E).

(C) The compensation of co-trustees in the aggregate shall not exceed the compensation that would have been allowed to one trustee acting alone, except where the instrument under which the co-trustees are acting provides otherwise.

(D) Except for good cause shown, neither compensation for a trustee nor fees to counsel representing the trustee shall be allowed while the trustee is delinquent in the filing of an account.

(E) The court may deny or reduce compensation if there is a delinquency in the filing of an inventory or account, or after hearing, the court finds the trustee has not faithfully discharged other duties of the office.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 43. The statement requiring the filing of the local rule with the Supreme Court has been deleted from division (A) in that the filing is required by Sup. R. 5(A) and Sup. R. 75.

Former C.P. Sup. R. 43(C) has been deleted as being unnecessary.

Former C.P. Sup. R. 43(D) has been relettered division (C) and amended to clarify the requirements and procedure for extraordinary compensation for the trustee. The procedure parallels the procedure that was previously in place for extraordinary compensation to an executor or administrator. Division (C) incorporates the requirements of former C.P. Sup. R. 43(C), which has been deleted. The reference to service in accordance with Civil Rule 4.1 has been revised, since service is controlled by Civil Rule 73.

Former C.P. Sup. R. 43(E) has been relettered as division (D) and has been amended grammatically without substantive changes.

Division (E) is new and parallels R.C. 2113.35. It defines the delinquent filing of inventories and accounts as acts that are included within the phrase "not faithfully discharged other duties of the office."

RULE 75. Local Rules.

Local rules of the court shall be numbered to correspond with the numbering of these rules and shall incorporate the number of the rule it is intended to supplement. For example, a local rule that supplements Sup. R. 61 shall be designated County Local Rule 61.1.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 44. Former C.P. Sup. R. 44(A) has been deleted entirely as its provisions are addressed adequately by Sup. R. 5.

RULE 76. Exception to the Rules.

Upon application, and for good cause shown, the probate division of the court of common pleas may grant exception to Sup. R. 53 to 79.

Commentary (October 1, 1997)

This rule is identical to former C.P. Sup. R. 45.

RULE 77. Compliance.

Failure to comply with these rules may result in sanctions as the court may direct.

Commentary (October 1, 1997)

This rule is identical to former C.P. Sup. R. 46.

RULE 78. Probate Division of the Court of Common Pleas -- Case Management in Decedent's Estates, Guardianship, and Trusts.

(A) Each fiduciary shall adhere to the statutory or court-ordered time period for filing the inventory, account, and, if applicable, guardian's report. The citation process set forth in section 2109.31 of the Revised Code shall be utilized to ensure compliance. The attorney of record and the fiduciary shall be subject to the citation process. The court may modify or deny fiduciary commissions or attorney fees, or both, to enforce adherence to the filing time periods.

(B)(1) If a decedent's estate must remain open more than six months pursuant to R.C. 2109.301(B)(1), the fiduciary shall file an application to extend administration (Standard Probate Form 13.8).

(2) An application to extend the time for filing an inventory, account, or guardian's report, shall not be granted unless the fiduciary has signed the application.

(C) The fiduciary and the attorney shall prepare, sign, and file a written status report with the court in all decedent's estates that remain open after a period of thirteen months from the date of the appointment of the fiduciary and annually thereafter. At the court's discretion, the fiduciary and the attorney shall appear for a status review.

(D) The court may issue a citation to the attorney of record for a fiduciary who is delinquent in the filing of an inventory, account, or guardian's report to show cause why the attorney should not be barred from being appointed in any new proceeding before the court or serving as attorney of record in any new estate, guardianship, or trust until all of the delinquent pleadings are filed.

(E) Upon filing of the exceptions to an inventory or to an account, the exceptor shall cause the exceptions to be set for a pretrial within thirty days. The attorneys and their clients, or individuals if not represented by an attorney, shall appear at the pretrial. The trial shall be set as soon as practical after pretrial. The court may dispense with the pretrial and proceed directly to trial.

Commentary (October 1, 1997)

This rule imposes case management standards for actions filed in the probate division of the court of common pleas. In addition to establishing time periods for filing of documents and conducting pretrials and trials, the rule requires that an application for a continuance must be signed by the fiduciary and that written status reports be filed in estates that are open for more than one year. The rule also contains a citation procedure that may be employed to bar an attorney who is delinquent in the filing of an inventory, account, or guardian's report from being appointed or serving as attorney of record in any new proceeding until all delinquent pleadings have been filed.

AMENDMENTS TO THE SUPREME COURT
RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

The following amendments to the Rules of Superintendence for the Courts of Ohio (new Sup.R. 66.01 through 66.09 and amended Sup.R. 73) were adopted by the Supreme Court of Ohio. The history of these amendments is as follows:

May 26, 2014	Published for public comment
March 10, 2015	Final adoption by conference
June 1, 2015	Effective date of amendments

RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

RULE 66.01. Definitions.

As used in Sup.R. 66.01 through 66.09:

(A) Best interest

"Best interest" means the course of action that maximizes what is best for a ward, including consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the ward.

(B) Direct services

"Direct services" means services typically provided by home and community-based care and institutionally-based care providers, including medical and nursing care, care or case management services, care coordination, speech therapy, occupational therapy, physical therapy, psychological services, counseling, residential, legal representation, job training, and any other similar services. The term "direct services" does not include services of a guardian.

(C) Guardian

"Guardian" has the same meaning as in R.C. 2111.01(A).

(D) Ward

"Ward" means any adult person found by the probate division of a court of common pleas to be incompetent and for whom a guardianship is established.

(E) Guardianship services

"Guardianship services" means the duties assigned to a guardian in an adult guardianship case pursuant to R.C. Chapters 2109 and 2111.

RULE 66.02. Application of Rules.

(A) General

Sup.R. 66.01 through 66.09 shall apply in an adult guardianship case where the probate division of a court of common pleas appoints a guardian to protect and control a ward pursuant to R.C. 2111.02, provided the appointing court for good cause may, by order of the court, exempt a guardian who is related to the ward by consanguinity or affinity.

(B) Corporation as guardian

Sup.R. 66.01 through 66.09 shall apply to the employees of a corporation who provide guardianship services in an adult guardianship case where the probate division of a court of common pleas appoints the corporation as guardian.

RULE 66.03. Local Guardianship Rule.

The probate division of a court of common pleas that establishes guardianships shall adopt local rules governing the establishment of guardianships that do all of the following:

(A) Establish a process for emergency guardianships;

(B) Establish a process for submitting in electronic format or hard copy comments and complaints regarding the performance of guardians appointed by the court and for considering such comments and complaints. The process shall include each of the following:

(1) The designation of a person for accepting and considering comments and complaints;

(2) A requirement that a copy of the submitted comment or complaint be provided to the guardian who is the subject of the comment or complaint;

(3) A requirement that the court give prompt consideration to the comment or complaint and take appropriate action;

(4) A requirement that the court maintain a record regarding the nature and disposition of the comment or complaint;

(5) A requirement that the court notify the person making the comment or complaint and the guardian of the disposition of the comment or complaint.

(C) Addresses other provisions as the court considers necessary and appropriate, including but not limited to indicating where filed comments and complaints will be kept.

RULE 66.04. Establishment of Guardianship.

(A) Scope of guardianship

When establishing a guardianship, the probate division of a court of common pleas shall consider a limited guardianship before establishing a plenary guardianship.

(B) County of residence

The last county of residence in Ohio in which a ward resided prior to losing the cognitive ability to choose shall be the ward's county of residence for purposes of establishing a guardianship, unless determined otherwise by the probate division of the court of common pleas establishing the guardianship.

(C) Guardianship of estate

The probate division of a court of common pleas may waive establishing or continuing the guardianship of the estate of a ward if the assets and principal income of the ward do not support a guardianship of the estate.

(D) Restrictions on direct service providers

The probate division of a court of common pleas shall not issue letters of guardianship to any direct service provider to serve as a guardian for a ward for whom the provider provides direct services, unless otherwise authorized by law.

RULE 66.05. Responsibilities of Court Establishing Guardianships.

(A) General responsibilities

The probate division of a court of common pleas that establishes a guardianship shall do both of the following:

(1) Conduct, or cause to be conducted, a criminal background check. If the applicant to serve as a guardian is an attorney, the court may accept a certificate of good standing with disciplinary information issued by the Supreme Court in place of a criminal background check.

(2) Require each guardian appointed by the court to submit to the court information documenting compliance with the guardian qualifications pursuant to Sup.R. 66.06 or 66.07, as applicable.

(B) Responsibilities regarding guardians with ten or more wards

The probate division of a court of common pleas shall do all of the following with respect to guardians with ten or more wards under the guardian's care:

(1) Maintain a roster, including the name, address, telephone number, and electronic mail address, of the guardians. The court shall require the guardians to notify the court of any changes to this information.

(2) Require the guardians to include in the guardian's report a certification stating that the guardian is unaware of any circumstances that may disqualify the guardian from serving as a guardian;

(3) Require the guardians to submit to the court an annual fee schedule that differentiates guardianship services fees, as established pursuant to local rule, from legal or other direct services;

(4) On or before March 1st of each year, review the roster of guardians to determine if the guardians are in compliance with the education requirements of Sup.R. 66.06 or 66.07, as applicable, and that the guardians are otherwise qualified to serve.

RULE 66.06. Guardian Pre-Appointment Education.

(A) Requirement

Except as provided in division (B) of this rule, the probate division of a court of common pleas shall not appoint an individual as a guardian unless, at the time of appointment or within six months thereafter, the individual has successfully completed, at a minimum, a six-hour guardian fundamentals course provided by the Supreme Court or, with the prior approval of the appointing court, another entity. The fundamentals course shall include, at a minimum, education on the following topics:

(1) Establishing the guardianship;

(2) The ongoing duties and responsibilities of a guardian;

(3) Record keeping and reporting duties of a guardian;

(4) Any other topic that concerns improving the quality of the life of a ward.

(B) Exception

An individual serving as a guardian on June 1, 2015, or who served as a guardian during the five years immediately preceding that date shall have until June 1, 2016, to complete

the training required under division (A) of this rule unless the appointing court waives or extends the requirement for good cause.

RULE 66.07. Guardian Continuing Education.

(A) Requirement

In each succeeding year following completion of the requirement of Sup.R. 66.06, a guardian appointed by the probate division of a court of common pleas shall successfully complete a continuing education course that meets all of the following requirements:

(1) Is at least three hours in length;

(2) Is provided by the Supreme Court or, with the prior approval of the appointing court, another entity;

(3) Is specifically designed for continuing education needs of guardians and consists of advanced education relating to the topics listed in Sup.R. 66.06(A)(1) through (4).

(B) Annual compliance

On or before January 1st of each year, a guardian shall report to each probate division of a court of common pleas from which the guardian receives appointments information documenting compliance with the continuing education requirement pursuant to division (A) of this rule, including the title, date, location, and provider of the education or a certificate of completion.

(C) Failure to comply

If a guardian fails to comply with the continuing education requirement of division (A) of this rule, the guardian shall not be eligible for new appointments to serve as a guardian until the requirement is satisfied. If the deficiency in continuing education is more than three calendar years, the guardian shall complete, at a minimum, a six-hour fundamentals course pursuant to Sup.R. 66.06(A) to qualify again to serve as a guardian.

RULE 66.08. General Responsibilities of Guardian.

(A) Orders, rules, and laws

A guardian shall obey all orders of the probate division of a court of common pleas establishing the guardianship and shall perform duties in accordance with local rules and state and federal law governing guardianships.

(B) Pre-appointment meeting

Unless otherwise determined by the probate division of a court of common pleas, an applicant guardian shall meet with a proposed ward at least once prior to appearing before the court for a guardianship appointment.

(C) Reporting abuse, neglect, or exploitation

A guardian shall immediately report to the probate division of a court of common pleas and, when applicable, to adult protective services any appropriate allegations of abuse, neglect, or exploitation of a ward.

(D) Limitation or termination of guardianship

A guardian shall seek to limit or terminate the guardianship authority and promptly notify the probate division of a court of common pleas if any of the following occurs:

(1) A ward's ability to make decisions and function independently has improved;

(2) Less restrictive alternatives are available;

(3) A plenary guardianship is no longer in the best interest of a ward;

(4) A ward has died.

(E) Change of residence

(1) A guardian shall notify the probate division of a court of common pleas of a ward's change of residence and the reason for the change. Except if impracticable, the guardian shall notify the court no later than ten days prior to the proposed change.

(2) A ward's change of residence to a more restrictive setting in or outside of the county of the guardian's appointment shall be subject to the court's approval, unless a delay in authorizing the change of residence would affect the health and safety of the ward.

(F) Court approval of legal proceedings

A guardian shall seek approval from the probate division of a court of common pleas before filing a suit for the ward.

(G) Annual plan

A guardian of a person shall file annually with the probate division of the court of common pleas a guardianship plan as an addendum to the guardian's report. A guardian

of an estate may be required to file an annual guardianship plan with the probate division of the court of common pleas. The guardianship plan shall state the guardian's goals for meeting the ward's personal and financial needs.

(H) Annual registration

All guardians appointed by the court who have ten or more wards under their care shall annually register with the probate division of the court of common pleas and provide such information as the court may require, including but not limited to a fee schedule that differentiates guardianship services from legal or other direct services.

(I) Ward's principal income

A guardian shall inform the probate division of the court of common pleas and apply to close the guardianship of the estate if the principal income of the ward is from governmental entities, a payee for that income is identified, and no other significant assets or income exist.

(J) Limits on guardian's compensation

(1) A guardian's compensation is subject to Sup.R. 73.

(2) A guardian who is in receipt of fees other than through the guardianship of the estate shall report to the probate division of the court of common pleas the source and entity which reviewed and authorized payment.

(3) A guardian shall not receive incentives or compensation from any direct service provider providing services to a ward.

(K) Conflict of interest

A guardian shall avoid actual or apparent conflicts of interest regarding a ward's personal or business affairs. A guardian shall report to the probate division of the court of common pleas all actual or apparent conflicts of interest for review and determination as to whether a waiver of the conflict of interest is in the best interest of the ward.

(L) Filing of ward's legal papers

In addition to filing an inventory, if applicable, pursuant to R.C. 2111.14(A)(1) and within three months after the guardian's appointment, a guardian shall file with the probate division of the court of common pleas a list of all of the ward's important legal papers, including but not limited to estate planning documents, advance directives, and powers of attorney, and the location of such legal papers, if known at the time of the filing.

RULE 66.09. Responsibilities of Guardian to Ward.

(A) Professionalism, character, and integrity

A guardian shall act in a manner above reproach, including but not limited to avoiding financial exploitation, sexual exploitation, and any other activity that is not in the best interest of the ward.

(B) Exercising due diligence

A guardian shall exercise due diligence in making decisions that are in the best interest of a ward, including but not limited to communicating with the ward and being fully informed about the implications of the decisions.

(C) Least restrictive alternative

Unless otherwise approved by the probate division of a court of common pleas, a guardian shall make a choice or decision for a ward that best meets the needs of the ward while imposing the least limitations on the ward's rights, freedom, or ability to control the ward's environment. To determine the least restrictive alternative, a guardian may seek and consider an independent assessment of the ward's functional ability, health status, and care needs.

(D) Person-centered planning

A guardian shall advocate for services focused on a ward's wishes and needs to reach the ward's full potential. A guardian shall strive to balance a ward's maximum independence and self-reliance with the ward's best interest.

(E) Ward's support system

A guardian shall strive to foster and preserve positive relationships in the ward's life unless such relationships are substantially harmful to the ward. A guardian shall be prepared to explain the reasons a particular relationship is severed and not in the ward's best interest.

(F) Communication with ward

(1) A guardian shall strive to know a ward's preferences and belief system by seeking information from the ward and the ward's family and friends.

(2) A guardian shall do all of the following:

(a) Meet with the ward as needed, but not less than once quarterly or as determined by the probate division of the court of common pleas;

(b) Communicate privately with the ward;

(c) Assess the ward's physical and mental conditions and limitations;

(d) Assess the appropriateness of the ward's current living arrangements;

(e) Assess the needs for additional services;

(f) Notify the court if the ward's level of care is not being met;

(g) Document all complaints made by a ward and assess the need to report the complaints to the court of common pleas.

(G) Direct services

Except as provided in Sup.R. 66.04(D), a guardian shall not provide any direct services to a ward, unless otherwise approved by the court.

(H) Monitor and coordinate services and benefits

A guardian shall monitor and coordinate all services and benefits provided to a ward, including doing all of the following as necessary to perform those duties:

(1) Having regular contact with all service providers;

(2) Assessing services to determine they are appropriate and continue to be in the ward's best interest;

(3) Maintaining eligibility for all benefits;

(4) Where the guardian of the person and guardian of the estate are different individuals, consulting regularly with each other.

(I) Extraordinary medical issues

(1) A guardian shall seek ethical, legal, and medical advice, as appropriate, to facilitate decisions involving extraordinary medical issues.

(2) A guardian shall strive to honor the ward's preferences and belief system concerning extraordinary medical issues.

(J) End of life decisions

A guardian shall make every effort to be informed about the ward's preferences and belief system in making end of life decisions on behalf of the ward.

(K) Caseload

A guardian shall appropriately manage the guardian's caseload to ensure the guardian is adequately supporting and providing for the best interest of the wards in the guardian's care.

(L) Duty of confidentiality

A guardian shall keep the ward's personal and financial information confidential, except when disclosure is in the best interest of the ward or upon order of the probate division of a court of common pleas.

RULE 73. Guardian's Compensation.

(A) Setting of compensation

Guardian's compensation shall be set by local rule.

(B) Itemization of expenses

A guardian shall itemize all expenses relative to the guardianship of the ward and shall not charge fees or costs in excess of those approved by the probate division of a court of common pleas.

(C) Additional compensation

Additional compensation for extraordinary services, reimbursement for expenses incurred and compensation of a guardian of a person only may be allowed upon an application setting forth an itemized statement of the services rendered and expenses incurred and the amount for which compensation is applied. The probate division of a court of common pleas may require the application to be set for hearing with notice given to interested persons in accordance with Civ.R. 73(E).

(D) Co-guardians

The compensation of co-guardians in the aggregate shall not exceed the compensation that would have been allowed to one guardian acting alone.

(E) Denial or reduction of compensation

The probate division of a court of common pleas may deny or reduce compensation if there is a delinquency in the filing of an inventory or account, or after hearing, the court finds the guardian has not faithfully discharged the duties of the office.

RULE 99. Effective Date.

[Existing language unaffected by the amendments is omitted to conserve space]

(PPP) New Sup.R. 66.01 through 66.09 and the amendments to Sup.R. 73, adopted by the Supreme Court of Ohio on March 10, 2015, shall take effect on June 1, 2015.