

**LUCAS COUNTY  
LOCAL PROBATE RULES**

It is ordered that the following are adopted as the Local Rules of the Court of Common Pleas, Probate Division. These rules are supplemental to the Rules of Superintendence and must be read in conjunction therewith. The Court of Common Pleas of Lucas County, Ohio, Probate Division adopts the following rules effective January 1, 2017.

**Rule 8.1**

**COURT APPOINTMENTS**

- A. Persons appointed by the Court pursuant to constitutional or statutory authority, rule of court, or the inherent authority of the Court shall be selected from lists of pre-qualified persons maintained by the Court subject to the exclusions as set forth by Sup R. 8(A)(1)(a)-(f).
- B. Appointments will be made from such lists taking into consideration all of the following:
  - 1. The anticipated complexity of the case;
  - 2. Any educational, mental health, language, or other challenges facing the party for whom the appointment is made;
  - 3. The relevant experience of those persons available to accept the appointment, including proficiency in a foreign language, familiarity with mental health issues, and scientific or other evidence issues;
  - 4. The avoidance of conflicts of interest or other situations that may potentially delay timely completion of the case;
  - 5. Intangible factors, including the court's or judicial officer's view of a potential appointee's commitment to providing timely, cost effective, quality representation to each prospective client.
- C. The Court will review Court appointment lists periodically to assure the equitable distribution of appointments.
- D. Court Appointees will be paid a reasonable fee with consideration given to the factors set forth in Prof. Cond. Rule 1.5 of the Ohio Revised Code, Supreme Court rule, or the local rules of court relating to fees. Compensation of the Court appointees will be reviewed at least every five years to determine the adequacy of the compensation and the effect of the compensation upon the availability of court appointments.

**Rule 9.1**

**COURT SECURITY PLAN**

Pursuant to Rule 9 of the Rules of Superintendence, the Court has adopted and implemented a Security Policy and Procedures Plan. This plan is confidential and is not available for public access.

**Rule 26.1**

**COURT RECORDS MANAGEMENT AND RETENTION**

Pursuant to Rule 26 (G) of the Rules of Superintendence for the Courts of Ohio, the Probate Division of the Court of Common Pleas, Lucas County, Ohio adopts the Court Records Management and Retention and schedules as set forth, and will be followed in conjunction with the Rules of Superintendence for the Courts of Ohio.

Rule 53.1  
HOURS OF COURT

The Probate Court and its offices shall be open for the transaction of business from 8:30 a.m. to 4:30 p.m. Monday through Friday except holidays. All pleadings requiring a new case number or payment of Court costs shall be filed by 4:15pm. Marriage applications shall not be accepted after 4:00 p.m.

Rule 57.1  
FILINGS AND JUDGMENT ENTRIES

A. NOTICE OF NO FURTHER ADMINISTRATION

Where an estate is opened for purposes of admitting the will only, or filing an estate tax return only, or both, and no further administration is contemplated, the attorney shall so advise the Court in writing at the time of filing.

B. CERTIFICATION OF RELATED CASES

Upon the filing of an application for the appointment of a fiduciary or the filing of a complaint or petition, the attorney of record or the applicant (if there is no attorney of record) shall certify that there is no related case on file in this Court. If there is a related case on file, the attorney or pro se applicant shall certify the number, character and attorney of record of the related case. This shall be done on a form in the clerk's office.

C. CERTIFICATION-DEPOSITED WILLS & POWERS OF ATTORNEY

Upon the filing of an application for probate of a will, an application to appoint a fiduciary for a decedent's intestate estate or relief therefrom, or the application for appointment of a guardian, the deputy clerk shall certify that no will or later will is on deposit with the Court pursuant to R.C. § 2107.07, and no POA or writing nominating a guardian is on file with the Court.

D. ADDRESS CHANGE OF FIDUCIARY OR ATTORNEY OF RECORD

It is the responsibility of every attorney of record or of each pro se fiduciary or applicant to advise the Court, in writing, and captioned in the particular matter, of any change in the mailing address of the attorney, the fiduciary, or the applicant. It is the responsibility of each attorney of record, pro se fiduciary or applicant to notify the Court, in writing and captioned in the particular matter, if a fiduciary dies, or moves out of the State of Ohio. Failure to comply with this rule may lead to the removal of the fiduciary and attorney of record and/or a disallowance of fiduciary and/or attorney fees or commission.

E. ATTORNEY OF RECORD

1. At the time application is made to the Court of a fiduciary, that fiduciary shall file in the court the name of the attorney (if any) who will represent the fiduciary and perform all legal services required of the fiduciary in all matters relating to the estate,

- trust, guardianship, or other proceeding. If the attorney is deceased, resigns or is no longer acting, the fiduciary shall promptly advise the Court in writing.
2. An attorney of record on a matter pending in the Probate Court who wishes to withdraw as counsel shall obtain leave of the Probate Court by filing a motion with the court, which may be set for hearing at the Court's discretion. If the attorney of record is deceased or is permitted by the Court to withdraw from the case, the fiduciary shall promptly designate a new attorney and advise the Court in writing.

#### F. FILING OF PAPERS

1. Every filing shall be typewritten or computer generated. If filed by an attorney, every filing shall be prepared by the attorney or shall have endorsed thereon a certificate signed by the attorney certifying that the attorney has examined the pleading or other instrument and that it is correct and proper and shall obtain the original signature of the party submitting the pleading or other instrument. If filed by a pro se applicant, every filing must be properly completed to the best of the applicant's ability, in compliance with Ohio law and probate procedure. The Court may refuse all filings not so prepared or certified.
2. Every judgment entry submitted to the magistrate or judge for approval shall be typewritten or computer generated. All original signatures on any and all pleadings, etc., submitted to this Court by applicants, fiduciaries, and attorneys shall be, from this effective date, signed in ink. No pleadings shall be filed signed in pencil.

#### 57.2

#### NEW CASE INFORMATION STATEMENT

Every new case filed shall contain a new case information statement. The New Case Information Statement shall contain all information required, including, but not limited to a Certification of Related Cases, Certification of Deposited Wills, the Nature of the Case, a designation relating to the Citation of the Spouse, the Designation of an Attorney (if any), and a Statement of Permanent Address [LCPC 1A - New Case Information Statement](#). The Applicant may also file a Confidential Disclosure of Personal Identifiers at this time [LCPC 45D - Confidential Disclosure of Personal Identifiers](#) .

#### Rule 57.3

#### RECORD CHECKS

Unless otherwise ordered by the Probate Court, all applicants for appointment as a fiduciary must complete a criminal record check in the manner and form prescribed by the Probate Court, except for (1) applicants who are attorneys at law currently registered with the Ohio Supreme Court, (2) state agencies, and (3) corporate fiduciaries [LCPC RRCPPF - Release for Record Check on Proposed Fiduciary](#) .

#### Rule 58.1

#### COURT COSTS

As of this effective date, all Court costs shall be listed on the Probate Court website: [www.lucas-co-probate-ct.org](http://www.lucas-co-probate-ct.org), and no matter pending before this Court shall be finalized by the Court until all costs are paid. It is recommended that the Court be telephoned ahead of time to verify Court costs.

#### Rule 59.1

##### AFFIDAVIT OF GIVING NOTICE OF PROBATE OF WILL

- A. For dates of death on or after 5-31-90, and before 6-23-94, every fiduciary (applicant/commissioner if the estate is relieved from administration) shall be required to file an affidavit of giving notice of the probate of the will within 90 days from the entry admitting said will to probate. The affidavit shall be supplemented by a copy of the form [SC 1.0 - Surviving Spouse, Children, Next of Kin, Legatees and Devisees](#) and waivers of notice [SC 2.1 - Waiver of Notice of Probate of Will](#), affidavit of no notice or a copy of the notice sent for all heirs at law and legatees and devisees of the will.
- B. Failure to file the affidavit will forestall the commencement of the statutory period of time to contest the will and will delay the approval of an accounting or commissioner's report filed in said estate. (eff. 5-31-90)

#### Rule 59.2

##### CERTIFICATE OF GIVING NOTICE OF PROBATE OF WILL

- A. For dates of death occurring on or after 6-23-94, and before 1-1-02, every fiduciary (applicant/commissioner if the estate is relieved from administration or other interested person) in testate administration shall be required to file a certificate of giving notice of the probate of the will [SC 2.4 - Certificate of Service of Notice of Probate of Will](#) within 90 days from the entry admitting said will to probate. The certificate shall be supplemented by a copy of the form [SC 1.0 - Surviving Spouse, Children, Next of Kin, Legatees and Devisees](#) and waivers of notice [SC 2.1 - Waiver of Notice of Probate of Will](#), a copy of the notice [SC 2.2 - Notice of Probate of Will](#) sent by certified mail for all heirs at law and legatees and devisees of the will and the certified mail receipt for same.
- B. Failure to file the certificate will forestall the commencement of the statutory period of time to contest the will and will delay the approval of an accounting or commissioner's report filed in said estate. (eff. 6-23-94)

#### Rule 59.3

##### CERTIFICATE OF GIVING NOTICE OF PROBATE OF WILL

- A. For dates of death occurring on or after 1-1-02, every fiduciary (applicant/commissioner if the estate is relieved from administration or other interested person) in testate administration shall be required to file a certificate of giving notice of the probate of will [SC 2.4 - Certificate of Service of Notice of Probate of Will](#) within two months after the appointment of a fiduciary, or two months after the will is admitted upon the application of an applicant/commissioner if the estate is relieved from administration or other interested person, unless the Court grants an extension of time. The certificate shall be supplemented by a copy of the form [SC 1.0 - Surviving Spouse, Children, Next of Kin, Legatees and Devisees](#) and waivers of notice [SC 2.1 - Waiver of Notice of Probate of](#)

Will, a copy of the notice SC 2.2 - Notice of Probate of Will sent by certified mail for all heirs at law and legatees and devisees of the will and the certified mail receipt for same.

- B. Failure to file the certificate will forestall the commencement of the statutory Period of time to contest the will and will delay the approval of an accounting or commissioner's report filed in said estate, and also be subject to citation and penalty provisions of R.C. 2109.31 of the Ohio Revised Code.

#### Rule 60.1

#### APPLICATION FOR LETTERS OF AUTHORITY TO ADMINISTER ESTATE AND NOTICE OF APPOINTMENT

An application for the appointment of a Special Administrator pursuant to R.C. 2113.15 shall be filed in conjunction with an Application for Authority to Administer Estate SC 4.0 - Application for Authority to Administer Estate . The Court in its discretion may waive or modify notice requirements and may limit the Special Administrator's powers.

#### Rule 61.1

#### APPRAISERS

- A. Upon application, the Court may appoint a suitable, disinterested appraiser. The Court maintains a list of approved appraisers from which the applicant shall request an appraiser, unless the applicant requests, and the Court approves, a special appraiser. The list may be found at [www.lucas-co-probate-ct.org](http://www.lucas-co-probate-ct.org). An appraiser or broker shall not directly or indirectly purchase, acquire or negotiate the purchase or sale of any property that he or she appraises.
- B. On its website, the Court shall maintain alphabetical lists of all such approved persons available to the general public in the selection of appraisers for filings in this Court. The Court may, from time to time, add to and delete from this list in its discretion. However, it is highly recommended that, prior to asking that a particular appraiser be appointed in a case, the attorney/applicant contact the individual appraiser first, in case the appraiser no longer is engaged in the practice.
- C. Effective 1/13/2012, a formal appraisal of real estate is no longer required by law, and the county auditor's/AREIS value may be used. For dates of death prior to the above date, the county valuation may be used upon motion, on case by case basis. If the county valuation is not used, the Probate Court will not waive a formal appraisal. The Court reserves the right to investigate the value of any real estate reported on an inventory of a fiduciary and may require a secondary appraisal of same.

#### Rule 62.1

#### INSOLVENCY PROCEDURE

- A. Insolvency hearings may be held in full administrations, reliefs from administration and guardianships (R.C. § 2111.24). Insolvency proceedings shall be commenced by the fiduciary (applicant or commissioner if the estate has been relieved from administration) filing a representation of insolvency SC 24.0 - Representation of Insolvency accompanied by a schedule of claims SC 24.4 - Schedule of Claims. The attorney of record shall

indicate on the schedule of claims in the estimated payment column the amount of the proposed payment to each creditor. Computer generated or self-drafted forms are permissible. The clerk shall set a hearing on the insolvency on a notice form [SC 24.1 - Judgment Entry Setting Hearing and Ordering Notice](#) provided by the attorney. The attorney shall notify all creditors of said hearing by certified mail.

- B. At the hearing, counsel shall provide copies of the Notice of Hearing on Representation of Insolvency and Schedule of Claims [SC 24.2 - Notice of Hearing on Representation of Insolvency and Schedule of Claims](#) sent to each creditor and proof of notice by copies of the certified mail returns. Further, proof of notice to creditors shall be evidenced by Counsel's submission of the Verification of Service, Notice of Hearing on Representation of Insolvency and Schedule of Claims [SC 24.3 - Verification of Service Notice of Hearing on Representation of Insolvency and Schedule of Claims](#). Upon receipt of the foregoing documents, the Court will approve the insolvency on the journal entry [SC 24.6 - Judgment Entry of Insolvency](#) provided by counsel, making any necessary changes and attaching an amended form [SC 24.4 - Schedule of Claims](#) only if needed. The Court reserves the right to require counsel to serve additional notice to creditors or submit a drafted journal entry if necessitated by a particular situation.

#### EXCEPTION TO INSOLVENCY PROCEDURE

- A. No hearing is required and no insolvency forms need to be filed if the decedent's date of death and value of assets are as follows:

Prior to October 12, 2006	\$4,000.00 or less
On or after October 12, 2006	\$8,000.00 or less
On or after January 1, 2017	\$12,000.00 or less

- B. If a spouse or minor child(ren) claim an allowance for support, then no hearing is required and no insolvency forms need be filed based upon dates of death and values of assets as follows:

On or before March 17, 1999	\$27,000.00 or less
On or after March 18, 1999 and prior to October 12, 2006	\$42,000.00 or less
On or after October 12, 2006	\$48,000.00 or less
On or after January 1, 2017	\$52,000.00 or less

- C. In either situation, the estate may be relieved from administration with the creditors and amounts owed listed on the assets and liabilities form [SC 5.1 - Assets and Liabilities of Estate to be Relieved from Administration](#). The attorney shall add language to the form that the estate is insolvent, and that the estate is proceeding under this rule. Creditors

shall be paid in accordance with R.C. § 2117.25. It is suggested, as a courtesy only, that each creditor who has not received payment in full be notified accordingly by letter or otherwise; proof of such notification is not required.

- D. This same exception applies in an estate where a full administration has been opened and the fiduciary has determined that the estate is insolvent. The fiduciary may either relieve the estate from further administration and proceed as set forth above or they may file the fiduciary's account indicating that the estate is insolvent and pay creditors pursuant to R.C. § 2117.25. It is once again suggested as a courtesy that the fiduciary notify creditors when applying this exception to the insolvency proceeding.

#### Rule 64.1 ACCOUNTS

- A. The time for filing fiduciary accounts shall be as follows:
1. For estates, if the date of death is prior to January 1, 2002, the first account shall be due not later than nine months following the date of appointment of the fiduciary. All subsequent accounts must be filed on a yearly basis, unless the Court orders otherwise.
  2. For estates, if the date of death is on or after January 1, 2002, the final and distributive account shall be rendered within six months after appointment of the fiduciary unless extensions of administration and filing of account are ordered by the Court. See also Local Rule 78.3.
  3. An Account of Distribution shall be filed no later than ninety (90) days after the approval of a final account.
  4. A Supplemental Final Account shall be filed no later than ninety (90) days from the date the estate administration is re-opened and an executor or administrator is appointed.
  5. For guardianships, the first account shall be due not later than one year following the date of appointment of the guardian. All subsequent accounts shall be due on a yearly basis, unless the Court orders otherwise.
  6. For trusts, the first account shall be due not later than one year following the date of appointment of the trustee. All subsequent accounts shall be due on a yearly basis, unless the Court orders otherwise.
  7. In estates of decedents where R.C. § 2109.301(A) waives the filing of a partial account, the Administrator or Executor shall file a waiver annually at least seven (7) days before the date the partial account would otherwise be due SC 13.4 - Waiver of Partial Account. When applicable, written consents must accompany each waiver.
  8. A motion to waive the guardian's partial account(s) by Court order pursuant to R.C. § 2109.302(B) shall be filed at least seven (7) days prior to the date the partial account(s) would otherwise be due.
  9. With the exception of corporate fiduciaries subject to R.C. § 1109.16, no fiduciary shall be permitted to file any account without first paying outstanding court costs due, or having an adequate deposit on file. Corporate fiduciaries must comply with this rule within 30 days of filing an account.

- B. Compensation for fiduciaries whose fees are based on a computation schedule or on a percentage of assets that are managed, must submit the written computation for said fees simultaneous with the filing of the account.
- C. All accountings of fiduciaries shall comply with the accounting procedures used internally by the Lucas County Probate Court and shall be audited by the accounting staff prior to filing same to verify compliance thereto.
- D. The Lucas County Probate Court shall publish notice of the hearing on the approval of the account of fiduciary in the *Toledo Legal News* and assess the publication fee accordingly. Waivers of notice of hearing are not required in the event of such publication. Notice by publication is not required if the fiduciary submits to the Court proof of service of the hearing on approval for all heirs in an intestate estate and all residuary beneficiaries in a testate estate and/or waivers of such service.

Rule 65.1

LAND SALES

- A. Parties under Legal Disability. In a land sale proceeding involving a party defendant who is under legal disability, namely minors, incarcerated persons, and adult incompetent persons, the Court shall appoint a guardian ad litem who shall be an attorney not associated with the attorney or law firm who filed the land sale complaint. The answer of the guardian ad litem shall set forth the facts involved in the sale of the real estate, the interests of the defendant who is under legal disability in the sale and recommendation to the Court as to what action is in the best interest of the defendant who is under legal disability. The Court shall have final approval for all fees submitted by the guardian ad litem.
- B. Necessary Party Defendants. In all land sale proceedings the Auditor and Treasurer of Lucas County shall be made party defendants.

Rule 66.1

GUARDIANS

- A. 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 purpose, qualifying a minor for health/life insurance absent the written consent of the insurance company or to establish the placement for an adoption. The Court will not accept for filing any guardianship for an incompetent person where the sole purpose for the guardianship is to establish a no resuscitation code status for the proposed ward.
- B. The Probate Court reserves the right to refer an applicant for guardianship of the person of a minor to the Juvenile Division of the Lucas County Court of Common Pleas. Should the Probate Court accept the application for filing, a home study will be required.



- C. All guardians of an incompetent ward under the jurisdiction of the Probate Court who are in possession of any wills of their ward shall be required to deposit for safekeeping all of the wills of their ward in the Probate Court.
- D. The Probate Court reserves the right to require any or all-supporting documentation to be attached to a request for expenditure of funds in any guardianship proceeding under the jurisdiction of the Probate Court.
- E. All reports of guardians as required by R.C. 2111.49 SC 17.7 - Guardian's Report shall be accompanied by a statement of expert evaluation SC 17.1 - Statement of Expert Evaluation and shall be filed annually on the anniversary date of the appointment of the guardian. Failure to comply with this requirement may result in the removal of the guardian.

Where a physician or clinical psychologist states on a Statement of Expert Evaluation SC 17.1 - Statement of Expert Evaluation that to a reasonable degree of medical or psychological certainty, that the mental capacity of the ward will not improve, the Court may dispense with the filing of subsequent Statements of Expert Evaluation when the guardian files subsequent annual Guardian's Reports LCPC 17.1D - Motion & Order to Dispense with Subsequent Statements of Expert Evaluation.

- F. A Guardian of the person of an incompetent ward shall make quarterly personal contacts with the ward on an annual basis. Failure to comply with this requirement may result in the removal of the guardian,

#### RULE 66.03

##### A. PROCESS FOR EMERGENCY GUARDIANSHIPS AND ORDERS.

1. Emergency guardianship and emergency orders should be used as a last resort in cases where there is no spouse, next of kin or attorney-in-fact to give consent, and no advance directives have been issued by the alleged incompetent.
2. The primary consideration when requesting an emergency guardianship or an emergency order is that the prospective ward is incompetent. A person is not incompetent solely because they refuse recommended treatment. It is also essential to determine that there is an emergency that will harm the ward. Issues of concern to health care providers or family members are not sufficient, in and of themselves, to warrant emergency measure. The nature of the harm to the ward must be immediate (within several hours) and significant. All available alternatives must be explored.
3. EMERGENCY GUARDIANSHIP: In most cases, the alleged incompetent will have an ongoing need for a guardianship, and the Emergency Guardianship Application should be filed at the same time and in the same case as the routine guardianship application. The Application may be submitted to the Court in writing or by facsimile transmission (with the original filed the following business day).
4. Upon the filing of an Application for Appointment of Guardian and Statement of Expert Evaluation, the Court may appoint an emergency guardian when the ward

needs immediate attention to prevent significant injury to the person or estate of the incompetent or minor.

5. EMERGENCY ORDER: Where there is no guardian-applicant, the need for guardianship has not been fully determined, and the Court has detailed information regarding an emergency, the Court may issue an Order to health care providers to protect the physical and financial well-being of, or to prevent harm to, the minor or alleged incompetent. The Application for Emergency Order/Worksheet and the Statement of Expert Evaluation shall be filed with the court.
6. Additional medical or other information may be required by the court prior to granting either order.
7. If the court declines to grant an emergency guardianship or order, in its discretion the court may schedule the matter on an expedited basis.
8. If the court approves the request for an Emergency Order or an Emergency Guardianship the order shall issue and notice of the order shall be served as soon as possible on the ward or subject of the order.

#### RULE 66.03 (B) and (C)

#### PROCESS FOR RECEIVING, ADDRESSING AND FILING GUARDIAN COMMENTS AND COMPLAINTS.

1. Comments or complaints regarding the performance of guardians appointed by this Court may be submitted in writing via ordinary mail, fax, or electronic mailing to the court.
2. The court will provide a copy of the comment or complaint to the guardian who is the subject of the comment or complaint.
3. The comment or complaint shall be filed in the guardianship case, unless for good cause shown, and shall be reviewed and considered by the assigned magistrate for appropriate action. The Court may, in its discretion, set a hearing on the matter. Notice of the hearing shall be served to both the guardian, person who filed the complaint and any other parties deemed necessary by the Court.
4. The magistrate shall issue a written decision or order regarding the comment or complaint. The decision or order shall be filed in the guardianship case and a copy shall be served upon the guardian, the person who filed the comments or complaint, and any other parties as deemed necessary by the Court.

#### RULE 66.05

#### RESPONSIBILITIES REGARDING A GUARDIAN WITH TEN OR MORE WARDS

A roster of guardians for adults having ten (10) or more wards will be maintained by this Court under Case Number 64385 That list will be updated on or after January 1<sup>st</sup> of each year. Each guardian on the roster shall file their fee schedule annually by the 15<sup>th</sup> day of April which differentiates fees for guardianship work and legal work.

#### Rule 68.1

#### SETTLEMENT OF CLAIMS FOR INJURIES TO MINOR

- A. Prior to settling a claim, the attorney shall personally appear at the court to obtain preliminary approval of the completed Proposal for Minor Settlement [LCPC 22 MSP - Minor Settlement Proposal](#).
- B. Rule 67 of the Rules of Superintendence for the Courts of Ohio shall apply to all settlements under \$25,000.
- C. When the minor and parents are unrepresented by counsel, the attorney drafting the pleadings and other instruments shall be responsible for depositing the funds and for providing the financial institution with a copy of the Entry Dispensing With Appointment Of Guardian And Ordering Deposit [LCPC 16A - Entry Dispensing with Appointment of Guardian and Ordering Deposit](#). This attorney shall obtain a Verification of Receipt and Deposit [SC 22.3 - Verification of Receipt and Deposit](#) from the financial institution, containing the bank official's original signature, and file it with the Court within 7 days of the approval of the Entry, as well as the Report of Distribution and Entry [SC 22.4 - Report of Distribution and Entry Minor's Claim](#), which is due within 30 days of the approval of the Entry.

#### Rule 70.1

#### SETTLEMENT OF WRONGFUL DEATH AND SURVIVAL CLAIMS

The Court requires that the attorney, prior to settling a claim, personally come to the Court to obtain preliminary approval of the settlement and distribution of the proceeds of the claim from the Court [LCPC - Proposal for Wrongful Death Settlement](#).

#### Rule 71.1

#### COUNSEL FEES

- A. Attorney fees allowed as part of the expense for administering a decedent's estate, a trust or a guardianship, shall be based on actual services performed, the novelty and difficulty of the problem involved and the responsibility incurred by the attorney in relation to the amount of the assets. No retainer fees are permitted. Attorney fees and fiduciary 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. Attorney fees and fiduciary fees for services performed in connection with civil complaints shall not be paid until the matter is finalized unless otherwise approved by the Court upon application and for good cause shown.
- B. Except as provided in paragraphs (C), (D) and (E) below, an application, signed by the fiduciary, [LCPC 13A - Application and Entry Allowing Fees](#), must be filed for allowance of all attorney fees. Each application shall set forth: 1) an itemized statement of the services performed; 2) the date services were performed; 3) the time spent rendering the

services; 4) the average rate charged per hour. If additional fees are claimed for extraordinary or unusual services, the application shall set forth details.

- C. When Counsel and an Executor or Administrator have entered into a written contract for legal services to be performed for administering a decedent's estate, and an application to enter into that agreement has been filed with the Court [LCPC 13B - Application to File Attorney Fee Contract](#) no later than three months after the appointment of the fiduciary without relief from the Court, no application need be made for the allowance unless counsel intends to receive fees prior to the close of the administration of the estate [See Local Rule 71.1(A)]. Contracts must set forth the method of calculation.
- D. When payment of the attorney fee is included in the final account filed by the fiduciary, who is also the sole beneficiary of a solvent estate, no application need be made for the allowance. Counsel shall inform the Court when this circumstance exists by making a statement to that effect in the final account.
- E. Any attorney fee, fiduciary fee or guardian's compensation based on a computation on the value of the assets in an estate involving real estate shall include the appraised value of the real estate listed in the inventory if the real estate is transferred and the sale price of the real estate if sold.
- F. Except as provided in paragraph (G) below, no application need be made for the allowance of attorney fees if said fees are no greater than the sum of subparagraphs (1) and (2):
1. As to probate assets, including all real and personal property administered, as well as the income therefrom:
    - 4 1/2% of the first \$100,000 thereof;
    - 3 1/2% of the next \$300,000 thereof;
    - 2 1/2% of the balance thereof.
  2. As to non-probate assets:
    - 1 1/2% of the non-probate assets excluding joint and survivor accounts;
  3. If, in reliance on this paragraph, no application for attorney fees is filed, counsel shall complete [LCPC 13C - Computation of Attorney Fees \(Pursuant to Local Rule 71.1\(A\)\)](#) , and attach it to the estate's final account.
- G. When counsel and the fiduciary are the same individual, or when both are attorneys associated in the same firm, an application for attorney fees [LCPC 13A - Application and Entry Allowing Fees](#) must be filed disclosing the amount of the fiduciary fee claimed. In addition, the options set forth in items (C) and (D) shall not be available for use if the fiduciary fee is taken on a percentage, the attorney fee must be requested at an hourly rate attached to an itemization which details the hours spent on the case, the work performed and the hourly rate of the attorney

- H. The court reserves the right to reduce the hourly rate if found excessive, or modify the number of hours requested if the interest of the case demands it. (eff. 1-23-92)
- I. Application for attorney fees for services rendered to guardians and trustees in setting up the guardianship or trust in the probate court may initially be made after the inventory is filed with the court. Thereafter, application may be made annually upon the filing of the account.
- J. Ohio law does not permit a commissioner appointed by the Court in a release from administration to take a fee/compensation for services performed, as a commissioner is not a fiduciary under Ohio law.

#### Rule 73.1

#### GUARDIAN'S AND CONSERVATOR'S COMPENSATION

Unless otherwise provided by law or ordered by the Court, a guardian may charge a fee for ordinary services in an amount computed in accordance with the following schedule during each accounting period.

- A. Excluding income from real estate, 4% of the first \$3,000 of income, and 3% of the balance in excess of \$3,000; and 4% of the first \$3,000 of expenditures and 3% of the balance in excess of \$3,000.
- B. If the guardian manages real estate, a fee amounting to ten percent (10%) of gross rental real estate income may be allowed. If the guardian receives net income from real estate actively managed by others, the guardian shall treat such net income as ordinary income.
- C. \$2.50 per thousand for the first \$100,000 of fair market value of the principal; \$2.00 per thousand on the next \$300,000 of fair market value of the principal; \$1.50 per thousand of the fair market value of the balance.
- D. A minimum annual fee of \$250.00 will be allowed in each guardianship or conservatorship.
- E. Unless otherwise provided by law, the order of the Court or limitation by the conservatee, a conservator may charge for ordinary services an amount computed in accordance with the above schedule during each accounting required by statute or Court Rule.

#### Rule 74.1

#### TRUSTEE'S COMPENSATION

- A. Except where the instrument creating the trust makes provision for compensation, a trustee who is accountable to the court, may charge annually for ordinary services performed by the trustee in connection with the administration of each separate trust estate:
  - 1. An amount to be computed on the fair market value of the principal of the trust property, in accordance with the following schedule, such compensation to be charged one-half to income and one-half to principal, unless the beneficiary or

beneficiaries have the power to invade the corpus in which case all compensation shall be paid out of income unless otherwise provided in the instrument creating the trust:

\$8.50 per \$1000 on the first \$200,000 of the fair market value of the principal;

\$7.50 per \$1000 on the next \$800,000 of the fair market value of the principal;

\$5.00 per \$1000 on the next \$1,000,000 of the fair market value of the principal;

\$2.50 per \$1000 on any amount over \$2,000,000 of the fair market value of the principal;

2. The trustee may charge a minimum fee of \$1000 annually.
  3. A separate fee, based upon time expended, may be charged for the preparation and filing of fiduciary income tax returns. This fee may not exceed \$500 except for just cause shown.
- B. For the purpose of computing the 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 a date, determined by the trustee, such date to commence during the calendar quarter of the original receipt of trust property and each anniversary date thereafter. At the option of the trustee, fee valuations may be made on a quarterly basis, each valuation to be coordinated with the original annual valuation date as selected by the trustee. If this option is selected by the trustee, the trustee must continue to compute such trustee's fee on the quarterly valuation basis, unless upon application to the Probate Court, a change in fee valuation method is allowed.
- C. Additional compensation for extraordinary services may be allowed upon application. The Court may require that the application be set for hearing and notice thereof be given to interested parties in accordance with Civil Rule 73(E). The notice shall contain a statement of amount of the compensation sought.
- D. The compensation of co-trustees in the aggregate shall not exceed the compensation which would have been payable if only one trustee had been acting, except in the following instances:
1. Where the instrument under which the co-trustees are acting provided otherwise; or
  2. Where all the interested parties have consented in writing to the amount of the co-trustees' compensation and the consent is endorsed on the co-trustees' account or evidenced by separate instrument filed therewith.

Rule 74.2

CORPORATE FIDUCIARY COMPENSATION

- A. For purposes of this rule a corporate fiduciary shall be defined as a bank or trust company authorized to conduct a trust business under the laws of the State of Ohio or of the United States.
- B. Except where the governing instrument makes a different provision for compensation, a corporate fiduciary, serving in the capacity of guardian or trustee who is accountable to the court may charge on a quarterly basis for ordinary services performed in connection with each separate guardian or trust estate:
1. An amount to be computed on the fair market value of the principal of the trust or guardianship property in accordance with the following schedule, such compensation to be charged one-half to income and one-half to principal, unless the beneficiary or beneficiaries have the power to invade corpus, in which case all compensation shall be paid out of income unless otherwise provided in the instrument creating the trust:  
  
\$10.00 per \$1000 on the first \$1,000,000 of the fair market value of principal;  
  
\$7.50 per \$1000 on the next \$1,000,000 of the fair market value of principal;  
  
\$5.00 per \$1000 on any amount over \$2,000,000 of the fair market value of principal;
  2. The corporate fiduciary may charge a minimum fee of \$2500 annually.
  3. A separate fee, based upon time expended, may be charged for the preparation and filing of fiduciary income tax returns. This fee may not exceed \$500 except for just cause shown.
- C. For purposes of computing the trustee's and guardian's compensation as herein provided, the fair market value of the principal shall be determined on a quarterly basis.
- D. Additional compensation for extraordinary services may be allowed upon application. The court may require that the application be set for hearing and notice thereof be given to interested parties in accordance with Civil Rule 73(E). The notice shall contain a statement of the amount of the compensation sought.
- E. The compensation of co-trustees in the aggregate shall not exceed the compensation which would have been payable if only one trustee had been acting, except in the following instances:
1. Where the instrument under which the co-trustees are acting provided otherwise; or
  2. Where all the interested parties have consented in writing to the amount of the co-trustees' compensation and the consent is endorsed on the co-trustees' account or evidenced by separate instrument filed therewith.

## ADOPTIONS

- A. The Lucas County Probate Court Adoption Procedures are hereby adopted by reference hereto. Copies are available at the Probate Court.
- B. If a birth parent requires counseling prior to or after the birth of the child, the cost of counseling shall be the responsibility of petitioners, up to the amount of \$500.00.
- C. Notice on the adoption petition to birth parents must be by personal service.

### Rule 78.1

#### CASE MANAGEMENT AND PRE-TRIAL PROCEDURE

##### A. MAGISTRATES

Pursuant to Rule 53 of the Ohio Rules of Civil Procedure, the Probate Judge may assign any pending matter before the Court to a magistrate. This rule shall serve as an order of reference for any matter so assigned.

##### B. CIVIL ACTIONS

1. For the purpose of insuring the readiness of civil cases in the Probate Division for pre-trial, final pre-trial and trial, the following procedures shall be in effect:
2. Within forty-five (45) days after the answer date, unless otherwise requested by the parties, 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 counsel of record, or parties if there is no counsel of record, by the Court not less than fourteen (14) days prior to the conference. An 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. The date for the final pre-trial shall be set by the Court and shall be held approximately one 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.
- g) The trial date shall not be changed nor shall the trial be continued without order of the Court and after showing of good cause.
- h) The Lucas County Probate Court may refer any civil action or proceeding that is within the jurisdiction of the Probate Court for dispute resolution, which shall include, but is not limited to, mediation.
- i) The selection of the mediator, fees for mediator, and source of payment for mediator fees shall be within the sole discretion of the Probate Court Judge. Payment for any additional expenses associated with the resolution of disputes must have prior approval by the Probate Court. This Court shall follow mediation procedures as required under Ohio Sup. R. 16(B) (1).

#### C. LAND SALES

All sale of lands actions which remain open for a period of twelve months from the date of the filing of the complaint may be scheduled for a status conference. The following procedures shall be in effect for the status conference:

1. The attorney of record and fiduciary must attend the status conference;
2. A written status report LCPC - Status Report shall be filed with the Court no later than seven (7) days prior to the status 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;
4. Failure to appear for this conference could result in the dismissal of the land sale complaint pursuant to Civ. R. 41(B)(1).

#### D. DECEDENT'S ESTATES

1. The statutory time for filing of an account (R.C. § 2109.30 and R.C. § 2109.301) shall be adhered to and the citation procedure (R.C. § 2109.31) shall be utilized if necessary to gain compliance.

## 2. RESERVED.

### E. GUARDIANSHIPS

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

### F. TRUSTS

Adequate statutory provisions exist to control timeliness of filings; however, each case shall be reviewed annually. Pursuant to revisions of the Ohio Trust Code (Chapter 58) that came into effect 1/13/2012, all “petitions” for modifications or terminations of trusts must be filed as complaints, with party plaintiffs and defendants.

### G. MOTIONS

All motions filed in this Court in a civil action or contested matter shall be accompanied by a memorandum stating the grounds and citing the authorities relied upon. Opposing party must file a responsive pleading on or before 14 days after the date of service as set forth on the certificate of service attached to the served copy of the motion or be deemed untimely.

The original movant shall serve any reply memorandum on or before 7 days after the date of service as set forth on the certificate of service attached to the served copy of the response memorandum. The motion shall be deemed submitted to the Court for decision unless the Court orders a hearing or a prior written request for oral hearing has been filed and approved by the Court.

#### Rule 78.2

#### JURY MANAGEMENT PLAN

The jury management plan for this Court shall be the same as the jury management plan set forth in Local Rules of Practice and Procedure for the General Division of the Lucas County Common Pleas Court, except to the extent such rules would be clearly inapplicable, and shall be consistent with the Trial Court Jury Use and Management Standards as set forth in the Ohio Rules of Superintendence, Appendix B.

#### Rule 78.3

#### EXTENSION OF TIME; CONTINUANCE OF HEARING UPON CITATION OR REMOVAL

- A. Requests for extension of time LCPC 1B - Application to Extend Time for the filing of an account, inventory or commissioner’s report may be submitted to the Court by facsimile without the requirement of filing a hard copy of same.
- B. The probate court reserves the right to require the consent of the beneficiaries on any request for an extension of time.

- C. Any request for a continuance of the hearing on a citation for removal of fiduciary shall be by motion.

Rule 78.4

CERTIFICATE OF TRANSFER

- A. In every full administration, relief from administration, and no-administration estate, each certificate of transfer must be requested by the filing of an application/entry, and the certificate of transfer [SC 12.0 - Application for Certificate of Transfer](#) & [SC 12.1 - Certificate of Transfer](#).
- B. No certificate of transfer [SC 12.1 - Certificate of Transfer](#) shall be issued by the Court unless the legal description listed on the certificate is the exact duplicate of that listed on the fiduciary's inventory excluding those certificates issued when an estate is relieved from administration. Whenever a certificate of transfer is issued by the Court, and it is later discovered that it is not needed or was issued in error, it shall be the responsibility of counsel to move the Court to cancel same; and where possible, tender any issued, but unrecorded, documents back to the Court. Any request to correct a certificate of transfer shall be made by an "Application for Amended Certificate of Transfer".
- C. A request for a duplicate certificate of transfer may be made by an "Application for Alias Certificate of Transfer".

Rule 78.5

SUMMONS AND NOTICE

A monetary deposit is required for personal service upon each nonresident of the county or state. Please call the Court at 419-213-4775 or consult the Court website at [www.lucas-co-probate-ct.org](http://www.lucas-co-probate-ct.org) for costs.

Rule 78.6

INVENTORY OF DECEDENT'S ESTATE

The Lucas County Probate Court shall publish notice of the hearing on the approval of the inventory of fiduciary in the *Toledo Legal News* and assess the publication fee accordingly. Waivers of notice of hearing are not required in the event of such publication. Notice by publication is not required if the fiduciary submits to the Court proof of service of notice of the hearing on approval for any person interested in the decedent's estate and/or waivers of such service.

Rule 78.7

SPECIAL NEEDS TRUSTS

In addition to the requirements of Ohio R.C. § 5163.21, all special needs trusts approved by this Court, or funded with Court approval, must have the following terms:

- A. No expenditures may be made without prior Court approval.
- B. Bond shall be posted unless all personal property belonging to the trust is deposited in lieu of bond pursuant to Ohio R.C. § 2109.13, or the trustee is exempt from bond under Ohio R.C. § 5807.02.
- C. The Trustee(s) shall make and file within three months after registration of the Trust with the Court a full inventory LCPC 25.4 - Trustee's Inventory of the real and personal property belonging to the trust, its value, and the value of the yearly rent of the real property.
- D. Annual accounts shall be filed LCPC 25.5A - Trustee's Account.
- E. The Trustee(s) shall invest pursuant to the Ohio Uniform Prudent Investor Act as set forth at Chapter 5809 of the Ohio Trust Code.

Rule 78.8

SAFE DEPOSIT BOX

Prior to the appointment of a fiduciary, authority to open a deposit box shall only be granted to an attorney at law licensed to practice law in the State of Ohio who has been appointed by the Court as commissioner to report on the contents of a safe deposit box LCPC 2.8 - Application for Appointment of a Commissioner to Report on the Contents of a Safe Deposit Box. The special commissioner shall file the report LCPC 2.8RPT - Report on Contents of Safe Deposit Box as required by law.