

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

**EFFECTIVE JANUARY 1, 1999
(Amended 6/2015)**

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INTRODUCTION

The following Local Rules of the Holmes County Court of Common Pleas, Probate Division, are adopted pursuant to Rule 5 of the Rules of Superintendence for the Courts of Ohio. These Local Rules are supplemental to the Rules of Superintendence promulgated specifically for the Probate Division, as well as various sections of the Ohio Revised Code, and must be read in conjunction therewith.

RULE 53.1 HOURS OF THE COURT

- A. The Probate Court and its offices shall be open for the transaction of business from 8:30 AM to 4:30 PM daily except Saturday, Sunday, and legal holidays.
- B. The foregoing hours of business may be changed by the Court by providing two (2) weeks' notice in at least one newspaper of general circulation in the county.
- C. The Court office, at the discretion and upon order of the Judge, may be open at other hours for matters of extraordinary importance.

RULE 55.1 EXAMINATION OF PROBATE RECORDS

Copies of any non-confidential records may be obtained at the following cost: \$.05 per page. Certified copies are \$1.00, plus the cost of the copy.

RULE 57.1 FILINGS AND JUDGMENT ENTRIES

Pleadings and filings requiring the fiduciary's signature shall be signed by all fiduciaries.

RULE 58.1 DEPOSIT FOR COURT COSTS

The Court reserves the right to require advance deposits upon the filing of any action or proceeding in any amount not to exceed \$125.00. The Schedule of Cost Deposits is attached hereto as Exhibit A.

RULE 61.1 APPRAISERS AND APPRAISALS

- A. When required by law, there shall be one suitable and disinterested appraiser appointed by the fiduciary of an estate, with Court approval. The following persons shall be disqualified from being such an appraiser:
 - 1. A person related by blood or marriage to the decedent;
 - 2. A beneficiary of the estate;
 - 3. A person related by blood, marriage or employment to the attorney for the estate; and
 - 4. A person related by blood, marriage or employment to the fiduciary for the estate.

- B. Real estate appraisals shall be made by licensed real estate agents, brokers, auctioneers, credentialed real estate appraisers, or such other persons who by experience and training are qualified to make real estate appraisals.
- C. No appraiser shall be permitted to directly or indirectly purchase or acquire any of the property he or she appraises, except at public auction.
- D. Readily ascertainable value of real property:

Notwithstanding sections (A) through (C) of this rule, the market value of real estate as found in the Holmes County Auditor's property records may be submitted by the fiduciary as the readily ascertainable value of the property and no further appraisal of such property shall be required, unless ordered by the Court pursuant to Paragraph G of this rule. A copy of said valuation shall be attached to Form 6.1 – Schedule of Assets, or Form 5.1 – Assets and Liabilities of Estate to be Relieved from Administration, whichever is applicable.

- E. Readily ascertainable value of motor vehicle:

Notwithstanding sections (A) through (C) of this rule, the market value of any motor vehicle as found in the most recent N.A.D.A. Official Used Car Guide under the category "Av'g Retail" may be submitted by the fiduciary as the readily ascertainable value of the property and no further appraisal of such property shall be required, unless ordered by the Court pursuant to Paragraph G of this rule. A copy of the appropriate page from said booklet shall be attached to Form 6.1 – Schedule of Assets, or Form 5.1 – Assets and Liabilities of Estate to be Relieved from Administration, whichever is applicable.

- F. All chattel property and household furnishings shall be appraised, unless an appraisal has been dispensed with by an Order of the Court.
- G. Any beneficiary or creditor of a decedent's estate may file a written request with the Court not later than five (5) days prior to 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 (C) of this rule.

RULE 64.1 ACCOUNTS

- A. Final Accounts and Certificates of Termination shall not be approved before the expiration of the applicable period as required by ORC Section 2109.32,

or before the expiration of the four-month period for filing of a will contest action as described in ORC Section 2107.76.

- B. Notice of the hearing on the account shall be by publication in a newspaper of general circulation within the county.
- C. Each account shall include an itemized statement of all disbursements and distributions made by the fiduciary during the accounting period. Such itemized disbursements and distributions shall be verified by vouchers or proof, except in the case of an account rendered by a corporate fiduciary subject to section 1111.28 of the revised code.

RULE 66.1 GUARDIANS

- A. The Court will not accept for filing any guardianship for a minor where the primary 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 and Domestic Divisions.
- B. A separate guardianship must be filed and a corresponding case file set up for each proposed ward.
- C. All guardians appointed by this Court shall inform the Court as to any change of their address or of the address of their ward. This notification must be made within ten (10) days of the address change. Failure to notify the Court under this rule may result in the guardian being removed. See SupR 57(C).

D. EMERGENCY GUARDIANSHIPS

- (1) Emergency Guardianships shall be filed following the procedures outlined in Ohio Revised Code Section 2111.02(B)(3). Until Standard Probate Forms are available, an Applicant shall use forms prescribed by the Court or prepared by Counsel for the Applicant. All pertinent facts need to be included in the filings in order for the Court to make a decision on the Motion for Emergency Guardianship. Any omission of information may result in a delay in a decision.
- (2) A Motion for Appointment of Emergency Guardian must be filed by an individual willing to take on the responsibilities of a guardian in the emergency situation, which could cover a 33-day period.
- (3) The Motion must be accompanied by a Statement of Expert Evaluation with the Supplement for Emergency Guardian of Person, both completed by a Licensed Physician or Licensed Clinical Psychologist.
- (4) Applicant shall provide the Court with complete information regarding the location of the proposed ward, including street and mailing address, so

that the Order appointing the emergency guardian can be served upon the proposed ward promptly after the hearing, and so that notice of the extension hearing can be served upon the ward.

- (5) There is no cost deposit for an emergency guardianship; however, if a full guardianship application is filed during the extended emergency guardianship period, all cost deposit guidelines shall apply.
- (6) Applicants must understand that an Emergency Guardianship, if granted, is effective initially only for 72 hours. Depending upon the time and date of issuing the Order granting the emergency guardianship, the authority may expire over a weekend before an extension hearing can be scheduled.

E. GUARDIAN COMPLAINT PROCEDURE

- (1) Should any individual have a comment or concern regarding the performance of a Guardian appointed by this Court, they shall mail that complaint in written form to Holmes County Probate Court, 1 East Jackson Street, Suite 201, Millersburg, Ohio 44654, for consideration of such comments or concerns.
- (2) Such written comments or concerns may be hand delivered to the Deputy Clerks of the Holmes County Probate Court, 1 E. Jackson Street, Suite 203, Millersburg, Ohio 44654.
- (3) Upon presentation of a comment or concern regarding a Guardian appointed by this Court, the Court shall promptly provide that Guardian with a copy of the comment or complaint.
- (4) The Court shall promptly consider the presented comment or complaint and shall take appropriate action.
- (5) The Court shall maintain a record of all comments and complaints and their disposition, both in a separate file solely for this purpose, and in the guardianship file related to the comment or complaint.
- (6) The Court shall promptly notify the person making the comment or complaint, and the guardian, of the disposition of the comment or complaint.

RULE 71.1 COUNSEL FEES

A. Estates

1. The Application for Payment of Fees hereinafter set forth as Exhibit B shall serve as a guide and application for determination of fees allowable to any attorney for ordinary services rendered in the administration of a decedent's estate, including release from administration. The Application shall be filed with and approved by the Court prior to the payment of fees.

2. Where the attorney, law partner, or firm associate is appointed as fiduciary, the total fee may not exceed the counsel fee calculated pursuant to the Application for Payment of Fees attached as Exhibit B, plus one-half of the statutory fiduciary commission.

B. Guardianships and Trusts

Counsel fees for the administration of a guardianship or trust shall be those reasonable and beneficial to the guardianship or trust. The application for fees shall be in writing and shall set forth the details supporting the calculations on which the requested fees are based. In considering whether counsel fees are reasonable and beneficial, the Court may consider any amounts received as guardian or trustee fees pursuant to Rules 73.1 and 74.1, where counsel also serves as guardian or trustee.

C. Counsel Fees in Other Matters

An application shall be filed for the allowance of counsel fees in all matters not otherwise provided for above. The application shall set forth a concise description of the services rendered and the amount claimed. An itemized statement of the services for which compensation is requested shall be attached to the application.

RULE 72.1 EXECUTOR'S AND ADMINISTRATOR'S COMMISSIONS

The Application for Payment of Fees hereinafter set forth as Exhibit B shall serve as a guide and application for determination of fees allowable to a fiduciary for ordinary services rendered in the administration of a decedent's estate. The Application shall be filed with and approved by the Court prior to the payment of fees.

RULE 73.1 GUARDIAN'S COMPENSATION

- A. Guardian's compensation shall be computed according to the Guardian's Fee Application attached as Exhibit C.
- B. For the 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
 4. Market appreciation of corpus during account period

- C. The determination of the value of the principal of the estate, for the purpose of computing guardian's compensation as hereinabove provided shall be made as of the beginning date of the accounting period, using the market value with respect to assets having a listed market value. As to assets which do not have a listed market value, a fair valuation shall be the criterion subject to review by the Court.
- D. In all motions, including application for compensation, guardians of veterans must comply with ORC 5905 and all other rules and regulations of the Veterans Administration which may apply.

RULE 74.1 TRUSTEE'S COMPENSATIONS

A. Individual Trustees

Trustees of all testamentary trusts subject to Probate Court jurisdiction may, upon application and entry, be allowed compensation for ordinary services in connection with the administration of each separate trust estate in accordance with the Application for Trustee's Compensation attached as Exhibit D.

B. Corporate Trustees

1. A testamentary trustee may charge fees on the same basis as it charges for inter vivos trusts.
2. Fee schedules shall be filed with each account.
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. The trustee may charge its applicable "sweep fee" for the management of funds within testamentary trust accounts.

C. Exceptions

Trustees' compensation shall be allowed as stated in 74.1 A. and B. except when:

1. The instrument creating the trust makes specific provision for compensation; or
2. Compensation is otherwise provided by statute.

RULE 75.1 MISCELLANEOUS LOCAL RULES

A. Relieving Estate from Administration

1. Appraisal of Assets
 - a. The appraisal of assets shall be subject to Local Rule 61.1, "Appraisers and Appraisals."
 - b. Chattel property and household furnishings passing to the surviving spouse may be returned without an appraisal, subject to court approval.
2. Commissioner – A commissioner shall be appointed:
 - a. To make distributions in kind;
 - b. To sell personal property;
 - c. To pay outstanding debts;
 - d. To execute documents to titled property.
3. Every commissioner shall file a report of distribution within (60) days of the appointment.
4. No Entry Relieving Estate from Administration shall be issued in estates where the liabilities exceed the assets unless assumption of the excess liabilities is made by the surviving spouse or other heirs. Such assumption shall be made in writing and filed with the Court and shall be subject to the Court's review and approval. In estates where no such assumption is made, the applicant must follow the procedures for insolvent estates outlined in ORC 2117.15.

B. Inventory

1. The Court will not approve the distribution of any estate assets or expenditures of guardianship funds prior to the filing of the Inventory, unless approved by the Court upon the showing of undue hardship.
2. The Schedule of Assets shall contain the legal description and the parcel number of all real estate included in the Inventory of the Estate.
3. The date of the hearing on the Inventory will be within thirty (30) days from the date upon which the Inventory was filed. See ORC 2115.16.
4. Notice of the hearing on the inventory shall be given by certified mail to the following at least ten (10) days prior to the date of the hearing unless waived:

- a. The surviving spouse;
- b. Vested beneficiaries under the will; and
- c. The attorneys, if known, representing any of the persons described in 1 and 2 above.

C. Court Costs

1. The Court will charge and collect, if at all possible, the fees enumerated in Section 2101.16 of the Ohio Revised Code.
2. The Court will charge a Conduct of Business Fee as authorized by Section 2101.19 of the Ohio Revised Code.
3. Pursuant to ORC 2101.16(F), the Court hereby establishes the fee of \$50.00 for the filing of a Petition for the Release of Adoption Information as provided for in ORC 3107.41.

D. Certificates of Title

A Certificate of Title prepared by an attorney shall accompany all Applications for Certificates of Transfer establishing the title in the deceased to the real estate to be transferred. Such title evidence shall be prepared in accordance with the Ohio Standards of Title Examination established by the Ohio State Bar Association. Any deviations from this requirement or discrepancies between the Certificate of Title and Application require Court approval prior to issuance of the transfer.

E. Fax Filings

All pleadings and other papers may be filed with the Court by facsimile at (330) 674-5820, subject to the following provisions:

1. A document filed by facsimile transmission will be accepted as original and the signature accepted as original consistent with Civ. R. 5(E).
2. The sending party or attorney must provide all required information on a cover page of transmission. Said cover page shall bear the name of the case, the full case and docket number, the sender's name, firm, address, phone number and fax number; the date of transmission; the number of pages, including the cover page being transmitted; and such other comments and information as may assist the Court in processing the document. Transmissions without such information will not be accepted for filing. A transmitted document must be no longer than 10 pages, not including the cover page, and must pertain to only one case.
3. The Court shall notify the attorney or sending party if the transmitted document cannot be filed for any reason. All documents submitted shall be considered filed when the date has been stamped by the Court.

4. The risk of fax filing remains with the sender and the Court assumes no new responsibilities or liabilities.

F. Adoptions

1. In addition to the requirements of R.C. 3107.012, to be a qualified assessor each person shall first have on file with the Court a copy of a current "Certificate of Completion."
2. Each assessor who is to perform a home study as provided in R.C. 3107.031 must first be approved and appointed by the Court.
3. The requirement of a pre-finalization assessment as provided in R.C. 3107.12 shall not be required in an adoption by a step-parent, unless the Court orders otherwise.
4. A final accounting in accordance with R.C. 3107.10 shall be filed in all public children services agency adoptions.
5. A preliminary estimate account and a final account as provided for in R.C. 3107.10 shall not be required in adoptions by a step-parent, unless the Court orders otherwise.
6. The application for search of the Ohio Putative Father Registry shall be filed by the mother of the child, the child welfare agency or the attorney for either of them.
7. There shall be separate legal counsel for the person(s) seeking to adopt and the parent(s) placing a child for adoption, pursuant to R.C. 5103.16.

RULE 78.1 CASE MANAGEMENT

For the purpose of insuring prompt disposition of civil proceedings in the Probate Division, the Court hereby adopts and incorporates by reference the Civil Case Management Rule, Rule 5, of the Holmes County Common Pleas Court, General Division, effective as of the date of the adoption of these Local Rules, and as amended in the future. Copies of the General Division Rules are available from the Holmes County Clerk of Courts.

EXHIBIT A

COST DEPOSITS Effective December 1, 2014

Adoption with Name Change \$198.00

Adoption without Name Change \$139.00

NOTE: In cases in which an adoption assessment is required, please deliver a separate check to the Court payable to Beverly Theil for the assessment fee. The rates are as follows:

One Child \$500.00
Per Additional Child (if same parents) \$200.00
Per Additional child (if different parents) \$250.00

Placements \$65.00

Name Change \$109.00
Plus (\$35.00-Graphic Publications & \$21.50-Treasurer, State of Ohio)

Estates
Full Administration (& Ancillary) \$127.00
Releases from Administration (Call the Court for cost deposit amount)
Transcripts from Out of County \$58.00
Probate of Will Only \$81.00
Tax Only \$53.00
Probate of Will and Tax Only \$86.00
Summary Release from Administration \$60.00

Guardianships
Incompetent \$79.00

Additional \$50.00 will be due at the date of the hearing

Plus: Separate check for Court Investigator \$100.00

Please call the court regarding Court Investigator Payee

Minor \$79.00

Additional \$50.00 will be due at the date of the hearing

Miscellaneous
Appeals (Checks payable to Holmes Co. Clerk of Courts) \$90.00
Complaint \$81.00
Disinterment \$58.00
Marriage License (Cost includes one certified copy) \$56.00
Mental Illness \$25.00
Minor Settlement \$71.00
Sale of Real Estate \$86.00
Structured Settlement/Annuity \$63.00
Trusts \$103.00
Wrongful Death \$81.00

**EXHIBIT B
PROBATE COURT, HOLMES COUNTY, OHIO**

**APPLICATION FOR PAYMENT OF FEES
(Court Rule 71.1)**

ESTATE OF: _____

Case No. _____

	<u>Value</u>	<u>Computation</u>
1.(a) Appraised value (when not sold) or gross proceeds (when sold) of personal property included in inventory; and amount of estate income for which fiduciary accounts:	\$ _____	
(b) Gross proceeds of real estate sold pursuant to authority granted in the will; real estate sold to surviving spouse pursuant to ORC Sec. 2113.38; or real estate sold during the administration of the estate:	\$ _____	
Sub-Total:	\$ _____	
4% on first \$100,000		\$ _____
3% on next \$300,000		\$ _____
2% on balance		\$ _____
2. Joint and survivorship personal property: All other non-probate property (except life insurance proceeds payable to beneficiaries other than the estate, or real estate):	\$ _____	
	\$ _____	
Sub-Total:	\$ _____	
Fee at 1%		\$ _____
3. Real estate sold as a result of a judicial land sale proceeding under ORC Sec. 2127:	\$ _____	
Fee at 2%		\$ _____
4. Real estate transferred by certificate and/or non-probate real estate subject to Ohio estate tax determination (i.e. joint & survivorship real estate):	\$ _____	
2% on first \$50,000		\$ _____
1% on balance		\$ _____
5. Release of Estate from Administration Minimum Charge (\$500.00) Calculated according to fee schedule		\$ _____
6. Extraordinary fees allowed by Court entry		\$ _____
Total Fee:		\$ _____

**FIDUCIARY FEES
(ORC SEC. 2113.35)**

On all personal property, including income from personal estate and proceeds of real estate sold:

\$ _____

4% on first \$100,000
3% on next \$300,000
2% on balance

\$ _____
\$ _____
\$ _____

On real estate not sold:

\$ _____

Fee at 1%

\$ _____

On property not subject to administration but includable for purposes of computing Ohio estate tax, except joint and survivorship property:

\$ _____

Fee at 1%

\$ _____

Total Fee:

\$ _____

Attorney for Estate

Fiduciary

APPROVED:

THOMAS C. LEE, JUDGE

EXHIBIT C
PROBATE COURT, HOLMES COUNTY, OHIO
APPLICATION FOR PAYMENT OF GUARDIAN'S FEES
(Court Rule 73.1)

MATTER OF: _____

Case No. _____

	<u>Value</u>	<u>Computation</u>
<u>Income and Disbursements:</u>		
4% of the first \$5,000 of income	\$ _____	\$ _____
3% of the excess of \$5,000 of income	\$ _____	\$ _____
4% of the first \$5,000 of disbursements	\$ _____	\$ _____
3% of the excess of \$5,000 of disbursements	\$ _____	\$ _____
Total income and disbursement fee:		
 <u>Principal:</u>		
\$3.00 per thousand on the first \$250,000 of market value	\$ _____	\$ _____
\$2.00 per thousand on excess of \$250,000 of market value	\$ _____	\$ _____
Total principal fee:		\$ _____
 <u>Distribution Fee:</u>		
1% of fair value of final principal distribution	\$ _____	\$ _____
 Extraordinary Fees allowed by Court Entry		\$ _____
Total Fees:		\$ _____

Guardian

Attorney for Guardian

APPROVED:

THOMAS C. LEE, JUDGE

**EXHIBIT D
PROBATE COURT, HOLMES COUNTY, OHIO**

**APPLICATION FOR PAYMENT OF
INDIVIDUAL TRUSTEE'S FEES
(Court Rule 74.1)**

MATTER OF: _____

Case No. _____

	<u>Value</u>	<u>Computation</u>
<u>Income:</u>		
6.5% of total income for accounting period	\$ _____	\$ _____
<u>Principal:</u>		
\$2.00 per thousand of market value of principal held by Trustee.	\$ _____	\$ _____
Value of principal shall be based on market value at the beginning of the accounting period.		
<u>Principal Distribution Fee:</u>		
1% of fair value of principal distributed during accounting period.	\$ _____	\$ _____
Extraordinary Fees allowed by Court Entry		\$ _____
Total Fees:		\$ _____

Trustee

Attorney for Trustee

APPROVED:

THOMAS C. LEE, JUDGE