

MERCER COUNTY COMMON PLEAS COURT

PROBATE DIVISION

Mary Pat Zitter, Judge

RULES OF COURT

Effective September 20, 2004

Amended January 1, 2016

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LOCAL RULES OF COURT

MERCER COUNTY COMMON PLEAS COURT, PROBATE DIVISION

5.1 – Introduction

These local rules are adopted pursuant to the authority of Rule 5 of the Rules of Superintendence for the Court of Ohio as amended from time to time. These local rules are supplemental to the Rules of Superintendence for the Courts of Ohio and must be read in conjunction therewith.

5.2 – Effective Date

The Local Rules were originally adopted and made effective September 20, 2004 including Amendments adopted through January 1, 2016.

9.1 – Security Plan

Pursuant to a Supreme Court of Ohio resolution dated July 26, 1995, the Mercer County Probate Court has determined the entire Security Plan as submitted to the Supreme Court of Ohio be maintained as confidential and not a matter of public record.

11.1 – Recording of Proceedings

The Court will make an audio recording of the proceedings as the record of the Court. Parties who desire to have a stenographic record of the proceedings must make their own arrangements for a court reporter at least twenty-four (24) hours prior to the scheduled hearing. The costs of the stenographic record shall be paid by the requesting party unless otherwise ordered by the Court. The original audio electronic recording of the proceedings will not be made available to the parties. Arrangements must be made with the Court to have proceedings copied at a cost to be determined by the Court, or transcribed by a stenographer approved by the Court.

51.1 – Forms Availability

Approved forms for use in the Mercer County Probate Court are available at the Probate Clerk's Office on the third floor of the Mercer County Courthouse. The Court requests that two-sided forms be converted to one-sided whenever possible.

52.1 – Computerized Forms

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

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

53.1 – Hours of Court

The Probate Court shall be open for the transaction of business from 8:30 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. on Mondays, and from 8:30 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. daily, Tuesday through Friday, except legal holidays.

54.1 – Conduct in Court

- A. Proper decorum in the Court is necessary for the administration of justice.
- B. No radio or television transmission or voice recording other than equipment supplied by the Court for purposes of maintaining a record of proceedings shall be permitted without the express consent of the Court in advance and pursuant to C.P. Sup. R. 11.
- C. In any preliminary Probate matter presented to the Court, the Court may restrict the attendance at said hearing to next of kin, interested parties and their counsel.
- D. Proper attire is required in the courtroom. Those inappropriately dressed may be denied access to the courtroom. The Judge, Magistrate and/or Bailiff shall determine appropriate dress.
- E. The Court does expect that all attorney's appearing before the Court dress in an appropriate professional manner, i.e. jackets and ties, appropriate length skirts/dresses, modest tops.

54.2 – Pro se Representation

Any person may represent himself or herself pro se in any matter before this Court except as otherwise ordered by the Court for good cause shown.

No person, who is not currently licensed to practice law in Ohio may assist another person in matters before this Court, unless appointed as a fiduciary or guardian ad litem or otherwise ordered by the Court.

If it comes to the attention of the Court, in open court, and in the presence of the Court, that a person, not a duly licensed Ohio attorney, or relative of a person, is representing, assisting, or advising a pro se person, the Court may summarily find such person in contempt of the Court. Such person, so found to be in contempt may be punished by this Court, as is provided by Ohio Revised Code Section 2705.01 et seq. and the matter will be referred to the Ohio Supreme Court's Commission on Unauthorized Practice of Law.

55.1 – Removal of Files

The Clerk shall not permit any of the files to be taken from the Clerk's Office except with the consent of the Clerk.

55.2 – Charges for Copies

Copies of any public records maintained in the Clerk's Office of the Probate Court of Mercer County, Ohio, may be obtained by any party at a cost of \$.25 per page.

57.1 – Facsimile Filings

The Court will accept filings by facsimile transmission or electronic mailing.

57.2 – Forwarding Copies

The Court will not return the file-stamped copies by mail unless submitted with a return, self-addressed stamped envelope.

57.4 – Certificates of Transfer

Certificates of Transfer submitted for approval by the Court shall contain a prior instrument reference and a tax parcel number.

58.1 – Security Deposit for Court Costs

The Court requires advance deposits for court costs in accordance with the schedule attached as Appendix B.

61.1 – Appraisers & Appraisals

- A. When required by law, there shall be one suitable, unrelated and disinterested appraiser appointed by the executor or administrator of an estate with Court approval.
- B. Real estate appraisals shall be made by licensed real estate agents, brokers, auctioneers, credentialed real estate appraisers, real estate loan officers of local financial institutions, or such other persons who by experience and training are qualified to make real estate appraisals. A licensed real estate agent or broker who is the listing broker for the sale of the real estate is not disqualified as an appraiser.
- C. The legal description and auditor's parcel number of all decedent's real property located in Ohio shall be included on the Schedule of Assets.
- D. No appraiser shall be permitted to directly or indirectly purchase or acquire any of the property he or she appraises, except at public auctions.
- E. Readily ascertainable value of motor vehicle: Notwithstanding sections (A) through (D) of this rule, the market value of any motor vehicle as found in the current N.A.D.A. Official Used Car Guide under the category "Av'g Retail" may be adopted as the readily ascertainable value of the property and no further appraisal of such property shall be required except as provided under Paragraph I of this rule.
- F. Description and Valuation of Stock:
 - (1) If the stock is publicly traded, its valuation may be obtained from any recognized stock exchange or over-the-counter quotation and said verification must be listed.
 - (2) If the stock represents an investment in a closed corporation, its value must be made by a duly appointed and qualified appraiser.
- G. Items of household goods are not required to be individually listed and individually valued.
- H. An administrator, executor, fiduciary, beneficiary, or creditor of a decedent's estate may file a written request with the Probate Court not later than the date set for hearing on the Inventory and Appraisal pursuant to R.C. 2115.16 that any property deemed to be appraised by readily ascertainable value shall be appraised by a suitable and disinterested appraiser as provided in sections (A) through (D) of this rule.
- I. Unless there is a dispute, or an appraisal is required for other purposes, a Court-appointed appraiser shall not be necessary in estates relieved from administration.

64.1 – Accounts

- A. All accounts must be personally signed by the fiduciary and contain the full name, current address and telephone number of the fiduciary, if different from the name, address and telephone number listed on the application to administer.
- B. All fiduciaries must sign the account when multiple fiduciaries have been appointed.
- C. For decedent's estates, a final account or certificate of termination is due six months from the date of the appointment of the fiduciary. If a final account or certificate of termination cannot be filed in six months, either an application to extend administration or a notice to extend administration must be filed. A status report must be filed with any partial account subsequently filed. All subsequent accounts must be filed on an annual basis unless the Court orders otherwise. Accounts not filed in compliance with this rule shall be subject to citation.
- D. For guardianships and trusts, the first account shall be filed no later than one (1) year following the date of the appointment and all subsequent accounts shall be filed on an annual basis, unless otherwise ordered by the Court.
- E. Copies of the account shall be served as follows:
 - (1) Intestate Estate. No account shall be approved unless there is a certificate filed by the fiduciary or fiduciary's counsel that a copy of the account as filed has been personally served or mailed by ordinary U.S. Mail to the surviving spouse and all next of kin in an intestate estate.
 - (2) Testate Estate. No accounts shall be approved unless there is a certificate filed by the fiduciary or fiduciary's counsel that a copy of the account as filed has been personally served or mailed by ordinary U.S. Mail to the surviving spouse and all the beneficiaries at the addresses listed in the file except corporate or charitable beneficiaries, and except beneficiaries not required to be notified pursuant to Ohio Revised Code Section 2109.32(B)(1).
 - (3) Guardianships. No account shall be approved unless there is a certificate filed by the guardian or guardian's counsel that a copy of the guardian's account as filed has been personally served or mailed by ordinary U.S. Mail to all next of kin of the ward who reside in Ohio.
 - (4) Trusts. No account shall be approved unless there is a certificate filed by the fiduciary or fiduciary's counsel that a copy of the

account as filed has been personally served or mailed by ordinary U.S. Mail to all the beneficiaries of the trust.

64.2 – Delinquency in Filing an Account

No expenditure, sale, distribution, or fee will be approved while the fiduciary is delinquent in filing an account unless permission is granted by the Court. See also Sup.R.78.

64.3 – Vouchers

The Court does not require the filing of vouchers, canceled checks or receipts with the filing of partial or final accounts. However, such vouchers, receipts or canceled checks must be available for review by the Court if requested.

64.4 – Bond

An account will not be accepted for filing unless the bond, when required, is sufficient to cover twice the sum of the value of the personal property assets on hand plus one (1) year's projected income, or in such other amount as determined by the Court.

64.5 – Evidence of Assets

The Court requires that all assets be documented at the time of filing a partial account and available to be exhibited to deputy clerk upon order or request of the Court.

64.6 – Court Costs

No account, certificate of termination or report of distribution will be accepted for filing without the appropriate Court costs attached.

66.0 – Guardianships

The Court adopts Rules 66.01 – 66.09 of the Rules of Superintendence in addition to the following guardianship rules.

66.03 – Local Guardianship Rule

A. Emergency Guardianship (R.C. 2111.02): Required pleadings for an emergency guardianship are as follows:

1. Initial Filing: Application for Appointment of Emergency Guardian of Alleged Incompetent, Next of Kin of Proposed Ward, Statement of Expert

Evaluation with Supplement for Emergency Guardian of Person, Fiduciary's Acceptance and required deposit (see Appendix B).

2. Ex Parte Hearing: Ex Parte Judgment Entry Appointment of Emergency Guardian for Incompetent Person, Emergency Letters of Guardianship, Notice-72 Hour, Precipe, and Motion for 30 Day Extension.
 3. 30 Day Extension Hearing: Entry Granting 30 Day Extension, Emergency Letters of Guardianship, and Notice-30 Day.
 4. Affidavit of Supervisor/Administrator: Within five (5) days after the expiration of the 72 hour order an Affidavit of Supervisor/Administrator must be filed with the Mercer County Probate Court.
 5. Form 17.0-Application for Appointment of Guardian of Alleged Incompetent OR Form 16.0-Application for Appointment of Guardian of Minor shall be filed with the Court immediately, so that the Court can serve all interested parties and to allow time for the Court Investigator to serve notice on the Ward, file a report with Court and to hold the hearing on the Application for Appointment, prior to the expiration of the thirty (30) day extension of the emergency guardianship.
- B. COMPLAINTS: Comments or complaints regarding the performance of guardians appointed by this Court shall be submitted in writing to this Court to the attention of the Deputy Clerk.
1. The comments or complaints may be submitted electronically (please contact the Court for the appropriate email address), or in hard copy by regular U.S. mail or hand delivery at 101 N. Main Street, Room 307, Celina, Ohio 45822. Anonymous comments or complaints will not be accepted for filing.
 2. The Court will provide a copy of the comment or complaint to the guardian who is subject of the comment or complaint and to the guardian's attorney, if any.
 3. The comment or complaint will be filed in the guardianship case and the Magistrate shall promptly review the submitted comment or complaint and take appropriate action.
 4. The Court shall notify the person making the comment or complaint, the guardian and their attorney, if any, of the disposition of the comment or complaint.

66.05--Responsibilities of Court Establishing Guardianships

All proposed guardians shall have a criminal background check conducted and the results shall be filed with the Court prior to the hearing on the Application for Appointment of Guardian of Alleged Incompetent.

Each guardian appointed by the Court is required to submit to the Court information documenting compliance with the guardian qualifications pursuant to Sup.R. 66.06 or 66.07, as applicable.

66.08 – Annual Plan

- A. A guardian is required to prepare an annual guardianship plan stating the guardian's goals for meeting the ward's personal and financial needs. This will be filed as an addendum to the guardian's report. The court has discretion to require a guardianship plan from a guardian of the estate.

66.1 – A separate guardianship must be filed and case file set up for each proposed ward.

66.2 – Guardianships of Minors

- A. A certified copy of the minor's birth certificate must be filed with the guardian's application.
- B. The Court will not accept for filing any guardianship for a minor where the only purpose of the guardianship is to establish a residency for school purposes. Custody for school purposes is a matter to be heard and determined by the Juvenile or Domestic Relations Divisions of the Court.
- C. The Court will not establish any guardianship over the person of a minor where another Court has jurisdiction over custody of the minor.
- D. Minors who are not U.S. citizens or resident aliens, are not considered by this Court to be residents or have legal settlement as set forth in Ohio R.C. 2111.02(A).

66.3 – Deposit of Wills

The guardian must deposit with the Court any and all wills of the ward for safekeeping pursuant to Ohio R.C. 2107.07.

66.4 – Change of Address

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

66.5 – Guardian’s Report

The guardian of the person shall file the guardian’s report. If there is only a guardian of the estate, the guardian’s accounting must be filed by this guardian.

Where a physician or clinical psychologist states on a Statement of Expert Evaluation that to a reasonable degree of medical certainty it is unlikely the ward’s mental competence will improve, the Court may dispense with the filing of subsequent Statements of Expert Evaluation when filing their subsequent annual guardian’s reports.

66.6 – Termination

Applications to terminate a guardianship of a minor require notice to all persons designated in Ohio R.C. 2111.04 and any other individuals who received actual notice of the original appointment of the guardian.

68.1 – Settlement of Injury Claims of Minors

A photocopy of the minor’s birth certificate must be presented to the Court upon the filing of the application to settle a minor’s claim.

68.2 – Settlement Conference

It is suggested that the attorney, prior to bringing the clients to Court to settle a minor’s claim, personally appear or telephonically discuss the settlement with the Court.

71.1 – Counsel Fees – Decedent’s Estates

- A. Attorney fees are a matter between the fiduciary and the attorney, subject to the provisions of O.R.C. 2113.36 and the Code of Professional Responsibility, DR-2-106. Upon the application by the fiduciary, the Court will allow reasonable attorney fees to be taken as an expense to the estate. The fee calculation shall be submitted to the Court in writing, utilizing the format as

set forth in Appendix A. Nothing in this rule shall in any way prevent or prohibit an attorney from charging a fee less or more than the amount that would be paid if calculated in accordance with the schedule set forth in paragraph C. However, if said fee exceeds the amount that would be paid if calculated in accordance with the attached schedule, there must be either an explanation or an itemization of time to justify said fee which shall in any event be subject to the approval of the Court. This rule applies to administered estates and estates relieved from administration. No hearing will be had except on written application of a party.

- B. Counsel fees for the administration of a decedent's estate as set forth below may serve as a guide in determining fees to be charged to the estate by legal services of an ordinary nature rendered as attorney for the fiduciary in the complete administration of a decedent's estate.
- C. The following schedule is not to be considered or represented to clients as schedules of minimum or maximum fees to be charged.
 - (1) On the personal property which is subject to administration, including income earned in the estate, for which the fiduciary is charged and upon the proceeds of real estate that is sold under a power of will as follows:
 - a. For the first \$50,000 at a rate of 4%;
 - b. All above \$50,000 and not exceeding \$100,000 at a rate of 3%;
 - c. All above \$100,000 at the rate of 2%.
 - (2) On real property that is not sold at a rate of 2%.
 - (3) On real estate sold by judicial proceedings according to the judgment entry confirming the proceedings. (See Ohio Revised Code Section 2127.38)
 - (4) On all non-probate property included in the Federal Estate Tax Return at a rate of 1%.
 - (5) If no Federal Estate Tax Return is required, attorney ordinary hourly rate for assistance in administration of non-probate assets.
 - (6) For Releases from Administration, a minimum fee of \$350.00 or application of above percentage fees in the discretion of the attorney and commissioner, if applicable.
- D. Where the attorney, law partner or firm associated is appointed as the fiduciary, the total administration fee may not exceed the statutory fiduciary commission plus one-half of the guideline counsel fee.

- E. If by reason of the application of the above percentages to values of assets 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.

71.2 – Counsel Fees – Guardianship

- A. Where the guardian, if the guardian is not the attorney, law partner or firm associate, consents in writing to the amount of counsel fees, and the counsel fees do not exceed the guidelines set forth in Paragraph B, no application need be made for the allowance thereof, provided such consent is endorsed on the account or evidenced by separate instrument filed therewith.
- B. Counsel fees for the establishment of the guardianship and filing of the inventory, at the conclusion of the filing of these documents is subject to the approval of the Court as to the reasonableness of those fees. The allowance of fees shall be in writing which sets forth the details supporting the calculations on which the requested fees are based. Set forth below is a guide in determining fees charged for ordinary legal services in establishing guardianships through the first account. There will be no duplicate payments for services provided. Any fees received for the establishment of the guardianship and the filing of the inventory shall be reflected. Such schedules, however, are not to be considered as schedules of minimum or maximum fees to be charged:
 - (1) Income and Disbursements:
 - 4% of the first \$10,000.00 of income and disbursements.
 - 3% of the next \$20,000.00 of income and disbursements.
 - 2% of income and disbursements in excess of \$30,000.00.
 - (2) Principal:
 - \$2.50 per thousand on the first \$250,000.00 of market value.
 - \$1.50 per thousand on excess of \$250,000.00 of market value.
- C. For purposes of determining compensation based on income, the following shall not be considered income:
 - (1) Receipts of corpus by guardian.
 - (2) Balance carried forward from prior accountings.
 - (3) Investment and reinvestment of corpus.
- D. If by reason of the application of the above percentages to income and disbursements a disparity or injustice results, such disparity may be reviewed on the Court's own motion in respect of any account reflecting such compensation.

- E. After the filing of the first account, all applications for attorney fees shall be those reasonable and beneficial to the guardianship and shall be in writing setting forth the calculations of such fees.

73.1 – Guardian’s Compensation

- A. A guardian shall be allowed compensation for income and disbursements as follows:
 - (1) Income and Disbursements:
 - 4% of the first \$10,000.00 of income and disbursements
 - 3% of the next \$20,000.00 of income and disbursements
 - 2% of the excess of \$30,000.00 of income and disbursements
 - (2) Principal:
 - \$2.50 per thousand on the first \$250,000.00 of market value
 - \$1.50 per thousand on excess of \$250,000.00 of market value
- B. For purposes of determining compensation based on income the following shall not be considered income:
 - (1) Receipt of corpus by guardian
 - (2) Balance carried forward from prior accountings
 - (3) Investment and reinvestment of corpus

74.1 – Trustee’s Compensation

- A. Corporate Trustees
 - (1) Except where the instrument creating the trust makes provisions for compensation, a testamentary trustee may charge fees on the same basis as it charges for living trusts.
 - (2) Fee schedules shall be furnished to the Court on the first day of January of each year and whenever a change in fees is made within any calendar year.
 - (3) A separate schedule of the computation of the trustee’s compensation shall be set forth in the trustee’s account as a condition of its approval.
 - (4) Corporate trustees who fail to furnish to the Court its current fee schedules shall be limited to fees set forth in its last furnished schedule, or if no schedule has been filed, then to the amounts for individual trustees.

- (5) Corporate trustees may at their option elect to use the Individual Trustee's compensation schedule.

B. Individual Trustees

Except where the instrument creating the trust makes provisions for compensation, the testamentary trustee may charge as follows:

- (1) Principal Fee. A fee of \$2.00 per \$1,000.00 of the market value of the principal held by the trustee.
- (2) Income Fee. A fee of Six Percent (6%) of the total of the income for the accounting period.
- (3) Principal Distribution Fee. A fee of One Percent (1%) of the principal distributed during the accounting period.

75.1 – Adoptions

- A. An original and a copy of all petitions, interlocutory decrees and final decrees shall be filed in every adoption case. Additional copies of the petition shall be submitted as required for service.
- B. In private placement adoptions, a pre-placement application in a form acceptable to the Court shall be filed by the proposed adopting parents not less than five (5) days prior to placement if applicants are residents of Mercer County, Ohio, and not less than thirty (30) days prior to placement if applicants are not residents of Mercer County, Ohio.
- C. Once the applications have been approved by the Court, a hearing shall be held not less than seventy-two (72) hours after the birth of the child or after the parent(s) have met with the adoption assessor, whichever occurs later, for the placement and consent by the parents. Prior to the placement hearing, the Court shall be supplied with a statement from the child's physician as to the medical condition of the child to be placed. If the placement is approved, the adoption petition must be filed before the Court will issue a Hospital Release for the release of the child to the petitioners or the attorney of the petitioners. When the petitioner is the guardian of the minor to be adopted, the Court shall require a placement hearing. The adoption petition shall not be set for hearing until after the placement is complete.
- D. In all adoptions, married petitioner(s) must be married for not less than one (1) year prior to the final approval of the adoption.

75.2 – Custodial Deposits in lieu of Bond

All custodial deposits of personal property, securities and monies must comply with Ohio R.C. 2109.13. All institutions desiring to be a depository must satisfy the Court of their authorization and certification by the State of Ohio.

75.3 – Release of Estates from Administration

- A. Release of estates from administration and Summary Administrations shall be filed and approved by the Court in accordance with applicable law.
- B. The Court may waive a noticed hearing in such instance where it appears no beneficiaries or creditors will be prejudiced.

75.4 – Pro Hac Vice

- A. An attorney not licensed to practice law in the State of Ohio, but who is duly licensed to practice law in any other state or the District of Columbia, may, at the discretion of the Probate Judge, be permitted to represent a party or parties in any litigation pending or to be filed in this county after completion of all of the following conditions:
 - (1) File a written oath substantially in compliance with Rule 1, Section 8A of the Supreme Court Rules for the Government of the Bar;
 - (2) The attorney must become familiar with Local Court Rules, Civil Rules, Rules of Evidence, and the Code of Professional Responsibility, and so certify to this Court in writing.
 - (3) Be sponsored in writing by an attorney licensed to practice law in the State of Ohio. The motion made by the licensed attorney shall certify such out-of-state attorney's compliance with this rule and the Supreme Court Rules for the Government of the Bar;
 - (4) The sponsoring attorney shall submit with the motion and certification an entry authorizing the approval of the motion;
 - (5) The sponsoring attorney, or any other attorney licensed to practice law in the State of Ohio, shall be co-counsel with the attorney admitted, *pro hac vice*.
- B. The continuance of any scheduled trial or hearing date shall not be permitted solely because of the unavailability or inconvenience of the out-of-state attorney.

76.1 – Exceptions

Upon application and for good cause shown, the Probate Court may grant an exception to these rules.

78.1 – Case Management and Pre-trial Procedure

For the purpose of ensuring the readiness of civil cases in the Probate Division for pre-trial, final pre-trial and trial, the following procedures shall be in effect:

A. Civil Actions.

- (1) A pre-trial conference shall be conducted in all civil cases prior to being scheduled for trial, except in land sale proceedings.
- (2) Within thirty (30) days after the answer day the case shall be set by the Court for a pre-trial conference.
- (3) Notice of the pre-trial conference shall be given to all parties or to counsel of record of those parties who are represented 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.
- (4) The following decisions shall be made at the pre-trial conference and all counsel attending must have full authority to enter into a binding pre-trial order.
 - (a) A definite discovery schedule shall be agreed upon by all parties for the completion of all discovery.
 - (b) A definite date for exchange for expert witness reports shall be determined.
 - (c) A definite date for filing of all motions, which date shall not be later than seven (7) days before the final pre-trial.
 - (d) The date for the final pre-trial shall be set by the Court and shall be held approximately one (1) week prior to the trial.
- (5) The following decisions shall be made at the final pre-trial and all counsel attending must have full authority to enter into a binding final pre-trial order.
 - (a) The Court will rule on all pre-trial motions.
 - (b) Briefs on any legal issues shall be submitted.
 - (c) Proposed jury instructions shall be submitted.
 - (d) Proposed jury interrogatories shall be submitted.
 - (e) Clients shall be present.
 - (f) No motions shall be heard after the final pre-trial without leave of Court and without good cause being shown.

- (6) The trial date shall not be changed nor shall the trial be continued without order of the Court and after the showing of good cause.

B. Land Sales

- (1) At the time of filing, the attorney shall have completed a Report on Examination of Title or acquired a Judicial Report setting forth the present status of the real estate title, certifying title at least from the date of acquisition by the decedent/ward.
- (2) All land sales which have not been concluded within one (1) year from the date of filing shall be set for pre-trial conference within ten (10) days following the expiration of one (1) year.
- (3) The following decisions shall be made at the pre-trial conference and all counsel attending must have full authority and enter into a binding pre-trial order:
 - (a) The attorney of record and fiduciary must attend the pre-trial conference.
 - (b) A written status report shall be filed with the Court no later than seven (7) days prior to the pre-trial conference.
 - (c) 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.

C. Decedent's Estate

- (1) The statutory time or the time as extended by these rules or court order for filing of an account (R.C. 2109.30) shall be adhered to and the citation procedure (R.C. 2109.31) shall be utilized if necessary to gain compliance.
- (2) Objections to inventory and objections to account. The Court shall set a pre-trial conference within thirty (30) days after filing and the Court, at the pre-trial conference, shall set the matter for an evidentiary hearing within thirty (30) days thereafter.
- (3) All decedents' estates, which are current as to filed accounts, which remain open after a period of one (1) year and nine (9) months shall be subject to a status conference. The fiduciary and the attorney shall be present and a written status report shall be submitted to the Court at the time of the status conference.

D. Wrongful Death Settlements

All hearings shall be held within thirty (30) days of the filing of the Form 14.0, provided, however, if either a guardian or a guardian ad litem is necessary to be

appointed, the hearing shall be held within thirty (30) days of the filing or fifteen (15) days after the appointment, whichever is later.

E. Guardianships

Adequate statutory provisions exist to control timeliness of filings, however, each case shall be reviewed not less than annually.

F. Trusts

Adequate statutory provisions exist to control timeliness of filings, however, each case shall be reviewed annually.

G. Motions

- (1) The moving party shall serve and file with the motion a brief written statement in support of the motion and a list of citations of authorities in support.
- (2) All responses to motions shall be filed within fourteen (14) days.
- (3) The Court shall set a hearing within thirty (30) days after receipt of the request or, if no request, then it shall determine the matter as soon as practical.
- (4) Oral arguments of motions shall be permitted at hearing.

79.1--Magistrates

- A. The Court may permit any matters coming before the Court to be heard by the magistrate instead of the Court pursuant to Rule 53 of the Ohio Rules of Civil Procedure.
- B. Upon the magistrate hearing a matter, if all parties and counsel of record execute the appropriate waiver provided by the Court the Magistrate's Decision required by Civ.R. 53 shall be the entry presented to the Court at the time of hearing.

79.2--Magistrate's Order

- A. A magistrate may enter orders without judicial approval if necessary to regulate the proceedings, and if not dispositive of a claim or defense of a party pursuant to Civ R. 53.
- B. Any party may file a motion with the court to set aside a magistrate's order. The motion shall state the moving party's reasons with particularity and shall be filed not later than ten (10) days after the magistrate's order is filed. The pendency of a motion to set aside does not stay the effectiveness

of the magistrate's order, although the magistrate or the court may, by her order, stay the effectiveness of said magistrate's order.

79.3--Magistrate's Decision; Findings of Fact and Conclusions of Law

- A. A magistrate shall prepare a magistrate's decision respecting any matter referred under Civ R. 53 or local rule. A magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law. The request for findings of fact and conclusions of law shall be made before the entry of a magistrate's decision or within seven (7) days after the filing of a magistrate's decision per Civ R. 53.
- B. When a party requests the Court to state its findings of fact separately from its conclusions of law under the provisions of Civ.R. 53, the party requesting such statement shall submit and serve with said request proposed findings of fact and conclusions of law.
- C. Within seven (7) days after receipt of such proposed statement of findings of fact and conclusions of law, opposing counsel shall submit and serve proposed findings of fact and conclusions of law.

79.4-- Magistrate's Decisions; Interim Orders

- A. A magistrate's decision is not effective unless adopted by the Court.
- B. A court may adopt, reject, or modify a magistrate's decision pursuant to Civ. R. 53.
- C. The court may enter an interim order on the basis of a magistrate's decision without waiting for or ruling on timely objections by the parties where immediate relief is justified pursuant to Civ R. 53. Time periods and terms shall be pursuant to Civ R. 53.

79.5-- Objections to Magistrate's Decision; Request for Transcript

When objections to a Magistrate's Decision resulting from an evidentiary hearing are filed, counsel shall file a Praecipe requesting a transcript as required by Civ.R. 53, or unless upon application, the Court determines that there is no need for a transcript.

- A. Content. Any objections filed by a party pursuant to Civ.R. 53 shall be specific and state with particularity the grounds therefore. Such objections shall specify whether they are directed to the findings of facts of the magistrate, the conclusions of law of the magistrate, or both. If the objections are to the findings of facts of the magistrate, they must state the specific finding(s) objected to or the specific finding(s) the party asserts was improperly omitted from or included in the Decision.

- B. Time. Objections shall be filed within fourteen (14) days following the filing of the Magistrate's Decision. Such time period may be extended for good cause shown upon written motion only, filed prior to the expiration of the original fourteen (14) day period and brought to the attention of the Judge. If objections are timely served and filed by any party, any other party may serve and file objections within ten (10) days of the date on which the first objections were filed, or within the time otherwise prescribed by this Rule, whichever period last expires.
- C. Stays. The filing of objections automatically stays the Magistrate's Decision, unless the stay is modified by Court Order.
- D. Brief in Response. A party may file a brief in opposition to the objections within ten (10) days of the filing of objections. An extension of time for filing a brief may be obtained for the same reason and upon the same terms as set forth in section B. of this rule. A time-stamped copy of the brief should be delivered to the Judge to ensure prompt consideration.
- E. Transcript Notice; Deposit fee; Time to File. When a transcript of proceedings before a magistrate is ordered pursuant to this Rule for the Court's consideration in ruling upon objections, the objections shall state that a transcript of the proceedings has been ordered. Failure to so state or file and serve upon the Court Reporter* a request for a transcript (within three (3) days of filing objections to the magistrate's decision) with appropriate deposit* may cause the Court to rule on the objection as if no transcript had been ordered.
- (1) If a transcript is necessary to support objections, the transcript must be filed by the moving party within thirty (30) days after the filing of objections, unless the Court in writing extends the time.
- * (Appropriate deposit is determined by the court reporter who estimates the cost needed to cover the transcript.) (The court reporter is determined by contacting the clerk for available court reporters that are eligible to transcribe the proceedings.)
- F. Supplemental Objections. If a party desires to support his/her objection with the transcript or parts thereof, such party shall so state in his/her objections and request an extension of time in which to supplement the objections. The original objection and the request for extension to supplement the objections, must be filed within the original fourteen (14) days objection period. The supplemental objections become due fourteen (14) days after the filing of the transcript.
- G. Hearings on Objections. No hearing will be held on objections unless specifically ordered by the Court.

PROBATE COURT OF MERCER COUNTY, OHIO

ESTATE OF: _____, DECEASED

CASE NO.: _____

APPENDIX A
ATTORNEY FEES FOR ESTATES

Probate Assets, including personal property
subject to administration, income earned during
administration and the gross proceeds of
real estate sold:

\$ _____

0 - \$50,000 4% _____

Between \$50,000 and \$100,000 3% _____

Over \$100,000 2% _____

Total Probate Fee.....\$ _____

Real Property distributed and not sold: 2% x \$ _____ \$ _____

Non Probate Property included in
Federal Estate Tax Return: 1% x \$ _____ \$ _____

If no Federal Estate Tax Return required,
attorney ordinary hourly rate for
assistance in administration of non-
probate assets

_____ hrs. x \$ _____ (rate) \$ _____

Extraordinary Fees (Must be Itemized)

- 1. _____ \$ _____
2. _____ \$ _____
3. _____ \$ _____
4. _____ \$ _____

Total Extraordinary Fees.....\$ _____

Total Attorney Fees (Sum of all lines).....\$ _____

Subtract Attorney Fee taken on Prior Account(s).....\$ _____

Balance of Attorney Fees.....\$ _____

Actual Fee taken, if less than above.....\$ _____

Attorney's signature _____

Fiduciary's signature _____

APPENDIX B
SECURITY DEPOSITS

The Probate Court requires the following deposits accompany the filing of all new cases:

Estates

Full Administration \$175.00

Release from Administration \$125.00

Summary Release from Administration – please call the court and we can give you the costs based on the documents you will be filing.

Guardianships

 Incompetent \$125.00

 Minor \$125.00

Trusts \$75.00

Civil Filings \$75.00

 Jury Trial Requested \$1,000.00

Adoptions

 Agency/Private adoption with placement \$275.00

 Agency/Private adoption without placement \$180.00

 Stepparent adoption with consent \$166.00

 Stepparent adoption without consent \$171.00

 Refinalization \$166.00

Name Changes

 Adult Name Change \$81.00

 Minor Name Change \$86.00

Registration of Birth \$22.00

Correction of Birth \$22.00

Minor's Claim \$60.00