

**RULES OF PRACTICE  
OF THE PROBATE COURT  
LAKE COUNTY, OHIO**

<b>IN THE MATTER OF RULES OF COURT</b>	)	
<b>FOR THE COMMON PLEAS COURT</b>	)	<b>DOCKET 8 PAGE 314</b>
<b>DIVISION OF PROBATE</b>	)	
<b>OF LAKE COUNTY, OHIO</b>	)	<b>JOURNAL ENTRY</b>

Pursuant to Sup.R. 5 and for good cause shown, to-wit: The expeditious, orderly and fair operation of the court, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Rules of the Probate Court of Lake County, Ohio, adopted March 19, 2003, including any subsequent revisions, amendments and/or supplements, are hereby repealed, and the following are adopted this 7<sup>th</sup> day of May 2007 as the Rules of Practice of the Court of Common Pleas, Probate Division of Lake County, Ohio. For good cause shown, the court may grant exception to the Rules of Probate Court of Lake County, Ohio, should the circumstances warrant in any particular case.

These Rules supplement the Rules of Superintendence for the Court of Common Pleas, in particular, the rules applicable to the Probate Division, Rules 50 through 90. Each Lake County Rule corresponding with a Rule of Superintendence incorporates the number of the rule to which it corresponds.

**LAKE COUNTY RULE 8. Court Appointments.**

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 Rule 1.5 of the Ohio Rules of Professional Conduct, the Ohio Revised Code and the Local Rules of Court relating to fees.

**LAKE COUNTY RULE 11. Recording of Proceedings.**

**Rule 11. Court Reporters/Audiotape Recording.**

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 written request of a party. Said request shall be made in writing at least three (3) days prior to the commencement of the proceeding. The court will release the audiotape to a court reporter for transcription at the expense of the party requesting a transcript of the proceeding in writing.

All hearings before a magistrate shall be recorded by audiotape or other electronic or digital means in the court's discretion.

The court shall maintain all electronically or digitally recorded proceedings for two years from the date of hearing. All currently existing audiotapes or digital recordings will be maintained for two years from the adoption of this Rule. Any interested person desiring to preserve the record beyond the two year period must make arrangements to have the record transcribed.

An interested party shall not be permitted to use the contents of a recording in subsequent pleadings or in argument before the court unless a transcript of the entire hearing is filed with the court. A transcript filed with the court shall supersede the digital or electronic recording as the official record of the court.

**LAKE COUNTY Rule 12. Broadcasting/Photographing Proceedings.**

The court hereby adopts Sup.R. 12, and any amendments thereto, in its entirety, regarding the conditions for broadcasting and photographing court proceedings. All requests for permission for the broadcasting, televising, recording, or photographing in the courtroom shall be in writing and shall be made part of the record of the proceedings. The Court Administrator and Chief Deputy Clerk of the Lake County Probate Court is designated the court's representative for media contact.

**LAKE COUNTY RULE 53. Hours of the Court.**

The court and its offices shall be open for the transaction of business from 8:00 a.m. to 4:30 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 56. 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 with the signature of the client and must (1) contain the reason for the request; (2) be accompanied by a stamped, self-addressed envelope and a judgment entry leaving the time and date blank for the court to set a new date; and (3) be personally signed by the fiduciary. No continuance shall be granted in the absence of proof of reasonable notice or consent by, the adverse party or the party's counsel. Failure to object to the continuance within a reasonable time after receiving notice shall be considered consent to the continuance.

**LAKE COUNTY RULE 57. Filings and Judgment Entries.**

**Rule 57.1. In General.**

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.

**[Reserved for Rule 57.2. Electronic Filing.]**

**Rule 57.3 Facsimile Filing.**

The Probate Court does not accept documents sent via facsimile. Documents received by facsimile will not be filed or entered onto the docket. Facsimile transmissions will be accepted in case of emergencies.

**LAKE COUNTY RULE 58. Deposit for Court Costs.**

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.**

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. Appraiser Shall Be Independent and Disinterested.**

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.

### **Rule 61.3. Auditor's Evaluation.**

A fiduciary may name an appraiser or request the court to name an appraiser to appraise an asset of the estate that does not have a readily ascertainable value. An appraiser requested by a fiduciary must be independent and disinterested as set forth in Rule 61.1. If a fiduciary requests an appraiser, the request may, in the court's discretion, to be set for hearing.

The fiduciary may request the court to accept the Auditor's valuation for real property. The fiduciary and all next of kin or beneficiaries must sign written consent to

the use of the Auditor's evaluation. Notwithstanding such request, the Court may order a formal appraisal of the real property.

**LAKE COUNTY RULE 62. Insolvency Proceedings.**

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 63. Application to Sell Personalty.**

An application to sell personal property shall include an adequate description of the property. Except for good cause shown, an order of sale shall not be granted prior to the filing of the inventory.

**LAKE COUNTY RULE 64. Accounts.**

**Rule 64.1. When Due.**

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

**Rule 64.2. Vouchers.**

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. Citations.**

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 65. Land Sales.**



In all land sale proceedings, the plaintiff, prior to the issuance of an order finding the sale necessary, shall file with the court evidence of title showing the record condition of the title to the premises described in the complaint and prepared by a title company licensed by the state of Ohio, an attorney's certificate, or other evidence of title satisfactory to the court.

A Judicial Report is required to be filed in all land appropriation cases pursuant to R.C. 163 and all land sale proceedings pursuant to R.C. 2127.

### **LAKE COUNTY RULE 66. Guardianships.**

#### **Rule 66.1. Minors.**

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. Annual Report.**

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

#### **Rule 66.3. Depositing of Ward's Will.**

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. Fees from Indigent Guardianship Fund.**

Attorney and guardian fees paid from the court's indigent guardianship fund shall be no more than \$50 per hour for a maximum fee of \$800 per year. All requests for fees in addition to this amount shall be made by the filing of an application for extraordinary fees. Such applications may or may not be set for hearing, depending on the circumstances.

**Rule 66.5. Notification of Ward's Death.**

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 and attorney and/or a disallowance of guardian and/or attorney fees.

**Rule 66.6. Visitation with Ward.**

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. The court also has established a volunteer visitor program and/or an internship program to visit wards every other month. After his or her visit, a visitor's report shall be filed with the court.

**Rule 66.7. Right to Vote.**

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.**

Where a minor is entitled to funds less than \$10,000, those funds are to be deposited in a restricted account in lieu of bond for the benefit of the minor until the minor reaches the age of eighteen (18) or upon further order of the court. 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 prior to the age of eighteen (18) 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:
  - (1) A.M. Best Company: A++, A+, or A.
  - (2) Moody's Investors Service (financial strength): Aaa, Aa1, or Aa2.
  - (3) 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 69. Settlement of Claims of or Against Adult Wards.**

An application for settlement of a claim in favor of or against an adult ward shall be brought by the guardian of the estate. The application for settlement of an injury claim shall be accompanied by a current statement of the examining physician describing the injuries sustained, the extent of recovery from those injuries, and permanency of any injuries. Counsel fees shall be subject to approval by the court.

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

Any wrongful death trust created under the authority of R.C. 2125.03(A)(2) shall contain a provision requiring bond pursuant to R.C. 2109.04 or deposit of the funds in lieu of bond pursuant to R.C. 2109.13. An application for court approval of any expenditure shall be made prior to the expenditure of funds.

## **LAKE COUNTY RULE 71. Counsel Fees.**

### **Rule 71.1. Contingency Fees.**

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. Ordinary Fees.**

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 court will review attorney fees based on the factors set forth in Rule

1.5 of the Ohio Rules of Professional Conduct. 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 a 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

On the gross proceeds of real estate sold in a land sale proceeding:

2%

- (B) Transfer of real property by application, court order and certificate of transfer, to the heirs:

1% of the value of the real property

- (C) On the gross amount of money paid for real estate by the surviving spouse, purchasing at appraised value: 2%

- (D) Completion of a land contract but not on any uncompleted contract of sale made by the decedent:

2%

- (E) Legal services provided for administering nonprobate assets of the estate:

1%

When due to special circumstances, the fees previously described will not result in fair and reasonable compensation, the court requires an application for allowance of extraordinary compensation.

If the attorney or member of the attorney's firm is the fiduciary, a hearing may be scheduled 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.

**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. Itemization of Attorney Fees.**

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. Consent to Fees.**

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 if they are ordinary fees in compliance with Local Rule 71.2, provided the consent is endorsed on the fiduciary account. If the attorney fees are in excess of the guidelines set forth in Local Rule 71.2, an application shall be filed with the court unless the residuary legatees and devisees consent in writing by separate instrument filed with the court, evidencing that the consent is knowingly made. The separate instrument shall state the fact that the attorney fees are in excess of the guidelines set forth in Local Rule 71.2(A), the reason for the extraordinary attorney fees, and the amount of the attorney fees requested.

A hearing is mandatory when exceptions to an application for fees or to an accounting based on fees are filed.

**Rule 71.7. Deferment of Fees in Guardianships/Trusts.**

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 Commissions.**

Executors and administrators may receive compensation in conformity with the Ohio Revised Code 2113.35. 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. Ordinary and Extraordinary Services.**

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

- (A) 4% on all amounts received and 4% on all amounts paid out during accounting periods on sums not exceeding \$100,000;
- (B) 3% on all amounts received and 3% 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.

**Rule 73.2 Payment from Indigent Fund.**

Attorney and guardian fees paid from the court's indigent guardianship fund shall be no more than \$50 per hour for a maximum fee of \$800 per case for a period of one year. All requests for fees in addition to this amount shall be made by the filing of an application for extraordinary fees. Such applications may or may not be set for hearing, depending on the circumstances of the request.

**LAKE COUNTY RULE 74. Trustee's Compensation.**



- (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) An application for allowance of ordinary and extraordinary trustee's compensation shall be submitted to the court for approval with the annual trustee's account. The application required by Sup.R. 74(B) for the payment of extraordinary fees shall set forth an itemized statement of the services performed, the date services were performed, the time spent in rendering the services, and the rate charged per hour. The court may require that the application be set for hearing with notice given to interested parties in accordance with Civ.R 73(E). Trustee's compensation of an ordinary or extraordinary nature shall not be paid from the trust estate until the application has been approved by judgment entry.

(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 75. Local Rules.**

The local rules shall be numbered to correspond with the numbers of the Rules of Superintendence.

**LAKE COUNTY RULE 76. Exception to the Rules.**

The court may grant exception to the local rules for good cause shown.

**LAKE COUNTY RULE 77. Compliance.**

Failure to comply with these rules may result in sanctions as the court may direct.

**LAKE COUNTY RULE 78. Case Management.**

**Rule 78.1 Notice and Summons.**

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 with the signature of the client and must (1) contain the reason for the request; (2) be accompanied by a stamped, self-addressed envelope and a judgment entry leaving the time and date blank for the court to set a new date; and (3) be personally signed by the fiduciary. No continuance shall be granted in the absence of proof of reasonable notice of, or consent by, the adverse party or the party's counsel. Failure to object to the continuance within a reasonable time after receiving notice shall be considered consent to the continuance.

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.

**Rule 78.5. Procedure.**

After a suit has been filed and the answers of the defendants have been filed, the court will issue a judgment entry setting forth the rules of procedure to effectuate the most economical and efficient use of the court's time during trial and to speed the case to conclusion. The judgment entry shall state the rules relating to pretrial procedure, expert witnesses, pretrial conferences, trial procedures and settlement of cases. The judgment entry is incorporated by reference and made a part herein.

**Rule 78.6. Pretrial Conferences.**

The Probate Court through the Assignment Commissioner will schedule one pretrial conference before the court, or a magistrate appointed by the court, with counsel for the parties and the parties. At the pretrial conferences, unless otherwise notified, both counsel and the parties must be present, except that parties not within the jurisdiction of the court **may** be excused if the party is available by telephone. At the pretrial, the court will issue a pretrial order setting forth the requirements to be followed prior to and during trial and set the matter for trial on a date certain. The parties have the option to mediate cases if both parties agree. The request for mediation must be made within thirty (30) days of the pretrial conference. An attorney may be considered as mediator.

**LAKE COUNTY RULES 89 TO 93 [Reserved for Rules of Superintendence.]****LAKE COUNTY RULE 94. Inventories.****Rule 94.1. Citations.**

If inventories, or other necessary proceedings, 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 Local Rule 78.3.

**Rule 94.2. Motion to Correct Inventory.**

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 94.3. Notice of Filing of Inventory.**

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 95. Distributions to Minors.**

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 96. Fiduciary's Bond.**

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 97. Adoption Policy.**

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 98. Mediation.**

In order to promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution of court cases in Lake County, Ohio, the following procedures shall be effective on May 7, 2007. The court incorporates by reference the "Uniform Mediation Act" (UMA), R.C. Chapter 2710.

**(A) Cases Referred to Mediation.**

(1) Cases will be referred to mediation in one of two ways: (a) by a joint motion to mediate or stipulation signed by all parties; or (b) selection by the judge of this court for referral.

(2) Participation in mediation is voluntary unless referred by the court. If the case is referred by the court, the parties are not required to reach a settlement of the case.

(3) Exceptions to a judgment entry referring a case to mediation shall be made by a motion filed within ten (10) days of such order.

(4) A case is referred to mediation on the date when the judge of this court issues a judgment entry. Referral of a case to mediation shall not operate as a stay of proceedings, and is not justification for discontinuing any remaining discovery and preparation, which may continue through the mediation process in accordance with the applicable rules, unless otherwise agreed upon by the parties and ordered by the court.

(5) A mediator will be assigned by the court, or agreed to by the parties, to conduct the mediation within sixty (60) days of the date of the judgment entry ordering the case to mediation.

**(B) Attendance of Interested Parties.**

(1) The following persons are considered interested parties to the mediation and shall physically attend the mediation session:

- (a) in a guardianship case, the applicants for guardianship and the known next-of-kin;
- (b) all individual parties; or an officer, director, or employee having full authority to settle the claim for a corporate party; or in the case of a



governmental entity or agency, a representative with full authority to negotiate on behalf of the entity or agency and to recommend settlement to the appropriate decision making body;

- (c) the party's counsel primarily responsible for handling of the matter, if any; and
- (d) a representative of the insurance carrier for any insured party who has full authority to settle without further consultation.

**(C) Mediation Proceeding.**

(1) The mediation shall be held at a place agreed to by the parties. The parties also may make use of the court's additional hearing room on the Second Floor of the West Annex of the Lake County Courthouse.

(2) The mediator shall fix a time for the mediation to occur not more than sixty (60) days after the referral to mediation and shall notify the parties, or their counsel, in writing, at least ten (10) days before the mediation, of the time and place of the mediation.

(3) Counsel or the mediator shall promptly notify the Lake County Probate court in the event of a case settlement or dismissal occurring prior to the mediation.

(4) The mediator's actions shall not be construed as giving legal advice.

(5) If, for any reason, the parties wish to seek a continuation of the mediation of the case, the party seeking the continuation shall make all necessary arrangements for the continuance, including written permission from the opposing counsel and the court. The party shall select a new date convenient to the mediator, all counsel, and all parties required to attend.

(6) The parties shall participate in the mediation in good faith and cooperate in all matters pertaining to the mediation. Along with face-to-face sessions, the mediation

process shall provide an opportunity for the parties and their attorneys to engage in whatever other appropriate steps may be helpful in settling the matters in dispute.

(7) The court may order the parties to return to mediation at any time.

(8) Attorneys may, at their option, or must, if required on a specific case by the judge, submit a “Mediation Case Summary” to the mediator which shall contain the following: (a) summary of material facts; (b) summary of legal issues; (c) status of discovery; (d) settlement attempts to date, including demands and offers.

(9) Immediately upon conclusion of the mediation, the mediator shall submit a report to the court indicating only the status of the mediation, i.e., whether the mediation occurred or was terminated; whether a settlement was reached on some, all, or none of the issues; attendance of the parties; and future mediation sessions, including date and time. In cases in which parties, interested parties, or party representatives having full authority to settle were not present, this shall also be noted in the mediation report. The mediator should not include a summary of the discussions had by the parties.

(10) The mediator, parties or counsel, as agreed by the parties, may immediately prepare a written settlement agreement of an agreement reached by the parties signed by a party or party representative with authority to sign and a by a lawyer representing each party. A party representative who signs a written settlement agreement is presumed to have full authority to bind the party. The written agreement will not be privileged pursuant to R.C. 2710.05(A)(1). No agreements developed in mediation shall be legally binding until reviewed and approved by the parties and their attorneys. In cases in which an agreement is reached, the parties or their attorneys shall submit final judgment entries to the court within fourteen days of the conclusion of the mediation, or

earlier if ordered by the court. If an agreement is not reached, the case shall be returned to the judge of this court.

**(D) Sanctions for Failure to Participate or Attend.**

If any party fails to participate or fails to attend a duly ordered mediation without good cause, the court may impose sanctions, including an award of attorneys' fees and other costs, contempt, or other appropriate sanctions.

**(E) Confidentiality of Mediation.**

(1) All mediation communications related to or made during the mediation process are subject to and governed by the "Uniform Mediation Act" (UMA), R.C. 2710.01 to 2710.10.

(2) The mediation proceedings and discussions shall constitute settlement conferences under the applicable rules of evidence. Nothing said or disclosed during the settlement conferences nor any document produced during settlement conferences that is not otherwise discoverable shall be admissible as evidence or for impeachment or other purposes in any judicial, arbitration, or administrative action.

(3) 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.

(4) No party, person, or entity shall call or subpoena the mediator to testify or produce any notes or documents related to the mediation discussions. If called or subpoenaed, the mediator may refuse to testify or produce notes or documents. Any party, person or entity that attempts to compel such testimony or production will be liable

and shall indemnify the mediator against any liabilities, costs, and expenses, including reasonable attorney's fees which may be incurred in resisting such compulsion.

**(F) Mediator Compensation.**

(1) The mediator shall receive payment in the amount of \$150 per hour.

(2) The parties shall split the fees equally and expenses of the mediation, unless they agree on a different share as part of a mediated settlement, and that the mediator shall be paid no later than thirty (30) days after receipt of the expenses and fees.

(3) The mediator shall not be entitled to receive fees until after filing the report of mediation with this court.

**(G) Mediation Fund.**

(1) A party desiring to mediate the case or a party in a case ordered to mediation may apply by written motion and affidavit to the court, averring that by reason of poverty the party is unable to make the payment for compensation to the mediator required by these rules. The motion shall be filed within seven (7) days after the order of referral to mediation. If the judge is satisfied of the truth of the statements in the affidavit, the mediator's compensation shall be paid from the court's mediation fund.

(2) Funds from the mediation fund may be used for disputes existing in guardianship cases, including, but not limited to, the appointment of a guardian, placement and medical treatment of the ward.

**LAKE COUNTY RULE 99. Change of Address.**

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 RUL 100. Redaction of Personal Information.**

Counsel has the duty to redact certain personal information, including bank account numbers, except for the last four digits, and social security numbers. At the conclusion of a minor settlement hearing, the Court will seal medical records in cases involving personal injuries. The Revised Code also deems adoption, civil commitment and tax documents as confidential and the Court will not release them from court files.

All pro se persons must follow the Local Rules.

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

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**TED KLAMMER, Probate Judge**