

**LAKE COUNTY, OHIO
PROBATE COURT
THE HONORABLE MARK J. BARTOLOTTA, JUDGE**

Local Rules

LAKE COUNTY RULE 8. Court Appointments.

Rule 8.1

Persons appointed by the Court to serve as appraisers, fiduciaries, attorneys, counsel for Involuntary Psychiatric Commitment proceedings, investigators, guardians ad litem and trustees for suit, shall be selected from lists maintained by the Court.

Appointments will be made from each list taking into consideration the qualifications, skill, expertise and caseload of the appointee in addition to the type, complexity and requirements of the case.

Court appointees will be paid a reasonable fee with consideration given to the factors contained in DR 2-106 of the Code of Professional Responsibility, the Ohio Revised Code and the Local Rules of Court relating to fees.

LAKE COUNTY RULE 11. Recording of Proceedings.

Rule 11.1

The Court will make arrangements to have a court reporter present in jury trials only. The parties are responsible for obtaining a court reporter in all other cases, if desired. The Court will make an audio recording upon the request of a party. The Court will release the audiotape to a court reporter for transcription at the expense of the party.

LAKE COUNTY RULE 53. Hours of the Court.

Rule 53.1

The Probate Court and its offices shall be open for the transaction of business from 7:30 a.m. to 5:00 p.m. daily, except Saturday, Sunday and legal holidays.

LAKE COUNTY RULE 55. Examination of Probate Records.

No records or papers shall be taken from this Court to be used as evidence elsewhere, but certified copies can be obtained for such purpose.

LAKE COUNTY RULE 57. Filings and Judgment Entries.

Unless otherwise provided by law, applications, motions and exceptions in controverted cases will be heard at any time after notice to the opposing party, except in cases requiring immediate action. All motions, applications and exceptions should be typewritten and filed with the Court. The original copy of the motion shall bear an endorsement showing service of a copy upon the adverse party or the party's attorney and the method of service. The motion must be accompanied by a proposed judgment entry. Responses to motions must be filed within 14 days of the date of service, except such time may be extended by motion for good cause shown. Pursuant to Civ.R. 11, all

pleadings and memoranda, including proposed judgment entries, must contain an original signature and a signature block with attorney registration number.

All fiduciaries and attorneys shall notify the Court in writing within 30 days of a change of address. It is the responsibility of each attorney of record to notify the Court in writing 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 and/or a disallowance of fiduciary and/or attorney fees.

LAKE COUNTY RULE 58. Deposit for Court Costs.

Rule 58.1

The Court may require a deposit sufficient to cover the anticipated costs except when otherwise directed by law or the Court.

Court costs are due and payable at the discretion of the Court. All court costs due must be paid when an account is filed.

LAKE COUNTY RULE 59. Wills.

RULE 59.1

All fiduciaries appointed to administer estates of decedents who have died testate on or after May 31, 1990, are required to file a Certificate of Service of Notice of Probate of Will within the time prescribed by law. Proof of service will consist of either waivers of notice of admission of the will to probate or the original certified mail return receipt cards as provided under Civ.R. 73(E)(3).

LAKE COUNTY RULE 60. Application for Letters of Administration.

All documents necessary to open an estate must be filed at the time the estate is opened or they will be returned.

LAKE COUNTY RULE 61. Appraisers.

Rule 61.1

No person who has been appointed appraiser shall, during the administration of the estate or within one year of his or her appointment, whichever is shorter, directly or indirectly, purchase or negotiate the purchase or sale of properties inventoried or appraised by the appraiser or those to be inventoried or appraised by him or her. Appraisers shall not be (1) a relative of the decedent, or a relative of the family of the decedent; (2) a relative of the attorney representing the fiduciary; or (3) a business associate of either the family or the attorney.

Rule 61.2 Appraiser's Compensation.

Compensation for appraisers is to be computed on the gross appraised value of all assets of the estate, in accordance with the following schedule:

- (a) \$1.50 per \$1,000 on the first \$100,000; and
- (b) \$1.00 per \$1,000 on the next \$200,000; and
- (c) \$.75 per \$1,000 on the balance.

If additional appraisers are used, the maximum for each appraiser is \$1.00 per \$1,000 for (a) and \$.50 per \$1,000 for (b).

If, however, the estate consists in whole or part of cash, money on deposit or listed securities, the appraiser's compensation as to such assets shall be one-half of the above fee as to such assets. The maximum compensation for an appraiser as to all assets is limited to \$500; the minimum fee is \$40.

The Court may allow additional compensation for extraordinary services performed upon application filed by the fiduciary.

In land sale proceedings the appraisers appointed by the Court may be compensated in the same manner as provided above. The amount paid each appraiser shall be set forth in the entry of distribution and be subject to the approval of the Court.

NOTE: Assets whose values are readily ascertainable are not appraised. An appraiser's fee is computed only on the decedent's interest in the assets that are appraised.

LAKE COUNTY RULE 62 Insolvency Proceedings.

Rule 62.1

Insolvency hearings may be held in full administration and guardianship cases. Insolvency proceedings shall be commenced by the fiduciary filing a representation of insolvency accompanied by a schedule of claims. The attorney shall indicate on the schedule of claims the amount of the proposed payment to each creditor. The Court shall set a hearing on the insolvency on a notice form provided by the attorney. The attorney shall notify all creditors of the hearing by certified mail, and bring the receipts to the hearing. These receipts shall be retained in the case file.

LAKE COUNTY RULE 64. Accounts.

Rule 64.1

All trustees and guardians of the estate must submit their fiduciary accounts each year on the anniversary date of their appointment.

Rule 64.2

Guardians must submit receipts and canceled checks or photocopies (front and back) from their guardian checking account; personal checks of guardians cannot be accepted as vouchers.

In any case wherein a computer printout (statement of transaction) is presented as an itemized statement of receipts and disbursements, approval of all beneficiaries must be obtained and filed with the account.

In lieu of submitting vouchers in a solvent decedent's estate, the fiduciary may file with the account a waiver and consent from the heirs at law or beneficiaries under a

Will acknowledging that each person received a copy of the account, waives notice of hearing on the account, and consents to the account. The signature of each heir at law or beneficiary under a Will must be dated. The attorney for the fiduciary must sign his or her name on the account if vouchers are not submitted.

The Court, on its own motion, may require the fiduciary to submit vouchers with his or her account.

Rule 64.3

If accounts of fiduciaries are not filed within the time prescribed by statute, the Court, on its own motion, may cite the delinquent fiduciary to appear and show cause why the fiduciary has not filed the account. Upon issuance of a citation, a continuance shall not be granted until the fiduciary has personally appeared at a show cause hearing.

If an estate cannot be closed within six months of the fiduciary's appointment, application to extend administration must be filed pursuant to statute.

LAKE COUNTY RULE 66. Guardianships.

Rule 66.1

If a minor is in the care or custody of any person other than the parties entitled to notice by law, reasonable notice of the application for appointment must be given to such person. Minors must appear personally in court unless for good cause shown their presence is waived.

Rule 66.2

An annual report must be filed by the guardian of an incompetent person on or before January 2nd of each year.

Rule 66.3

Guardians of adult wards shall deposit the Last Will and Testament, if any, of their respective wards with the Court as provided by R.C. 2107.07 immediately following their appointment as guardian.

Rule 66.4

Attorney and guardian fees paid from the indigent guardianship fund shall be no more than \$50 per hour for a maximum fee of \$500 per case for each accounting period. Additional fees may be approved upon the filing of an application for extraordinary fees and a hearing before the Court.

Rule 66.5

Guardians shall notify the Court within 45 days of the death of the ward. Failure to comply may result in the removal of the guardian.

Rule 66.6

The Court shall require the guardian or a representative of his or her office to visit the ward at least once every two months. Failure to comply may result in the removal of the guardian. It is the intent of the Court to establish a volunteer program and/or an intern program with local colleges and Catholic Charities Services of Lake County to visit wards every month. After his or her visit, a Visitor's Report shall be filed with the Court.

Rule 66.7

No adult person adjudicated incompetent shall lose the right to vote, except upon motion, notice, and record hearing before the Court.

LAKE COUNTY RULE 67. Estate of Minors of Not More Than \$10,000.

Rule 67.1

Where a minor is entitled to funds less than \$10,000, those funds are to be deposited in a restricted account for the benefit of the minor until the minor reaches the age of eighteen. A receipt of deposit must be returned to the Court within 7 days from the date of the entry. These funds cannot be used by or for the minor unless authorized by the Court and then can only be used for the benefit of the ward.

LAKE COUNTY RULE 68. Structured Settlements.

If the minor's settlement is to be funded by an annuity, the application shall include a signed statement by the annuity carrier or the broker procuring the policy stating:

- (a) The annuity carrier is licensed to write annuities in Ohio.
- (b) The annuity carrier's ratings from at least one of the following organizations, which meet the following criteria:
 - i. A.M. Best Company: A++, A+, or A.
 - ii. Moody's Investors Service (financial strength): Aaa, Aa1, or Aa2.
 - iii. Standard & Poor's Corporation (financial strength): AAA, AA+, or AA.
- (c) The annuity shall be protected in the event of the annuity carrier's bankruptcy or insolvency.

In addition to the requirement of Paragraph (b) above, an annuity carrier must meet any other requirements the Court considers reasonably necessary to assure that funding to satisfy periodic payment settlements will be provided and maintained.

LAKE COUNTY RULE 70. Settlement of Wrongful Death and Survival Claims.

Rule 70.1

Any trust created under the authority of R.C. 2125.03(A)(2) shall contain a provision requiring court approval before any expenditure is made.

LAKE COUNTY RULE 71. Counsel Fees.

Rule 71.1

In claims for wrongful death or injuries, for conscious pain and suffering and in claims for personal injuries to persons under guardianship or to minors, attorney fees must not be in excess of 33 1/3 % of the gross award/amount. Additional compensation, however may be granted upon a showing of special facts establishing extraordinary services performed in the investigation of the case or trial or appeal of the action. A detailed statement of the extraordinary services performed in such preparation shall support application for additional compensation.

Rule 71.2

The schedules of compensation set forth below shall serve as a guide in determining the fees to be charged to the estate for legal services of an ordinary nature rendered as counsel for the executor or administrator in the complete administration of a decedent's estate. Such schedules, however, are not to be considered as schedules of minimum or maximum fees to be charged. See Sup.R. 71. Further, if by reason of the application of such percentages to values of assets or to amounts of income, a disparity or injustice results, such disparity or injustice may be reviewed either on the Court's own motion with respect to any account reflecting such compensation or upon exceptions to such an account. The attorney may receive for his or her fee a percentage of the estate in conformity with the following schedules.

- (a) On the appraised value of personal property included in the inventory, unless sold, then on the amount of the gross proceeds from the sale of such personal property, on the gross proceeds from the sale of real estate whether made under power stated in the Will or by land sale proceedings, on estate income for which the fiduciary accounts and on money actually advanced to pay debts or legacies:
 - 3 ½ % on the first \$ 100,000
 - 2 ½ % on the next \$300,000
 - 2% on the balance

However, if the attorney or member of the attorney's firm is the fiduciary, a hearing shall be had in which the attorney must demonstrate that the fees were provided in the capacity as attorney rather than executor, and that those fees are reasonable.

- (b) Transfer of real property by application, court order and certificate of transfer, to the heirs:
 - 1% of the value of the real property up to \$50,000
 - 0.5% of the amount over \$50,000
- (c) On the gross proceeds of real estate sold in a land sale proceeding: 2%
- (d) On the gross amount of money paid for real estate by surviving spouse, purchasing at appraised value: 2%
- (e) Completion of a land contract but not on any uncompleted contract of sale made by the decedent:
 - 1% of the value of the unpaid balance due from the sale of the real estate up to \$50,000
 - 0.5% over \$50,000

When due to special circumstances, the fees previously described will not result in fair and reasonable compensation, the Court may require an application for allowance of additional compensation.

Rule 71.3 Extraordinary Fees.

The Court will consider the allowance for any extraordinary services and expenses upon application, supported by detailed statements of such services and expenses. Nothing in the fee guidelines shall be construed as a bar to such application.

Rule 71.4 Hourly Rate Contracts.

In cases where the attorney has agreed to an hourly rate contract with the fiduciary, application shall be made to the Court for allowance, supported by a detailed statement of such services and a copy of the contract.

Rule 71.5

All applications for the allowance of attorney fees shall include an itemized statement of services performed, the date services were performed, the time spent in rendering the services and the rate charged per hour and must be signed by both the fiduciary and counsel.

Rule 71.6

Where all residuary legatees and devisees have consented in writing to the amount of counsel fees, an application need not be made for the allowance of fees, provided the

consent is endorsed on the fiduciary account or evidenced by a separate instrument filed with the Court.

The Court may approve an application for fees without a hearing or may require a hearing on fees, regardless of the fact that the required consents of the beneficiaries have been given. A hearing is mandatory when objections to an application for fees or exceptions to an accounting based on fees are filed.

Rule 71.7

Attorney fees applicable to guardianship or trust cases may be deferred one accounting period only. Attorney fees and allowance for extraordinary services and expenses are subject to further review if exceptions should be filed to an account.

LAKE COUNTY RULE 72. Executor's and Administrator's Compensation.

Rule 72.1

Executors and administrators may receive compensation in conformity with the Ohio Revised Code. No allowance for fiduciary fees in excess of the amount prescribed by law or by these Rules or for expenses incurred by the fiduciary will be made unless an application is filed with the Court setting forth in detail the services rendered or expenses incurred and the amounts claimed before payment is made.

The Court may require the application be set for hearing and notice as provided by the Ohio Rules of Civil Procedure given to all interested parties. The notice shall contain a statement of the amount of fiduciary fees or compensation for special services requested and a concise statement of the services rendered. Competent interested parties may waive notice and consent to the application.

Nonprobate assets shall not be included for the purpose of computing either fiduciary fees under the percentage schedules prescribed by statute or by these Rules, except as provided by R.C. 2113.35(C). If additional services are performed by the fiduciary by reason of the existence of nonprobate assets, fees may only be allowed on application as set forth above.

LAKE COUNTY RULE 73. Guardian's Compensation.

Rule 73.1

Guardians, unless otherwise provided by law, are allowed an amount for ordinary services not to exceed the following:

- (a) four percent on all amounts received and four percent on all amounts paid out during accounting periods on sums not exceeding \$100,000;
- (b) three percent on all amounts received and three percent on all amounts paid out during accounting periods on sums in excess of \$100,000;
- (c) no percentage will be allowed on balances carried forward from one accounting period to another;
- (d) an investment of funds is not to be considered an expenditure;

- (e) a final distribution of unexpended balances to a ward at the closing of a guardianship shall be considered an expenditure.

The foregoing allowance is subject to a minimum charge of \$250 per year. Guardian fees may be deferred one accounting period only.

On motion, the Court may make further allowances for extraordinary services or expenses when it is shown that the allowance is just and reasonable.

LAKE COUNTY RULE 74. Trustee's Compensation.

Rule 74.1

- (A) Except where the instrument creating the trust makes provision for compensation, a testamentary trustee may charge annually for ordinary services performed by the trustee in connection with the administration of each separate trust estate as follows:
 - (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 otherwise provided in the instrument creating the trust:
 - \$11.00 per \$1,000 on the first \$200,000 of the fair market value of the principal;
 - \$9.00 per \$1,000 on the next \$800,000 of the fair market value of the principal; and
 - \$5.50 per \$1,000 on all amounts over \$1,000,000 of the fair market value of the principal.
 - (2) An amount may be allowed equal to 1% of the fair market value of any distribution or payment from the principal of the trust property. This amount shall be charged against and deducted from the distribution or payment.
 - (3) A corporate trustee that provides a service that invests all available income and/or principal cash on a daily basis may be allowed an amount equal to one-half of one percent (0.5%), on an annual basis, of the amount invested, but not in excess of \$100 per month.
- (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 the date of the original receipt of trust property, and each anniversary date thereafter. At the option of the trustee, fee evaluations may be made on a quarterly basis, each evaluation to be coordinated with the original annual date as selected by the trustee. If the trustee selects this option, the trustee must continue to compute the trustee's fee on the quarterly valuation basis, unless upon application to the 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 be given to interested parties in accordance with Civ.R. 4.1. The notice shall contain a statement of the amount of compensation sought and the basis for the calculation of such amount.
- (D) The compensation of co-trustees in the aggregate shall not exceed the compensation that 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 provides 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 trustees' account or evidenced by separate instrument filed contemporaneously.
- (E) A separate schedule of the computation of trustee's compensation shall be shown in the trustee's account as a condition of its approval.
- (F) Except for good cause shown, neither compensation for a trustee nor fees to the counsel representing the trustee will be allowed as long as the trustee is delinquent in filing an account required by R.C. 2109.30

LAKE COUNTY RULE 78. Case Management.

Rule 78.1 Summons and Notice

Service by notice and summons shall be made as provided by the Ohio Rules of Civil Procedure in effect on the date the original pleading is filed in Court.

Praecipes for witnesses in the trial of any cause must be filed as early as is reasonably possible prior to the time set for trial.

Rule 78.2. Notice of Litigation.

Upon the filing of any legal action that affects an estate, a trust or guardianship, the fiduciary shall file a notice of litigation with the Court. The fiduciary shall also notify the Court within 30 days of the conclusion of the litigation.

Rule 78.3. Continuances.

No extension of time will be allowed within which to file an inventory, account or guardian's report except for good cause shown. Requests for extensions shall be made by motion and must (1) contain the reason for the request; (2) be accompanied by a stamped, self-addressed envelope and a judgment entry; and (3) be personally signed by the fiduciary.

If a fiduciary is delinquent in filing an inventory, account and/or guardian's report and no extension of time for filing has been granted, the Court may refuse to appoint the fiduciary or attorney for the fiduciary to another office of trust.

Rule 78.4. Attorney Withdrawal.

No attorney shall be permitted to withdraw from a case, including those cases where the client discharges the attorney, later than 20 days prior to a trial or a dispositive hearing unless the attorney obtains court approval upon good cause shown.

LAKE COUNTY RULES 89 TO 93 [Reserved as to Supreme Court Rules but see Local Rules 89.1 through 92.1.]

LAKE COUNTY RULE 89. Inventories.

If inventories, or other necessary proceedings, except accounts, are not filed by fiduciaries within the time prescribed by statute, the Court may issue a citation sua sponte unless the Court granted additional time.

No extension of time will be allowed within which to file an inventory except for good cause shown. Requests for an extension of time shall be made in accordance with Loc.Sup.R. 78.3

Rule 89.2

Inventories shall not be amended. Assets improperly included on an inventory, inaccurately valued or incorrectly described, must be reconciled by a motion to correct the inventory with corresponding judgment entry that rectifies the inaccuracy and reflects the estate's total value.

Assets inadvertently omitted from an inventory or later discovered, may be submitted as newly discovered assets in estates and on a supplemental inventory in guardianships.

Rule 89.3

Upon the filing of an inventory, the fiduciary shall serve notice of the hearing by ordinary mail, unless waived, upon the surviving spouse, all next-of-kin in an intestate estate and all beneficiaries in a testate estate. See R.C. 2115.02, 2115.16 and Civ.R. 73(E)(7).

At any time prior to or at the hearing, the fiduciary shall file a certificate evidencing that the proper parties have been served or have waived notice.

LAKE COUNTY RULE 90. Distributions to Minors.

Rule 90.1

If the Last Will and Testament of a decedent provides a monetary bequest to a minor and that bequest is not more than \$10,000, the executor or administrator shall not

make any such monetary distribution to the minor without first applying to the Court for an order authorizing the manner in which the distribution is to be made.

This rule does not apply if the Last Will and Testament provides that the distribution be made in accordance with Ohio Transfers to Minors Act under R.C. 1339.39 et seq., provided, however, that the Court receives documentation that the funds have been deposited in accordance with the Act within 30 days of the deposit.

LAKE COUNTY RULE 91. Fiduciary's Bond.

Rule 91.1

The executor, administrator or trustee will be required to give a bond even if the bond is requested to be dispensed with by the provision of a will or trust, if a showing is made that a bond is necessary to protect creditors or beneficiaries.

Bond is required for all out-of-state executors.

LAKE COUNTY RULE 92. Adoption Policy.

Rule 92.1

In all cases of adoption, the child to be adopted must be present in open court and the exact age must be stated in the application. The Court will hear no application for adoption until after an examination of the home of the applicant(s) and an investigation as to their character(s) has been made by a party appointed by the Court.

If the child is in the custody of a person other than the parties to the adoption proceedings and the person is not entitled to notice by law, reasonable notice nevertheless shall be given to the person regarding the pendency of the application.

LAKE COUNTY RULE 92. Mediation.

Rule 93.1

Cases will be referred to mediation in one of two ways: (1) voluntary referral by motion of all parties; or (2) selection by the Judge of this Court. Participation in mediation is voluntary unless referred by the Court, but the Court may not require that settlement be reached. A mediator will be assigned by the Court to conduct the mediation and submit an agreement or report within sixty (60) days. Statements made during a mediation conference do not constitute admissions against interest, and cannot be used as evidence or for impeachment in any subsequent proceeding. If a final agreement is reached, that agreement may be filed under seal to preserve confidentiality, provided that the parties request that the agreement be sealed and the Court approves.

Upon good cause shown, the Court may grant exception to the foregoing Local Rules of Practice depending upon the circumstances presented in a particular case