

**COMMON PLEAS COURT OF DARKE COUNTY, OHIO
PROBATE DIVISION
LOCAL RULES**

LOCAL RULE	SUPERINTENDENCY RULE		
1.	RULE 53	(A)	HOURS OF THE COURT The Probate Court and its offices shall be open for the transaction of business from 8:00 A.M. to 4:30 o'clock P.M., Monday – Friday. The Probate Court shall be closed on Saturday, Sunday and legal holidays.
2.	RULE 55	(B)	EXAMINATION OF PROBATE FILES, RECORDS AND OTHER DOCUMENTS Copies of any open records may be obtained at a cost set by the Court.
3.	RULE 58	(C)	COURT COSTS Deposits in the amount set forth in Appendix A, attached hereto shall be required upon the filing of any action & proceedings listed therein.
4.	RULE 67C	(D)	ESTATES OF MINORS OF TEN THOUSAND DOLLARS OR LESS Applicants shall follow rules of Superintendence O.R.C. Section 2111.04 as to application to dispense with the appointment of a guardian.
5.	RULE 68.1	(F)	SETTLEMENT OF CLAIMS FOR INJURIES TO MINORS UNDER TEN THOUSAND DOLLARS Probate Superintendence Rule 68 shall apply to all settlements covered by this rule, unless otherwise ordered by this Court.

6.

RULE 71.1

(I) **COUNSEL FEES**

Counsel fees for the administration of a decedent's estate as set forth in Appendix B, B(1) and B(2)-attached hereto, may serve as a guide in determining fees to be charged to the estate for legal services of an ordinary nature rendered as attorney for the executor or administrator in the complete administration of a decedent's estate. SUCH SCHEDULES, HOWEVER, ARE NOT TO BE CONSIDERED AS SCHEDULES OF MINIMUM OR MAXIMUM FEES TO BE CHARGED. Further, if by reason of the application of such percentages of values of assets or to amounts of income a disparity or injustice results, such disparity or injustice may be reviewed on the Court's own motion in respect of any account reflecting such compensation or upon exceptions to such an account.

(J) Examples of extraordinary services, which may be compensated in addition or to the foregoing suggested guidelines on ordinary fees, includes but is not limited to, the provisions or services set forth in Appendix C, attached hereto.

(K) A computation of fees conforming to the forms set forth in Appendix D, D(1) and D(2) shall be signed by the attorney and fiduciary and filed with the final account in the estate.

(L) Fees will not be paid until an estate has been closed without consent of the Court.

(M) Attorney fees for guardianship as set forth in Appendix F (B).

6.1

CONTINGENT FEE

All fiduciaries shall make written application to the Court for authority to enter into a Contingent Fee Contract. The fees associated therewith will be subject to future review and approval of the fees and expenses by the Court, notwithstanding any provisions of the contract. The application may conform to the form attached as Appendix K.

Otherwise, counsel fees may be determined on a quantum meruit basis.

7. RULE 73

(A) **GUARDIAN'S COMPENSATION**

- (A-1) Unless otherwise provided by law or ordered by the Court, a guardian may charge for his ordinary services on an annual basis an amount computed in accordance with the attached schedule marked Appendix E.
- (A-2) Compensation computed on income will not be allowed on balanced carried forward from one account period to another, nor will an investment of funds or the final distribution of unexpected balances to a ward at the close of a guardianship be considered as an expenditure.
- (A-3) For the purpose of computing a guardian's compensation as herein approved, the fair market value of the principal shall be determined by the guardian as of the date of his appointment and as of each anniversary thereafter. The compensation so determined may be changed during the ensuing year. The annual principal valuation shall be adjusted from time to time to reflect additions to and withdrawals from the principal of the estate, and the compensation for the remaining portion of the annual periods shall be similarly adjusted to reflect such revised valuation.

8. RULE 73

- (E-1) Computation of Guardian's fees shall be on a form set forth in Appendix F.
- (E-2) A separate schedule of the computation of the guardian's computation shall be set forth in the guardian's account as a condition of its approval. Said computation shall be on a form as set forth in Appendix F. Except for good cause shown, neither compensation for a guardian or fees to the attorney representing the guardian will be allowed when the guardian is delinquent in filing an account as required by O.R.C. 2109.30.

9.

RULE 74

(A) TRUSTEE'S COMPENSATION

- (A-1) Except where the instrument creating a trust makes provisions for compensation, a testamentary trustee may charge annually or the ordinary services performed by the trustee in connection with the administration of each separate trust estate a fee as established by Appendix G.
- (A-2) For the purpose of computing trustee's compensation as herein provided, the fair market value of the principal of the trust property shall be determined by the trustee as of the date of the trustee's appointment and as of each anniversary thereafter. The compensation so determined may be charged during the ensuing year. The annual fair market value of the principal shall be adjusted from time to time to reflect additions and withdrawals from the principal of the trust estate, and the compensation for the remaining portion of the annual period shall be similarly adjusted to reflect such revised valuations.
- (A-3) Additional compensation for extraordinary service may be allowed upon application. The Court may require that such application be set for hearing and notice thereof be given to interested parties in accordance with Civil Rule 4.1. Such notice shall contain a statement of the amount of such compensation applied for.

10.

- (C-1) A separate schedule of the computation of trustee's compensation shall be filed conforming to the form in Appendix H and filed with the Court at the time of payment of said fee.

11.

MOTIONS AND HEARINGS

- (A) All motions and responses shall be submitted in writing with the proper case heading and number and accompanied by a memorandum on the related law.
- (B) All motions shall be ruled by the Court on the pleadings without hearing, unless, an oral hearing is requested by a party or the Court, and granted

by the Court.

12.

TAX PROCEEDINGS

- (A) All estate tax filings in the Probate Court shall conform to the requirements of Chapter 5731 of the Revised Code of Ohio.
- (B) The Ohio Estate Tax Return shall be filed in Probate Court no sooner than three (3) months from the date of appointment, without prior approval of court.
- (C) Each attorney or other person filing a tax return shall also prepare and deliver to the Probate Court a notice, on the form prescribed by the tax commissioner, for service upon the County Auditor.

13.

RELEASES FROM ADMINISTRATION

- (A) A Summary Release of Administration and journal entry on the form prescribed by court, may be filed in each case where the assets of the estate are less than the amount prescribed by law. Ref. ORC 2113.031.

14.

ADOPTIONS

- (A) In any adoption action, prior to the initial hearing, the attorney for the adoptive parents shall follow the guidelines provided for in ORC § 3107, including, but not limited to, examining the proceedings and determining that all necessary parental consents, or notices to parents, have been accomplished, and that the Court has unimpaired jurisdiction in such matter.
- (B) It is the policy of the Court that all living parents of children sought to be adopted will be notified of such adoption, unless, such parents waive notice and consents thereto or consent is not necessary under ORC § 3107.07. This policy does not apply in cases where the child is in the permanent custody of an agency, defined as any public or private organization certified, licensed, or

otherwise specially empowered by law or rule to place minors for adoption, and such cases are exempt from the following requirements.

- (C) If the child sought to be adopted is born out of wedlock and the father has not waived notice of the filing of the Petition for Adoption and consented to such adoption (or consent that an agency take permanent custody of such child, for purposes of placing such child for adoption) and notice of hearing on petition for adoption to the father is not otherwise prohibited under ORC § 3107.11, the Clerk shall cause notice to be issued to the father by name and last known address, identify the child by incorporating a copy of the child's original birth certificate, shall state that the Petition for Adoption of said child has been filed and shall state that if said adoption is approved, said father will be relieved of all parental rights and responsibilities, including the right to contact the minor, and, except with respect to a spouse of the adoption petitioner and relatives of that spouse, terminate all legal relationships between the minor and the father and the minor's former relatives for all purposes. The Notice shall also set forth the initial hearing date and shall state that, if the father wishes to object to said adoption, that he must file his objection within fourteen days after proof of service of notice of the filing of the petition and of the time and place of hearing is given to him. The Notice shall also state that if the father wishes to contest the adoption, he must also appear at the hearing. The Notice shall also state that a final decree of adoption may be entered if the father fails to file an objection to the adoption petition or appear at the hearing.

However, if notice to the father under this rule is done by publication, the birth certificate of the child does not need to be published.

- (D) If the identity of the father of said child is not set forth on the birth certificate, the natural mother shall be responsible for checking the Ohio's Putative Father Registry at Columbus, OH and provide proof to the Court of such checking.

15.

**SEPARATE FINDINGS OF FACT AND
CONCLUSION OF LAW**

When a party requests the Court to state its findings of fact separately from its conclusions of law under the provisions of Rule 52 of the Civil Rules, the party requesting such statement shall, within five (5) days after receipt of notice of the Court's decision, submit to the Court a statement of proposed findings of fact and conclusions of law and shall serve copies thereof on all opposing parties or their counsel. Within five (5) days after receipt of such proposed statement, each opposing party shall submit to the Court a proposed statement of findings of fact and conclusions of law. For want of strict compliance with the rule on the part of the party requesting the statement of findings of fact and conclusions of law, the Court will enter a general finding.

16.

No more than three (3) fiduciaries will be appointed, unless, there are special circumstances, which shall be set forth in an Application. All multiple fiduciaries must sign all papers, unless, authorized by the court.

17.

Upon application, and for good cause shown, the Court may grant exception to any of the within Rules of Court.

RULE 18

CASE MANAGEMENT PROGRAM

I. CIVIL ACTIONS

- A. A scheduling conference shall be conducted in all civil cases prior to being schedule for trial, except in land sale proceedings.
- B. Within thirty (30) days after the answer day, the case shall be set by the Court for a scheduling conference.
- C. Notice of the scheduling conference shall be given to all counsel of record by mail and/or telephone by the Court not less than fourteen (14) days prior to the conference. Any application for continuance of the conference shall be in writing and filed with the Court in a timely manner.

- D. The following decisions shall be made at the scheduling conference and all counsel attending must have full authority to enter into a binding pretrial order.
1. A definite discovery schedule shall be agreed upon by all parties for the completion of all discovery.
 2. A definite date for exchange for expert witness reports shall be determined.
 3. A definite date for filing of all motions, which date shall not be later than seven (7) days before the final pretrial. The date for the final pretrial shall be set by the Court and shall be held approximately one (1) week prior to the trial.
- E. The following decisions shall be made at the final pretrial and all counsel attending must have full authority to enter into a binding pretrial order.
1. The Court will rule on all pretrial motions.
 2. Briefs on any legal issues shall be submitted.
 3. Proposed jury instructions shall be submitted.
 4. Proposed jury interrogatories shall be submitted.
 5. Clients shall be present.
 6. No motions shall be heard after the final pretrial without leave of Court and after the showing of good cause.

II. LAND SALES

All land sales, which have not been concluded within six (6) months from the date of filing, shall be set for pretrial conference within ten (10) days after the expiration of six months.

- A.
1. The attorney of record and fiduciary must attend the pretrial conference.
 2. A written status report shall be filed with the Court no later than seven (7) days prior to the pretrial conference.
 3. The status report shall address the issues as to the efforts being made to sell the real estate and when the case will be closed.

III. DECEDENT'S ESTATES

A. ACCOUNTS

The statutory time for filing an account is set by O.R.C. Section 2109.30 and as hereafter amended. Subsequent accounts are due yearly thereafter.

(A) 1. Compliance

- A. The first week of the quarter following an account due date, a letter is mailed by regular mail to the attorney. This notice indicates that an account is past due, and that a contempt of Court citation will be issued if the account is not filed within 30 days.
- B. If an account has not been filed within thirty-five (35) days, a citation is mailed to the fiduciary (certified mail) and attorney (regular mail), ordering them to appear to show cause why the account has not been filed.
- C. After a citation has been issued, this Court will not accept an account for filing until the hearing on the citation has been held.

(A) 2. Vouchers

There shall be submitted with the Fiduciary's Account vouchers or proof supporting disbursements. Vouchers or proof shall be keyed into the account by number, presented in the order as they are listed, and after verification by the Court with the account, will be returned to the Fiduciary.

B. INVENTORIES

The statutory time for filing an inventory (R.C. 2115.02) is within three (3) months after the appointment. The Court will grant one extension for good cause shown.

(B) 1. Compliance

- A. The same notice and citation procedure set forth above for delinquent accounts is utilized.
- B. After a citation has been issued, this Court will not accept an inventory for filing until the hearing on the citation has been held.

C. Objections to Inventory or Account

Objections are scheduled for pretrial conference within thirty (30) days after filing. At the pretrial conference, the issues are narrowed, a time table for discovery is agreed upon and the hearing date is scheduled.

D. Estate Remaining Open After Twenty-Seven (27) Months

Such estates are subject to a review conference. The fiduciary and attorney shall present a status report at the review conference.

E. Statement of Examined Record Title to Real Estate.

Upon the filing of any Inventory and Appraisal, and if the decedent owned any real estate upon which a determination of attorney fees will be made, the attorney for the estate shall file with the Inventory and Appraisal his statement, addressed to the Court, that he has examined record title to the real estate from the instrument prior to decedent acquiring said real estate. If decedent has owned said real estate for more than 61 years, then only as to when acquired by the decedent.

IV. WRONGFUL DEATH SETTLEMENT

All hearings shall be held within thirty (30) days of the filing of the Form 14.0 provided; however, if either a guardian or guardian ad litem is necessary to be appointed, the hearing shall be held within fifteen (15) days after the appointment.

V. GUARDIANSHIPS

- A. The Court hereby adopts Rules 66.01 – 66.09 of the Rules of Superintendence in addition to the guardianship rules outlined here.
- B. A separate guardianship must be filed and case file set up for each proposed ward.
- C. Waiver

The court will consider a waiver of Guardian education requirements upon written application and good cause shown.

D. Accounts

The statutory time for filing an account (R.C. 2109.30) is reduced. Guardians of the Estate shall file accounts not less often than annually; unless, the Court directs otherwise.

(A) 1. Compliance

- A. The same notice and citation procedure set forth under Decedent's Estate is utilized.

- B. After a citation has been issued, this Court will not accept a guardian's account for filing until the hearing on the citation has been held.

E. Guardian's Report (Incompetent Person Only)

Same are filed annually. The guardianship is scheduled for review if a concern is noted in the report or the Court so directs.

After the first initial evaluation, no further medical reports will be required with the annual Guardian's Report after a doctor has certified that the ward is mentally handicapped and such handicap is irreversible. Also if doctor in initial evaluation indicates that the ward is "mentally retarded" no further evaluations and reports are due.

F. Emergency Guardianship

Pursuant to section 2111.02, if an Emergency Guardianship or other order is being sought to prevent significant injury to the person or estate of a minor or incompetent, the person seeking such order or appointment shall comply with the following procedure:

1. File an Application for Appointment of Emergency Guardian or Issuance of Emergency Order
2. File an Affidavit in Support of the Application set forth above, which should include, but not be limited to the following information: Information describing the imminent risk of significant injury to the person or property of the minor or incompetent; the nature or type of significant injuries that might result without court order; a description and location of property that might suffer significant injury; the date the imminent risk was discovered by the applicant; the reasonable efforts that the applicant has taken to otherwise prevent significant injury without court order;
3. File SPF 17.1A "Supplement for Emergency Guardian of Person"
4. Personally file with the court the documents noted in 1., 2., and 3., of this rule and remain available for a personal appearance before the judge to respond to further court inquiry.
5. Within thirty (30) days of the expiration of any emergency orders issued hereto, the emergency guardian shall submit a report to the Court stating any specific action taken to prevent substantial injury to the person or estate and accounting for the management of any assets of the minor or incompetent during such period of time. If a guardianship is commenced upon the expiration of the emergency orders, the Court may dispense with this report if the guardian provides such information in the Inventory of the ward's assets.

G. Comments or Complaints on Guardianships

1. Any comment or complaint regarding the performance of any guardian appointed by this court shall be submitted in writing to the court's guardianship deputy clerk.
2. Upon receipt of the comment or complaint, the clerk shall forthwith send a copy of the comment or complaint by regular US mail to the guardian who is the subject of the comment or complaint.
3. A copy of the comment or complaint shall be referred to the judge of the court for review to determine the action necessary to dispose of the comment or complaint, including but not limited to a referral to the prosecuting attorney or other agencies for further investigation or for further hearing by the court. The judge shall determine such course of action within seventy-two (72) hours of reference of the comment or complaint. If the judge determines that a hearing is required to respond to the comment or complaint, such hearing shall be provided to those entitled to Notice. Notice of the hearing shall be sent by regular US mail to those identified in SPF 1.0 and such other interested persons as determined necessary by the court, including the person submitting the comment or complaint, the guardian and the ward.
4. Upon making a Final Disposition of the comment or complaint, the court shall prepare a written Final Disposition and provide a copy to the person making the comment or complaint and the guardian.

VI. TESTAMENTARY TRUSTS

A. Accounts

The statutory time for filing an account (R.C. 2109.30) is reduced. Trustees of the Estate shall file accounts every twelve (12) months from the date of appointment, unless, the Court directs otherwise.

(A) 1. Compliance

- A. The same notice and citation procedure set forth under Decedent's Estates is utilized.
- B. After a citation has been issued, this Court will not accept a trustee's account for filing until the hearing on the citation has been held.

B. Inventories

The statutory time for filing an inventory (R.C. 2111.14) is within three (3) months after appointment. The Court will grant one extension for good cause shown.

(B) 1. Compliance

- A. The same notice and citation procedure set forth under Decedent's Estates is utilized.
- B. After a citation has been issued, this Court will not accept a trustee's inventory for filing until the hearing on the citation has been held.

VII. JURY MANAGEMENT PLAN

A. Opportunity For Service

- B. The opportunity for jury service shall not be denied nor limited based on race, national origin, gender, age, religious belief, income, occupation, disability or any other factor that discriminates against a cognizable group in the jurisdiction.
- C. Jury service is an obligation of all qualified citizens of Darke County, Ohio.

B. Jury List Source

An entry setting forth the number of jurors required for the jury term shall be sent to the Jury Manager of the Darke County Common Pleas Court, General Division, and random juror selection shall take place pursuant to said Division's Jury Management Plan.

C. Eligibility For Jury Service

All persons shall be eligible for jury service except those who:

- 1. Are less than eighteen years of age;
- 2. Are not citizens of the United States;
- 3. Are not residents of the jurisdiction in which they have been summoned to serve; to wit, Darke County.
- 4. Are not able to communicate in the English language;
- 5. Have been convicted of a felony and have not had their civil rights restored.

D. Term Of Availability For Jury Service

Jurors shall be on call during the four-month term and will be given as much notice as possible if actually called to serve.

E. Exemption, Excuse and Deferral

- A. All automatic excuses from jury service are eliminated.

- B. Prospective jurors may be rescheduled or excused for good cause shown, such as financial hardship, personal or family illness, childcare hardship, employment responsibilities, or previously planned trips.
 - C. Deferrals for jury service for reasonably short periods may be permitted by a judge or specifically authorized court official.
 - D. Requests for excuses and deferrals shall be in writing.
- F. Voir Dire
- A. Voir dire examination shall be limited to matters relevant to determining whether to remove a juror for cause and to determine the juror's FAIRNESS AND IMPARTIALITY.
 - B. To reduce the time required for voir dire, basic background information regarding each panel member is available to counsel in writing one week before jury selection is to begin. (**Appendix L** Jury Questionnaire)
 - C. The judge should ensure that the privacy and personal security of prospective jurors is reasonably protected, and the questioning is consistent with the purpose of the voir dire process.
 - D. In all cases, the voir dire process shall be held on the record.
 - E. Rule of Voir Dire
 - 1. The case may not be argued in any way while questioning the jurors.
 - 2. Counsel may not engage in efforts to indoctrinate jurors.
 - 3. Jurors may not be questioned concerning anticipated instructions or theories of law. This does not prevent general questions concerning matters such as the validity and philosophy of reasonable doubt or the presumption of innocence.
 - 4. Jurors may not be asked what kind of verdict they might return under any circumstance.
 - 5. Questions are to be asked collectively of the entire panel whenever possible.
- G. Removal From The Jury Panel For Cause

If the judge determines during the voir dire process that any individual is unable or unwilling to hear the particular case at issue fairly and impartially, that individual shall be removed from the panel. Such a determination may be made on motion of counsel or by the judge.

H. Peremptory Challenges

The Supreme Court of Ohio and applicable statutory authority shall in accordance with the Ohio Civil and Criminal Rules adopt rules determining procedure for exercising peremptory challenges.

I. Administration Of The Jury System

- A. The administration of the jury system, once the General Division Jury Manager selects jurors for service, shall be the responsibility of the Probate and Juvenile Court Judge, and administered by the Court Administrator or deputy clerks as assigned.
- B. Ohio Rules of Court should govern all procedures concerning jury selection and service.

J. Notification And Summoning Procedures

The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person should be:

- A. Delivered by ordinary mail;
- B. Phrased so as to be readily understood by an individual unfamiliar with the legal and jury system; and,
- C. A summons should clearly explain how and when the prospective jury recipient must respond and the consequences of a failure to respond.
- D. The jury questionnaire should be phrased and organized so as to facilitate quick and accurate screening and should request only that information essential for:
 - 1. Determining whether a person meets the criteria for eligibility;
 - 2. Providing basic background information ordinarily sought during voir dire examination; and
 - 3. Efficiently managing the jury system.
- E. Policies and procedures should be established for monitoring failures to respond to a summons and for enforcing a summons to report for jury service.
- F. See example of notification letter (**Appendix M**) which is delivered to prospective jurors via ordinary mail, along with a summons.

K. Monitoring The Jury System

The Court shall review the performance of the jury system annually in order to evaluate:

1. The representativeness and inclusiveness of the jury source list;
2. The effectiveness of qualifications and summoning procedures;
3. The responsiveness of individual citizens to jury duty summonses;
4. The efficient use of jurors; and
5. The cost-effectiveness of the jury management system.

L. Juror Use

- A. The Court shall employ the services of prospective jurors to achieve optimum use with a minimum of inconvenience to jurors.
- B. The Court shall determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury duty and the number assigned to jury panels.

M. Jury Facilities

The Court shall provide an adequate and suitable environment for jurors.

- A. Jurors shall be accommodated in pleasant waiting facilities furnished with suitable amenities.
- B. Jury deliberation rooms shall include space, furnishings and facilities conducive to reaching a fair verdict.
- C. Juror facilities shall be arranged to minimize contact between jurors and the parties, counsel and the public.

N. Juror Compensation

- A. Persons called for jury service shall receive a reasonable fee for their service pursuant to statutory authority.
- B. Such fees shall be paid at the end of the term.
- C. Employers shall be prohibited from discharging, laying off, denying advancement opportunities to, or otherwise penalizing employees who miss work due to jury service.

O. Juror Instruction

The trial judge should:

- A. Give preliminary instructions to all prospective jurors.
- B. Give instructions directly following empanelment of the jury to explain the jury's role, the trial procedures including note-taking, the nature of evidence and its evaluation, the issues to be addressed, and the basic relevant legal principles;
- C. Prior to the commencement of deliberations, instruct the jury on the law, on the appropriate procedures to be followed during deliberations, and on the appropriate method for reporting the results of its deliberation. Such instructions may be made available to the jurors in writing during the deliberations;
- D. Before dismissing a jury at the conclusion of a case, the trial judge should:
 - 1. Release the jurors from the duty of confidentiality;
 - 2. Explain their rights regarding inquiries from counsel or the press;
 - 3. Either advise them that they are discharged from service or specify when they must call or report; and
 - 4. Express appreciation to the jurors for their service, but not
 - 5. Express approval or disapproval of the verdict.
- E. All communication between the judge and members of the jury panel from the time of reporting to the courtroom for voir dire until dismissal shall be in writing or on the record in open court. Counsel for each party shall be informed of such communication and given the opportunity to be heard.

P. Jury Deliberations

- A. Jury deliberations should take place under conditions and pursuant to procedures that are designed to ensure impartiality and to enhance rational decision-making.
- B. The judge should instruct the jury concerning appropriate procedures to be followed during deliberations.
- C. A jury should not be required to deliberate after a reasonable hour unless the trial judge determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interests of justice.

Q. Sequestration Of Jurors

- A. A jury may be sequestered only for good cause, including, but not limited to, insulating its members from improper information or influences.
- B. The jury shall be sequestered after a capital case is submitted to the jury in conformity with existing Ohio law.
- C. The trial judge shall have the discretion to sequester a jury on the motion of counsel or on the judge's initiative and shall have the responsibility to oversee the conditions of sequestration.
- D. Standard procedures should be promulgated to achieve the purpose of sequestration; and minimize the inconvenience and discomfort of the sequestered jurors.
- E. Training shall be provided to personnel who escort and assist jurors during sequestration.

**LOCAL
RULE**

**SUPERINTENDENCY
RULE**

19.

RULE 51 & 52

STANDARD PROBATE FORM

All filings in the Probate Court for which there is a standard probate form shall be submitted upon said standard probate form as set forth in Rule 51 and Rule 52 of the Rules of Superintendence for courts of Ohio. Counsel may use computer generated forms as provided under the Rules of Superintendence for courts of Ohio; however, said computer generated forms shall be numbered in conformity with the numbering system applied to the standard probate forms.

AMENDED
APPENDIX A
DEPOSITS FOR COURT COSTS

1. Filing Application for Probate of Will	-	\$250.00
2. Filing Application for Probate of Will in an Estate To be Released from Administration	-	\$180.00
3. Summary Release from Administration	-	\$140.00
4. Filing Application for Appointment of an Administrator	-	\$ 250.00
5. Filing Application for Appointment of:		
Guardian of an Incompetent Person:	-	\$300.00
Guardian of a Minor Child:	-	\$200.00
6. Minor Settlement	-	\$100.00
7. Filing Complaint (Civil Action, Land Sale, Determination of Heirship, Declaratory Judgment, Etc.)	-	\$150.00
8. Filing Application for Authenticated or Exemplified Will Proceedings	-	\$75 and \$1 per page
9. Filing Application for Ancillary Administration Barring Claims	-	\$250.00

ALL DEPOSITS WILL BE APPLIED TOWARDS FINAL COSTS.
THESE DEPOSITS FOR COURT COSTS MAY BE ADOPTED IN LESSER
AMOUNTS IF SO AUTHORIZED BY THE COURT.

APPENDIX B

COUNSEL FEES-FULL ADMINISTRATION

I. TOTAL PROBATE ASSETS - (PER INVENTORY)

0	-	\$20,000	\$1,000.00
\$20,001	-	\$100,000	4% over \$20,000.00
Over	-	\$100,000	2% over \$100,000.00

II. TOTAL NON-PROBATE ASSETS (AS VALUED IN OHIO ESTATE TAX RETURN)

0	-	\$25,000	500.00
Over	-	\$25,000	1% over \$25,000.00

III. EXTRAORDINARY FEES MAY BE AWARDED ON APPLICATION BASED UPON THE TIME SPENT AND SERVICES RENDERED

This schedule is merely a guide for determining fees of counsel in an ordinary estate and should be considered as neither a minimum or maximum fee schedule.

APPENDIX B (1)

COUNSEL FEES-RELEASE OF ADMINISTRATION

I. TOTAL PROBATE ASSETS - (PER INVENTORY)

0	-	\$10,000	\$500.00
\$10,001	-	\$35,000	4% over \$10,000.00
\$35,001	-	Up	2% over \$35,000.00

II. TOTAL NON-PROBATE ASSETS (AS VALUED IN OHIO ESTATE TAX RETURN)

0	-	\$25,000	\$500.00
Over	-	\$25,000	1% over \$25,000.00

III. EXTRAORDINARY FEES MAY BE AWARDED ON APPLICATION BASED UPON THE TIME SPENT AND SERVICES RENDERED

This schedule is merely a guide for determining fees of counsel in an ordinary Release of Administration and should be considered as neither a minimum or maximum fee schedule.

APPENDIX B (2)

COUNSEL FEES-LAND SALE

I. VALUE OF REAL ESTATE PER APPRAISAL OR AS OTHERWISE DETERMINED BY COURT

0	-	\$50,000	\$2,500.00
Over	-	\$50,000	2% over \$50,000.00

II. EXTRAORDINARY FEES MAY BE AWARDED ON APPLICATION BASED UPON THE TIME SPENT AND SERVICES RENDERED

This schedule is merely a guide for determining fees of counsel in an ordinary Land Sale proceeding and should be considered as neither a minimum or maximum fee schedule.

APPENDIX C

EXAMPLES OF EXTRAORDINARY SERVICES

Examples of extraordinary services which may be compensated in addition to the foregoing suggested guidelines on ordinary fees includes, but it not limited to the following:

- a. In a court other than the Probate Court.
- b. In a contested matter in the Probate Court.
- c. In connection with the preparation of filing, audit, protest or contest of an income or gift tax return, or liability incurred by the decedent or personal representative.
- d. In connection with the settlement of estate or inheritance taxes with respect to insurance not payable to the estate, gifts in contemplation of death, or general testamentary powers of appointment not exercised by the decedent, and other negotiation not represented by assets included in the "gross value" of the estate.
- e. With respect to problems of valuation or taxability of property for estate and inheritance taxes or to the protest of such taxes.
- f. Preparation and filing of federal estate tax returns.
- g. Services in connection with land sale proceedings, guardianships and estates: 5% of the first \$50,000 of sale price and 2% on the balance.
- h. In connection with matters which are unusual or excessive for the size of the estate involved.
- i. In connection with the performance of duties normally performable by the personal representative but which fall to the lawyer because of personal representative's inexperience, lack of ability, or absence from the place which assets of estate must be managed.
- j. Sale of business or business estate.
- k. Sale of real estate under power of will.
- l. Proceedings to determine heirship.
- m. Proceedings involving partnership.
- n. Completion of land contract.

APPENDIX D

COMPUTATION OF COUNSEL FEES-FULL ADMINISTRATION

TOTAL PROBATE ASSETS	(PER INVENTORY)	\$ _____
0 - \$20,000		\$1,000.00
\$20,001 - \$100,000	4% over \$20,000	_____
Over - \$100,000	2% over \$100,000	_____

1. PROBATE FEE TOTAL \$ _____

**Excluding real estate sold in Land Sale proceedings

TOTAL NON-PROBATE ASSETS (AS VALUED IN THE OHIO ESTATE TAX RETURN) \$ _____

Up to \$25,000 \$500.00

Over \$25,000 1% over \$25,000 _____

2. NON-PROBATE FEE TOTAL \$ _____

3. LAND SALE TOTAL FEE (ATTACH FORM FROM EXHIBIT \$ _____

EXTRAORDINARY FEES (Itemized and Attached Time Records, If Available)

1. _____

2. _____

3. _____

4. EXTRAORDINARY FEES TOTAL \$ _____

TOTAL COUNSEL FEE (SUM OF 1, 2, 3 & 4) \$ _____

COUNSEL FEE TAKEN ON PRIOR ACCOUNT (-) \$ _____

BALANCE OF COUNSEL FEES REQUESTED ON FINAL ACCOUNT \$ _____

COUNSEL'S SIGNATURE

FIDUCIARY'S SIGNATURE

APPENDIX D (1)

COMPUTATION OF COUNSEL FEES-RELEASE OF ADMINISTRATION

TOTAL PROBATE ASSETS(PER ASSETS & LIABILITIES)		\$ _____
0	- \$10,000	\$500.00
\$10,001	- \$35,000	4% over \$10,000 _____
Over	- \$35,000	2% over \$35,000 _____
1.	PROBATE FEE TOTAL	\$ _____
TOTAL NON-PROBATE ASSETS (AS VALUED IN THE OHIO ESTATE TAX RETURN)		\$ _____
Up to \$25,000		\$500.00
Over \$25,000		1% _____
2.	NON-PROBATE FEE TOTAL	\$ _____
EXTRAORDINARY FEES (Itemized and Attached Time Records, If Available)		
1.	_____	_____
2.	_____	_____
3.	_____	_____
3.	EXTRAORDINARY FEES TOTAL	\$ _____
TOTAL COUNSEL FEE (SUM OF 1, 2 & 3)		\$ _____
COUNSEL FEE TAKEN ON PRIOR ACCOUNT (-)		\$ _____
BALANCE OF COUNSEL FEES REQUESTED ON FINAL ACCOUNT		\$ _____

COUNSEL'S SIGNATURE

FIDUCIARY'S SIGNATURE

APPENDIX D (2)

COMPUTATION OF COUNSEL FEES-LAND SALE

LAND SALE PROCEEDINGS

VALUE OF REAL ESTATE PER APPRAISAL
OR AS OTHERWISE DETERMINED BY COURT

\$ _____

0	-	\$50,000		\$2,500.00
	Over	-	\$50,000	2% over \$50,000 _____

1. LAND SALE FEE TOTAL \$ _____

EXTRAORDINARY FEES (Itemized and Attached Time Records, If Available)

1. _____

2. _____

3. _____

2. EXTRAORDINARY FEES TOTAL \$ _____

TOTAL COUNSEL FEE (SUM OF 1, & 2) \$ _____

BALANCE OF COUNSEL FEES REQUESTED \$ _____

COUNSEL'S SIGNATURE

FIDUCIARY'S SIGNATURE

APPENDIX E

COMPUTATION OF GUARDIAN FEES

Accounting Period of _____, 20__ to _____, 20__

ORDINARY FEES

Total Income During Period \$ _____

I. 0 - \$1,000 income @ 4% _____ (excludes guardian managed
rental property income)

\$1,000 - Up income @ 3% _____

Total Fee From Income \$ _____

Total Expenses During Period \$ _____

II. 0 - \$1,000 Expense @ 4% _____ (excludes rental
property expenses)

\$1,000 - Up Expense @ 3% _____

Total Fee From Expenses \$ _____

III. Principal at Beginning of Accounting Period

times (x) _____ .003

Total Fee From Principal \$ _____

IV. Gross Rental Income From Property

Managed by Guardian _____
times (x) _____ .10

Total Fee From Rental Income \$ _____

V. Extraordinary Fees (Itemize and Attach Time Records)

- A. _____
- B. _____
- C. _____
- D. _____

Total Extraordinary Fees \$ _____

Total I - V \$ _____

Total Fee Requested \$ _____

GUARDIAN SIGNATURE

APPENDIX F

GUARDIAN FEE GUIDELINE

A. COMPUTATION OF GUARDIAN FEES – ANNUALLY

- (1) 0 - \$1,000 Income 4% of Income (excludes income from rental property managed by guardian)
 \$1,000 - Up Income 3% of Income

- (2) 0 - \$1,000 Expenses 4% of Expenses (excludes rental property expenses)
 \$1,000 - Up Expenses 3% of Expenses

- (3) \$3.00 Per Thousand Principal

- (4) 10% of Gross Rental Property Income if Managed by Guardian

- (5) Minimum of \$50.00 Per Year

B. ATTORNEY'S FEES

- (1) Attorney's fees up to \$1,000.00 for representing a guardian subsequently appointed including the filing of an inventory and an entry approving the inventory will normally be approved without application.

- (2) Attorney fees up to \$350.00 for preparing and filing an annual account and entry approving said account will normally be approved without application.

- (3) Application for extraordinary services may be filed.

- (4) Land Sale Proceedings same as extraordinary fees for estate, Appendix C (g).

APPENDIX G

TRUSTEE'S FEES

I. On Income From Personal Property

6% of Gross Income

II. On Income From Real Property

a. 10% of gross income on property managed by trustee.

b. 1% of adjusted gross income on property managed by someone else provided that management fees and trustee's fee combined do not exceed 10% of gross income.

Adjusted gross income is gross income less operating expenses before depreciation and management fees deduction.

III. On Principal

\$2.00 per thousand dollars on the first \$500,000.

\$1.00 per thousand dollars on all over \$500,000.

IV. On Distribution of Principal (other than termination)

1% of reasonable market value of principal property distributed to be paid from the distribution.

V. Extraordinary fees may be awarded upon application at discretion of the Court.

APPENDIX H

TRUSTEE'S FEE COMPUTATION

I.	Gross Annual Income From Personal Property		\$ _____
		times (x)	.06
	Total Fee from Personal Property Income		\$ _____
II.	(a) Gross Income From Real Property Managed by the Trustee		\$ _____
		times (x)	.10
	Total Fee for Trustee Managed Real Property	(a)	\$ _____
	(b) Adjusted Gross Income From Other Real Property		\$ _____
		times (x)	.01
	Total Fee to Trustee on Other Real Property Income	(b)	\$ _____
	Management Fee		\$ _____
III.	Principal		
	Up to \$500,000	.002	_____
	Over \$500,000	.001	_____
	Fee on Principal		\$ _____
IV.	Principal Distribution		\$ _____
		times (x)	.01
	Fee on Principal Distribution		\$ _____

RECAPITULATION

Item I Fees	\$ _____
Item II Fees	\$ _____
Item III Fees	\$ _____
Item IV Fees	\$ _____
Extraordinary Fees (from Application)	\$ _____
TOTAL FEES REQUESTED	\$ _____

SIGNATURE OF TRUSTEE

APPENDIX I

ADMINISTRATOR & EXECUTOR FEES (R.C. 2113.35)

I. PERSONAL PROPERTY

0	-	\$100,000	4%
\$100,001	-	\$400,000	3%
\$400,001	-	Up	2%

II. REAL ESTATE (NOT SOLD)

1% of APPRAISED VALUE FOR OHIO ESTATE TAX

III. NON-PROBATE ASSETS

1% of Value of Property not subject to administration but includable for Ohio Estate Tax purposes, except joint and survivorship property.

This fee is fixed by statute (ORC 2113.35) and may be waived entirely or in part by the fiduciary.

This fee may also be reduced proportionately to the extent part of the fiduciaries' duties are performed by his attorney and billed to the estate.

The Court may refuse to pay fee to fiduciaries who fail to timely file accounts and administer estates.

APPENDIX J

COMPUTATION SCHEDULE FOR ADMINISTRATOR/EXECUTOR FEES

I. PERSONAL PROPERTY (IN ESTATE)

0	-	\$100,000	@ 4%	_____
\$100,001	-	\$400,000	@ 3%	_____
\$400,001	-	Up	@ 2%	_____

1. TOTAL \$ _____

II. REAL ESTATE (NOT SOLD IN ESTATE)

2. 1% of Value Used in Ohio Estate Tax \$ _____

III. NON-PROBATE ASSETS (EXCEPT JOINT & SURVIVORSHIP)

3. 1% of Value of Property Includable
in Ohio Estate Tax \$ _____

IV. RECAPITULATION

Item 1. \$ _____
Item 2. \$ _____
Item 3. \$ _____

Total Adm./Exec. Allowable by Statute \$ _____

Fees Paid in Prior Accounts (-) \$ _____

Balance Payable \$ _____

Fee Requested \$ _____

SIGNATURE OF ADMIN./EXECUTOR

IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO

PROBATE DIVISION

IN THE MATTER OF:

CASE NO: _____

EMERGENCY GUARDIANSHIP OF:

APPLICATION FOR APPOINTMENT OF EMERGENCY GUARDIAN OR ISSUANCE OF
EMERGENCY ORDER

The undersigned states that:

1. _____ is in need of an Emergency Guardian or the issuance of an Emergency Court Order to prevent the imminent risk of significant injury to the person or property of _____.
2. Attached is an affidavit setting forth the underlying facts that indicate such imminent risk and support the basis of this application.
3. Applicant is seeking the following specific orders from the court to prevent significant injury: _____

WHEREFORE, Applicant requests the court issue an Emergency Guardianship or other restrictive orders as set forth in the application

Attorney for Applicant

APPLICANT

Address

Address

Phone No.

Phone No.

Email Address

Email Address

Attorney Registration No.

IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO

PROBATE DIVISION

IN THE MATTER OF:

CASE NO: _____

EMERGENCY GUARDIANSHIP OF:

APPLICATION FOR WAIVER OF EDUCATION REQUIREMENT

The Guardian hereby requests a waiver of education requirement for the following reasons:

Applicant

JUDGMENT ENTRY

The Court hereby approved/denies the request for waiver of education requirement.

Judge