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JAN 02 2020

**Harrison County
Juvenile Court**

RULES OF PRACTICE AND PROCEDURE

FOR THE

**COURT OF COMMON PLEAS
PROBATE/JUVENILE DIVISIONS**

OF

HARRISON COUNTY

FILED

JAN 02 2020

**Harrison County
Probate Court**

EFFECTIVE DATE: January 1, 2020

HONORABLE MATTHEW P. PUSKARICH, JUDGE

**HARRISON COUNTY COMMON PLEAS
PROBATE/JUVENILE COURT
100 WEST MARKET STREET
CADIZ, OHIO 43907**

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Pursuant to the authority granted in Article IV section 5(B) of the Constitution of the State of Ohio and the Rules of Superintendence for the Courts of Ohio, it is Ordered that the following be the Rules of Practice and Procedure in the Common Pleas Court – Probate/Juvenile Divisions of Harrison County, Ohio.

RULE 1 COMPLIANCE

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

RULE 2 LOCAL RULES

The Probate/Juvenile Divisions of the Court of Common Pleas may adopt supplementary rules concerning local practice in their respective Courts which are not inconsistent with these rules. Such rules shall be filed with the Supreme Court.

These Rules replace all previous Rules adopted by this Court.

RULE 3 HOURS OF SESSION

The Probate/Juvenile Courts shall be open for the transaction of business from 8:30 A.M. to 4:30 P.M. Monday through Friday each week except on those days designated by law as legal holidays. Such days and hours may be modified by the Judge to meet special circumstances or the exigencies of trial.

RULE 4 CASE MANAGEMENT

The Deputy Clerk of the Probate Court and the Deputy Clerk of the Juvenile Court shall monitor the progress of all cases and shall report directly to the Judge the status of all pending matters before the Court. Legal counsel shall be advised of the status of their cases from time to time, as required by the Judge.

Said respective Deputy Clerks shall keep appropriate records, issue necessary notices and compile required counts of pending cases for reporting purposes to the Supreme Court of Ohio.

In those cases where service has not been made within thirty (30) days of filing upon the party to be served, the Deputy Clerk shall notify Plaintiff's or Movant's counsel. If service has not been accomplished within thirty (30) more days, the Court shall dismiss said action for want of prosecution, subject to refileing.

RULE 5 COURT RECORDS

The Judge, as ex-officio Clerk of Probate and Juvenile Court, is responsible for all pleadings and papers filed.

Attorneys are permitted to withdraw files of this Court only upon signing a receipt for the same at the time of withdrawal and upon the following conditions:

- A. No active files may be withdrawn under any circumstances without the approval of the Judge.
- B. Closed files may be withdrawn, but shall be returned within three (3) business days. The date of removal shall be noted on the receipt signed by the Attorney removing the file.
- C. Any active file withdrawn with permission of the Judge must be returned on or before the next business day.
- D. Attorneys who fail to return files on time may be denied the privilege of this rule.
- E. A citation for Contempt of Court shall be issued against any attorney who fails to return a file, in the condition withdrawn, after notice from the Court to return such file.
- F. Adoption, Juvenile and Mental Illness case files are confidential. Access to these files may be authorized by the Court only and in its discretion.
- G. A Citation for Contempt of Court shall be issued against anyone who divulges or receives confidential information from the Adoption or Mental Illness files without authorization of the Courts.

Copies of all pleadings and journal entries of record shall be available to counsel representing any party to a case.

When a member of the general public requests copies of records or to review records maintained by this Court, the employee shall ask that individual to complete a "Request for Public Record" and submit it to any clerk of the Court. However, a request for documents does not have to be in writing to be considered a formal request (Zauderer vs. Joseph, 62 Ohio App. 3d 752; 577 N.E. 2d 444 (Franklin County)). If the requester will not complete the form, the clerk shall complete the form to the best of her/his knowledge before providing copies of the documents. After a clerk reviews the request, the clerk shall provide said copies within a reasonable time unless the information requested is excluded from public inspection.

The following records or information are excluded from public inspection and shall not be released to the general public.

- A. Adoption records or documents (ORC §149.43(A)(1))
- B. Probation documents including community service, theft diversion and Reach Our Youth documents for children on probation. (ORC §149.43)
- C. Judge's or Magistrate's trial notes (ORC §149.43)
- D. Putative father registry information (ORC §149.43(e))
- E. Records of Minors seeking approval for an abortion (ORC §149.43(A)(1))
- F. DNA records (ORC §149.43(A)(1))
- G. Records maintained by the Department of Youth Services pertaining to children in its custody released to the Department of Rehabilitation and Correction (ORC §149.43(A)(1))
- H. Estate tax returns in the possession of the Probate Court, Department of Taxation, County Auditor, County Treasurer, Attorney General (ORC §5731.90)
- I. Medical Records which include documents pertaining to medical history, diagnosis, prognosis, or medical condition of a patient including psychiatric history, diagnosis and prognosis (ORC §194.43(A)(1) and (3) and §2151.14 and JUV.R. (B))
- J. Confidential Law Enforcement investigatory records which would create a high probability of an information source or witness who was promised confidentiality, specific investigatory work, information that would endanger the life or physical safety of a victim, witness, confidential information source or law enforcement personnel (ORC §149.43(A)(1) and (2)(a)-(d))
- K. Sealed or Expunged records (ORC §2151.358)
- L. Recording of Proceedings or adjudicatory and dispositional proceedings in abuse, neglect, dependent and unruly and delinquent cases, permanent custody cases and proceedings before magistrates. Proceedings include receiving an admission or denial as well as evidentiary hearings. Recordings shall be released at the Judge's discretion (R.JUV.P. 37(B))
- M. Fingerprints and Photographs and records of an arrest or custody that was the basis for taking the photograph or fingerprint (ORC §2151.313(D)(3))

RULE 6 CONDUCT IN THE COURTROOM

Any conduct that interferes or tends to interfere with the proper administration of the Court is prohibited. Spectators shall be allowed in the Courtroom for confidential juvenile and probate cases only with the consent of the Court.

No pagers or mobile phones shall be permitted in the Courtroom unless audible signal is turned off.

Proper attire is required for parties appearing before the Court.

RULE 7 RECORDING OF PROCEEDINGS

All testimony or other oral proceedings shall be recorded by electronic means. Any party may provide a Court reporter at his/her own expense to make a written record from the electric recording of any proceeding before the Court.

RULE 8 BROADCASTING/PHOTOGRAPHING PROCEEDINGS

The Judge may permit the broadcasting or recording by electronic means and the taking of photographs in court proceedings that are open to the public as provided by Ohio law and in conformity with Rule 12 of the Rules of Superintendence of the Courts of Ohio.

Requests for variance from this Rule shall be submitted to the Judge in writing, and the Court's ruling on the request shall be made a part of the record.

The Judge shall specify the place or places in the Courtroom where media representatives are to be seated or positioned.

For recording and broadcast purposes, microphones and other electronic equipment necessary for the audio pickup shall be as inconspicuous as possible, but may be visible.

Arrangements between or among media for "pooling" of equipment shall be the responsibility of the media representatives. "Pooling" arrangements are to be made outside the Courtroom and without imposing on the Judge or Court personnel. If disputes arise over arrangements between or among media representatives, the Judge may exclude all contesting representatives from the proceedings.

The Judge may prohibit the use of electronic or photographic equipment that produces distracting sound or light. No artificial lighting other than that normally used in the Courtroom shall be employed.

To the extent practicable, media representatives shall be afforded a clear view of the proceedings, but shall not be permitted to move about in the Courtroom during proceedings from the places where they have been positioned by the Judge, except to leave or enter the Courtroom. Provided, however, that

once proceedings have commenced, the Judge may restrict media representatives from leaving or entering the Courtroom until an appropriate break in the proceedings is recognized by the Court.

There shall be no audio pickup or broadcast of conferences conducted in a Court facility between attorneys and clients or of conferences conducted at the Bench between counsel and the Judge.

Media representatives shall not be permitted to transmit or record anything other than the Court proceedings from the Courtroom while the Court is in session.

The Judge shall inform Jurors, Victims, and Witnesses of their right to object to being filmed, videotaped, recorded or photographed, and media representatives shall honor any such objection. This Rule shall apply not only in the Courtroom but also within the Court facility and grounds.

Any violation of this Rule by a media representative may result in exclusion of that media representative and media source from further proceedings; confiscation of the media equipment then being utilized by the representative pending conclusion of the proceedings and further Hearing; and such other sanctions as the Court may deem appropriate for contempt.

This Rule shall not be construed to grant media representatives any lesser or greater rights than permitted by law.

RULE 9 COURT APPOINTED COUNSEL

The Court shall maintain a list of appointees qualified to serve in the capacity designated by the Court. Any attorney licensed to practice in the State of Ohio may submit his/her name for inclusion on the appointment list. The Court may consider the skill and expertise of the appointee in the designated area of the appointment and the management by the appointee or his or her current caseload.

An attorney appointed by the Court to provide legal representation for an indigent shall be compensated, pursuant to law and a schedule adopted by the Board of Harrison County Commissioners. The reasonableness and award of such fees is left to the Court's discretion.

Fees and expenses for representation shall be submitted to the Court on the forms established by the Office of the Ohio Public Defender within 30 days of the final disposition. Applications for fees, which are greater than the maximum allowed by the Harrison County Fee Schedule for Assigned Counsel, must be accompanied by a Motion for Extraordinary Fees and a Judgment Entry.

Attorney fees relative to all matters shall be governed by the Code of Professional Responsibility, DR. 2-106.

A. Attorney fees may be allowed if there is a written application which sets forth the amount requested and will be awarded without hearing, provided the proper supporting documentation has been filed with the Court.

B. The Court does not have, nor is there recognized, any minimum or maximum fees which will automatically be approved by the Court except as listed as follows:

1. All in-court and out-of-court services shall be billed at \$75.00 per hour.
2. The prescribed maximum fees permitted in juvenile court proceedings are as follows:
 - a. Aggravated Murder (with specifications) will be set by Capital Fee Counsel R.C. §120,33(D)
 - b. Aggravated Murder per R.C. §2929.04(A) and R.C. §2941.14(B) is set at a rate of \$125 per hour with no fee maximum.
 - c. Aggravated Murder without specifications: \$7,500 for one attorney or \$12,500 for two attorneys
 - d. Murder - \$6000.00
 - e. Felony Adjudication (1st and 2nd Degrees) - \$5,000.
 - f. Felony Adjudication (3rd, 4th, and 5th Degrees) \$3,500.
 - g. Misdemeanor OVI/BAC - \$2,500.
 - h. Misdemeanor - \$2,000.
 - i. Traffic - \$300.
 - j. Objections - \$750.
 - k. Unruly - \$1,000.
 - l. Bindover – Mandatory - \$750 for one attorney or \$1,200 for two attorneys
 - m. Bindover – Discretionary - \$2,000 for one attorney or \$3,000 for two attorneys
 - n. Reverse Bindover Amenability - \$1,500.
 - o. Serious Youthful Offender – Adult degree plus 50% for two attorneys.
 - p. Serious Youthful Offender Invocation - \$2,000 for one attorney or \$3,000 for two attorneys.
 - q. Adult in Juvenile Court - \$1,500.
 - r. Violation (Probation/Community Control) - \$750.
 - s. Violation of a Valid Court Order - \$750.

- t. Violation (Parole/Supervised Release) - \$750.
- u. Abuse, Neglect, and/or Dependency – Initial Custody - \$1,500.
- v. Abuse, Neglect, and/or Dependency – Annual after Custody – \$1,500.
- w. Abuse, Neglect, and/or Dependency – Permanent Custody - \$2,500.
- x. Contempt of Court - \$500.
- y. Purge Hearing - \$150.
- z. Sex Offender Classification/Reclassification/Declassification - \$750.
- aa. Expungement - \$300.
- bb. Appellate counsel shall have a maximum rate of \$125 per hour for in and out-of-court services with a maximum of \$2,500 or as set by the 7th District Court of Appeals.
- cc. Other - \$750.

RULE 10 COUNSEL OF RECORD

Each attorney representing a party in this Court and who is not Court-appointed shall see that he or she is properly listed as counsel of record for said party in accordance with JuvR 4(D) by filing a written notice with the Court. Failure to so notify the Clerk shall be deemed a waiver of any notice required under these Court rules. The Attorney may also appear personally at a Court hearing and inform the Court of said representation.

The Court will not consider such representation to continue for the purpose of any case other than the particular case in which appearance is entered, unless otherwise notified in writing.

Subsequent to entering an appearance, the attorney or his or her firm will be considered counsel of record until such time as Journal Entry of withdrawal is approved by the Court and filed in the case.

RULE 11 LEAVE OF COUNSEL REQUIRED:

Counsel for any party shall be permitted by the Court to withdraw from an action in all cases where he is obligated to withdraw under Disciplinary Rule 2 - 110 of the Ohio Code of Professional Responsibility.

The Court may also permit counsel to withdraw when withdrawal is permitted under Disciplinary Rule 2 - 110.

PROCEDURE:

(1) When counsel's client consents to counsel's withdrawal, counsel shall file with the Court a written Motion to Withdraw, together with an entry and appearance of substitute counsel. The Court need not allow a continuance of the matter because counsel has been substituted.

(2) In all other cases counsel shall file a written Motion to Withdraw with the Court and counsel shall send written notice to the client of the time, date, and place of the hearing of the Motion by certified mail, return receipt requested. A copy of said notice shall be attached to the Motion. In the event that counsel is unable to locate his client, he shall submit with his Motion a statement as to his efforts to communicate with his client.

(3) If the Motion is granted, counsel shall notify his client of his withdrawal by sending a copy of the Entry by certified mail, return receipt requested, at the client's last known address. A copy of the Entry permitting withdrawal shall be filed and docketed by the Clerk, with a copy provided to the Assignment Commissioner and all other counsel of record of parties unrepresented by Counsel.

RULE 12 COMMUNICATIONS WITH JUDGE AND MAGISTRATE

A. Ex parte Communications. No attorney or party shall discuss the merits either orally or in writing, of any litigation with the Judge or Magistrate presiding over the matter before final disposition thereof without the presence of or by mailing or delivering a copy of any writing to opposing counsel or the party, if not represented.

B. Attorney Conferences. If it is determined that an issue in a pending action needs to be discussed with the Judge or Magistrate prior to hearing or disposition of the action, the attorney desiring said conference may, with notice to opposing counsel, request a conference with the Judge or Magistrate.

RULE 13 MEDIATION

Appropriate cases may, upon completion of necessary pleadings or motions, be referred by the Judge to a mediator for a mediation conference:

The mediation conference shall be set at the earliest practical date in light of the pleadings, appearances by counsel for all parties, and other facts and circumstances.

A reference to mediation shall be by Notice of Conference which shall set the time and place of the conference. A mediation conference may be set immediately prior to a scheduled hearing on a preliminary motion, if the preliminary motion is referred to a magistrate.

At the mediation conference, the mediator shall try to settle the entire case. The mediator may schedule, recess, or continue the conference; order monies held in trust by the Clerk of Court; conduct a view of the scene, if applicable; recommend orders to the Trial Judge for approval; and exercise such other powers as are necessary and proper for the mediation of cases.

Statements made during a mediation conference are subject to Evidence Rule 408.

RULE 14 JURY SERVICE

Jury Service is a duty of all qualified citizens and shall not be denied or limited, in any way, on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, or any other factor that discriminates against a cognizable group within the jurisdiction of this Court.

The names of potential Jurors shall be drawn from a Jury source list compiled from the poll list of registered voters obtained from the Board of Elections and may be obtained from the Ohio BMV list of Harrison County residents who hold a driver's license. The Jury source list shall be representative and shall be as inclusive of the adult population of Harrison County as is feasible. This Court shall review the Jury source list annually. Should the Court determine, upon review, that the Jury source list is not sufficiently representative and inclusive of the adult population of Harrison County, the Court shall direct appropriate corrective action.

Except as otherwise provided, selection of prospective Jurors from the Jury source list, summoning them for service, assigning them to panels, and calling them for voir dire shall be conducted in a random manner, either manual or automatic, so that every person listed has an equal probability of selection. The method utilized shall be documented by the Clerk of Courts. However, departure from random selection shall be appropriate under the following circumstances:

- (A) To exclude persons ineligible for service in accordance with these rules;
- (B) To remove prospective Jurors for cause or if challenged

- peremptorily;
- (C) To provide all prospective Jurors with an opportunity to be called for Jury Service and to be assigned to a panel;

All persons on the Jury source list shall be eligible for service except:

- (A) Persons under the age of 18 years;
- (B) Persons who are not U.S. citizens;
- (C) Persons who are not residents of Harrison County;
- (D) Persons who are not fluent in the English language; and
- (E) Convicted felons who have not had their civil rights restored.

Persons summoned for petit Jury service shall remain on a panel until:

- (A) Their services are no longer deemed necessary by the Court;
- (B) The term of Court has ended;
- (C) Said Juror has been summoned and has reported for service two (2) times without serving;
- (D) Said Juror has served at least two (2) consecutive Trial days in one (1) Trial; or
- (E) Said Juror has served a total of two (2) or more Trial days regardless of the number of Trials.

All Persons on the Jury source list shall be exempt, excused or deferred from Jury Service, in the discretion of the Court or the Jury Commissioners or their authorized representative. Request for exemption, excuse, or deferral of service shall be made in writing.

Exemptions from Jury Service are as follows:

- (A) Over the age of 70, or physically unable to serve, and has made a request to be exempted;
- (B) Death of a spouse or near relative or serious personal or family illness supported by a physician's certificate of inability to serve;
- (C) The Juror is necessarily absent from the County and will not return in time to serve;
- (D) Cloistered members of a religious organization;
- (E) The Juror previously has been called as a Juror for Trial in a Court of Record in the County within the same Jury year;
- (F) The interest of the public or of the Juror will be materially injured by the Juror's attendance.

Persons on the Jury source list may be temporarily excused for a specified Trial or deferred a specific period of time by the Court, Juror Commissioners and/or their authorized representative, as follows:

- (A) The Juror will be necessarily absent from the County on a temporary basis and will not return in time to serve;
- (B) The Juror is a full time student at a bona fide educational institution and has requested to be excused;
- (C) The Juror will be on vacation during the period of their respective Jury service.

Voir dire examination shall be limited to matters relevant to determining whether to remove a Juror for cause and to determine the Juror's fairness and impartiality. Juror questionnaires may be submitted by the attorneys, with the approval of the Court, and may be ordered by the court on an individual case basis.

Upon Motion or **Sua Sponte**, if the Court determines during the Jury Selection process that a prospective Juror is unable or unwilling to hear the matter fairly and impartially, the Court shall excuse that person for cause.

The exercise of peremptory challenges shall be governed by the law of the State of Ohio.

During the voir dire examination, counsel shall not argue their case in any manner; nor shall they engage in efforts to indoctrinate the Jurors; nor shall they ask questions concerning anticipated instructions or theories of law, except for general questioning on the validity and philosophy of the burden of proof and presumption of innocence; Jurors shall not be asked what kind of Verdict they would return under any circumstances. Questions that may be put to the panel of the prospective Jurors as a whole must be asked in that fashion.

The responsibility for administering the Jury System shall be vested in a Court Administrator acting under the supervision of the Administrative Judge and in conjunction with the Jury Commissioners. Pursuant to the above authorization, the Court Administrator shall issue the notice summoning prospective Jurors, Juror Questionnaires, and written requests for exemption, excuse or deferral, which documents shall be in a form approved by the Court and delivered by ordinary mail with readily understandable explanations for completion of the forms, return of the forms, and the consequences for failure to do so. Said explanation shall clearly advise each prospective Juror of their right to request an **in-camera hearing** to determine whether their legitimate private interests warrant non-disclosure of their written responses in their Questionnaires. Any person

summoned for Jury service who fails to appear without exemption, excuse, or deferral shall be summoned to show cause as to why that person should not be held in contempt.

The Court shall collect and analyze information regarding the performance of the Jury System on an annual basis, but not later than December of each calendar year, in order to evaluate:

- (A) Whether the Jury source list is representative and inclusive;
- (B) The effectiveness of the qualification and summoning procedures;
- (C) The responsiveness of individual citizens to Jury duty summons;
- (D) The efficient use of Jurors;
- (E) The cost effectiveness of the Jury Management System.

The Court shall utilize the service of Jurors in such a manner as to achieve optimum use and minimum inconvenience. To that end, the Court shall determine the minimum number of prospective Jurors necessary to accommodate Trial activity. Until a prospective Juror has been selected by the Court to participate in a Trial activity, the information contained in the Juror Questionnaires shall not be subject to release to the public, since the presumption of openness does not apply until the minimum number of Jurors needed to accommodate the prospective Trial has been Ordered by the Court.

The Court shall provide an adequate and suitable environment for Jurors. Clear directions for the time, place, and manner of checking in and information on parking shall be given to prospective Jurors in advance. The Jury deliberation room shall include space, furnishings and facilities conducive to reaching a fair verdict. The safety and security of the deliberation room shall be insured. To the extent feasible, Jury facilities and procedures shall minimize contact between the Jurors, parties, witnesses, counsel and the public.

Persons called for Jury duty shall receive a reasonable fee for their services and expenses in accord with ORC §2313.34 and appropriate resolution of the Board of County Commissioners of Harrison County, Ohio. Such fee shall be promptly paid.

In accord with ORC §2313.18, employers shall be prohibited from discharging, laying off, denying advancement opportunities to or otherwise penalizing the employees who miss work because of Jury service. Whoever violates ORC §2313.18 and/or any provision of this Local Rule shall be punished as and for Contempt of Court pursuant to Chapter 2705 of the Revised Code.

The Court shall be responsible for providing instructions that are readily understood by individuals unfamiliar with the law and the legal system to prospective Jurors appearing pursuant to summons. The Trial Judge shall:

- (A) Provide preliminary instructions to all prospective Jurors;
- (B) Provide instructions at the commencement of voir dire and/or immediately following the empanelling of the Jury to explain the Jurors' role, the Trial procedure, the nature of evidence and its evaluation, the issues to be addressed and basic legal principles; and
- (C) Provide instructions, prior to deliberations, on the law, procedures that the Jury must follow in deliberating, and the method for reporting the results of deliberation.

At the conclusion of the Trial, after the Jury has completed its service, the Trial Judge shall:

- (A) Advise the Jurors that they no longer have a duty of confidentiality;
- (B) Advise the Jurors as to their rights with respect to inquiries from counsel, the press, or others;
- (C) Advise the Jurors as to whether they are discharged from service or whether they will be required to report at another time;
- (D) Advise the Jurors that their service is appreciated;
- (E) Not express approval or disapproval of the result of the Jury's deliberation; and
- (F) Dismiss the Jury.

All communication between the Trial judge and the Jurors, from the time prospective Jurors report to the courtroom until the Jury is dismissed, shall be either in writing or on the record. The parties shall be advised of such communications and shall be given an opportunity to be heard.

A Jury shall be sequestered only for good cause. Good cause includes insulating members of a Jury from improper information or influence. The Trial Judge shall have discretion to sequester a Jury on motion or **sua sponte** and shall have the responsibility to set and manage the conditions of sequestration in order to achieve the purpose and to minimize the inconvenience and discomfort of Jurors. Court personnel shall be given training as to escorting and assisting Jurors during sequestration.

RULE 15 AUTHORITY OF PROBATION OFFICERS

Juvenile Probation Officers of the Harrison County Common Pleas Court, Juvenile Division, shall be and hereby are vested with power and authority, prior to a detention hearing, to release a child from detention or shelter care, and to place him in house arrest with his parent, guardian or custodian, or other person able to provide supervisory care and able to return the child to Court when required.

Juvenile Probation Officers of the Harrison County Common Pleas Court, Juvenile Division, shall be and hereby are vested with power and authority, prior to a detention hearing, to shift a child from detention to shelter care, and from shelter care to detention.

Juvenile Probation Officers of the Harrison County Common Pleas Court, Juvenile Division, shall, upon each exercise of the above granted power and authority, make a written notation of the time and exercise thereof, and shall thereafter append the same with any file, case, or other documents relating to the child, or shall deliver the same to the Judge, as may be appropriate.

Juvenile Probation Officers of the Harrison County Common Pleas Court, Juvenile Division, shall not be required to deliver any written notation or notification thereof, prior to a detention hearing, to any other person or authority, to secure a child's release from detention or shelter care, or to shift a child from detention to shelter care, or from shelter care to detention.

RULE 16 COURT SECURITY PLAN

Pursuant to C.P. Sup R.9(D), the court establishes as follows:

- A. Together with the General Division, this Court shall appoint a "Local Security Advisory Committee" (consisting of at least one representative of the following groups in Harrison County: the judges, law enforcement agency responsible for courthouse security, funding authority, local Bar Association, and the community as deemed appropriate by the Court);
- B. The Courts shall develop and implement a local "Security Policy and Procedure Plan" that will address the Ohio Court Security Standards adopted by the Supreme Court of Ohio on October 17, 1994.
- C. The "Local Security Advisory Committee" shall as soon as practicable adopt a Security Operations Manual which shall create

written directives for the purpose of insuring security within the Court while preserving accessibility to the public.

RULE 17 PARENTING TIME SCHEDULE

Pursuant to ORC §3109.051(F)(2), this Court adopts as a standard minimum parenting time schedule as set forth hereinafter as Appendix “D & E”. Said guidelines may be modified as appropriate upon hearing in conformity with O.R.C. §3109.051(D).

RULE 18 SPECIAL PROJECTS

Pursuant to ORC §2303.201(E)(1), the Court determines that for its efficient operation, additional fees are necessary to acquire and pay for Special Projects of the Court that are permitted by the statute.

Therefore, effective October 3, 2005, it is Ordered that the Deputy Clerk of Juvenile Court is authorized and directed to charge as court costs a fee of \$5.00 per case or filing for the Special Projects Fund for the Court of Common Pleas, Juvenile Division for all cases and post-judgment motions including, but not limited to delinquency, unruly, juvenile traffic offense, juvenile tobacco offender, domestic relations case or motion, contributing, paternity and other civil causes of action.

RULE 19 JUVENILE COURT COSTS AND DEPOSITS

All traffic cases	\$58.00
Application for Court Appointed Counsel	\$25.00
Delinquency and Unruly Cases	\$81.00
Felony Delinquency Cases	\$125.00
New Agreed Custody Cases	\$50.00
Complaints (Parentage/Custody/Visitation)	\$100.00
Objection to Admin. Order of CSEA	\$100.00
Motions on Open Cases	\$25.00
Motions to Reopen Cases	\$50.00
Miscellaneous Fees:	

Foreign Judgments:	\$35.00
Certified Mail	\$ 7.00
Certified Copy:	\$ 2.00
Copy, each page	\$ 0.25

RULE 20 ATTORNEY REGISTRATION NUMBER

Effective January 1, 1992, every attorney at law licensed to practice law in this state shall include his Ohio Supreme Court registration number on all documents filed in this Court.

RULE 21 FILINGS AND JUDGMENT ENTRIES

A. All filings, (except wills), shall be on eight and one-half by eleven inch paper, without backings, of stock that can be microfilmed.

B. All papers filed shall contain the name, address and telephone number of the individual counsel representing the fiduciary and, in the absence of counsel, the name, address and telephone number of the fiduciary. Any paper not containing the above requirements may be refused for filing by the Court.

C. Failure of the fiduciary to notify the Court of his current address shall be grounds for removal.

D. Papers containing partially or wholly illegible signatures of counsel, parties or officers administration oaths may be refused for filing, or, if filed, may be stricken from the files, unless the typewritten or printed name of the person whose signature is purported to appear is clearly indicated thereon.

E. All pleadings are to be typed or printed and correctly captioned.

F. Briefs shall be less than fifteen pages unless written permission is granted by the Court. All unreported cases cited in the brief must be attached and is not counted toward the fifteen page maximum limit.

G. The use and filing of a ticket that is produced by computer or other electronic means is hereby authorized in the Harrison County Common Pleas Court – Juvenile Division. The electronically produced ticket shall conform in all substantive respects to the Ohio Uniform Traffic Ticket. If an electronically produced ticket is issued at the scene of an alleged offense, the issuing officer shall provide the youth with a paper copy of the ticket.

RULE 22 JUDGMENT ENTRIES AND ORDERS

In all juvenile traffic offender, delinquency, unruly, dependency, neglect, abuse, adult criminal, paternity, custody, visitation and support cases, the Court will prepare all orders unless otherwise ordered.

Judgment Entries prepared by designated counsel shall be submitted to the Court for filing within 20 days of the date of the pretrial conference or hearing unless that time period is extended at the discretion of the Court. Failure to submit entries within the required time may result in the issuance of a notice of intent to dismiss.

RULE 23 DISMISSALS

Due to the statistical reporting requirements imposed by the Rules of Superintendence, all dismissals of original actions and post-judgment matters must be approved by the Court. A dismissal on the appearance docket by counsel is not effective until approved or ordered by the Court.

Cases which have been on the docket for six (6) months without any proceedings taken therein, except those awaiting final trial assignment, shall be subject to dismissal by the Court, after notice to counsel of record or to a pro se party, for want of prosecution unless good cause is shown to the contrary.

RULE 24 FAILURE TO APPEAR OR FAILURE TO COMPLY

Should a party or counsel fail to appear at a conference held pursuant to this Rule or fail to comply with the directions set forth in the Rule, an ex parte hearing may be held and judgment of dismissal or default or other appropriate judgment may be entered and sanctions imposed.

RULE 25 REQUEST FOR JURY TRIAL

All jury requests shall be in compliance with Civil Rules 38 and 39.

RULE 26 SUMMONS AND NOTICE

A. The Ohio Rules of Civil Procedure shall apply to any proceeding where notice, other than service of summons, is required by law or deemed necessary by the Court and the statute providing for such notice does not direct the manner of its service.

B. In case personal service of summons or notice is required upon non-residents of the county, a deposit is required for service by the sheriff of that county.

RULE 27 CIVIL / PROBATE / JUVENILE ACTIONS

I. PRE-TRIALS

A. The Court may schedule a Pre-Trial Conference in any matter before the Court where it appears that it be beneficial for isolation of issues and to explore settlement possibilities. Any party may request a Pre-Trial and for good cause shown, the Court shall schedule a Pre-Trial Conference.

B. Notice of the pre-trial conference shall be given to all counsel of record by mail or telephone by the court not less than fourteen (14) days prior to the conference, unless a shorter period is necessary due to the exigencies of the case. A continuance of the conference may be granted for good cause shown.

C. In addition to resolving all matters which can properly be resolved at the pre-trial conference, a trial date shall be set by the court, unless a further pre-trial conference is scheduled. The further pre-trial conference shall be scheduled to be held within sixty (60) days, unless a longer period is agreed to by the Court upon request of the parties and for good cause shown.

D. When all issues preliminary to trial have been resolved, the court shall set a trial date. At the same time the court will schedule a final pre-trial conference to be held approximately ten (10) days prior to the trial.

E. The following decisions shall be made at the final pre-trial conference and all counsel attending must have full authority to enter into a binding final pre-trial order:

1. The Court will rule on all pre-trial motions.
2. Briefs on all legal issues shall be submitted.
3. Proposed jury instructions shall be submitted.
4. Proposed jury interrogatories shall be submitted.
5. Clients shall be present.
6. No motions shall be heard after the final pre-trial without good cause being shown.

F. The trial date may be changed by the Court upon its own motion or upon motion by a party for good cause shown.

II. LAND SALES

All land sales which have not been concluded within one (1) year from the date of filing shall be set for a pre-trial conference.

The following decisions shall be made at the pre-trial conference and all counsel attending must have full authority to enter into a binding pre-trial order:

- A. The attorney of record and the fiduciary must attend the pre-trial conference. Upon application of the fiduciary, and for good cause shown, the Court may excuse the presence of the fiduciary.
- B. A written status report shall be filed with the Court on or before the date set for the pre-trial conference, which report shall address issues as to the efforts being made to sell the real estate and when the case will be closed.

III. DECEDENT'S ESTATES

A. All accounts shall be filed within the statutory time period (ORC §2109.30) unless an extension has been granted by the Court. The citation procedure (ORC §2109.31) shall be utilized if necessary to gain compliance.

B. The Court shall set a pre-trial conference within thirty (30) days of the filing of objections to an inventory and objections to an account.

The court at the pre-trial conference shall set the matter for an evidentiary hearing within thirty (30) days thereafter, unless a longer period of time is necessitated by the court docket.

C. The fiduciary in all decedent's estates, which are current as to filed accounts, that remain open after a period of one year shall state therein why the estate has not been completed.

IV. WRONGFUL DEATH SETTLEMENTS

A hearing shall be scheduled within thirty (30) days following the filing of the form 14.0, provided however, if either a guardian or guardian ad litem is necessary to be appointed the hearing shall be scheduled within fifteen (15) days after appointment, unless a longer period of time is necessary (1) due to docket constraints or (2) for other good cause shown.

V. GUARDIANSHIPS

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

VI. TRUSTS

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

VII. MOTIONS

A. Oral arguments of motions may be permitted on application and proper showing. Otherwise, the Court shall rule without hearing on Motions.

B. The moving party shall serve and file with the motion a brief written statement in support of the motion and a list of citations of authorities in support.

C. The Court shall set a hearing within thirty (30) days after receipt of the request for hearing.

RULE 28 PRE-TRIAL STATEMENT:

At the Court's discretion, counsel shall file within five (5) days of a Pre-Trial a "Pre-Trial Statement" containing the following required data:

- (1) The counsel who will be trial counsel and who is fully authorized to act and negotiate on behalf of the party.
- (2) A statement of the issues involved and an assessment in writing of all questions of law which it is expected will be involved in the case.
- (3) All exhibits which are expected to be offered in evidence at the trial; an itemization of all special damages claimed; the names of all witnesses, both expert and non-expert, expected to be called at the trial; whether or not a jury trial if previously demanded, will not be waived, and if not, the number of jurors demanded, and whether the case is one where the issue of liability should be tried separately with a subsequent trial on the issue of damages if liability be found.

Unless the Court determines that a Final Pre-Trial Conference would be unnecessarily burdensome to the court or the parties, or the Court determines that

a Final Pre-Trial Conference is otherwise unnecessary, a final pre-trial conference shall be scheduled during the 14 day period immediately preceding the trial date.

In the event a final pre-trial conference is held, pre-trial statements shall be prepared by counsel for all parties, or by party if unrepresented, and shall be filed with the court and served upon opposing counsel not less than 3 business days prior to the date of the final pre-trial conference. The pre-trial statement shall include the following:

- a. A concise summary of the essential fact.
- b. A brief statement of the issue involved.
- c. A brief statement of the applicable law and the authorities upon which counsel relies.
- d. A list of demonstrative evidence or exhibits which will be offered on date of trial.
- e. An itemized statement of damages by persons claiming such damages.
- f. Names and addresses of prospective lay and expert witnesses.
- g. Estimate of trial time.
- h. A brief statement that counsel conferred prior to the final pre-trial conference, discussed in depth the issues involved, proposed offers of settlement, that such offers were refused, and a statement as to the prospects of settlement prior to trial.

If the matter is to be tried to a jury, counsel shall also file with the court and serve upon all parties at least 3 business days before the date of pre-trial a draft of substantive jury instructions, interrogatories (if any), verdicts, and an indication as to whether a jury view will be requested and, if so, details as to the site and parameters of the view.

When justice so requires, such as when the party represents a limited or a peripheral interest or is not involved in the contested issues in the case, the court may execute any party or counsel from appearance at the final pre-trial conference or from the preparation of a pre-trial statement, or both. A notice of final pre-trial conference, shall request such consideration by written motion.

RULE 29 FIRM TRIAL DATES

Firm trial dates will be fixed by the Court at the earliest stage in the proceedings possible as deemed appropriate by the Court.

When a firm trial date has been set by the Court, continuances will not be granted for the convenience of any attorney or party, or by reason of assignments of one counsel or other in another court except for good cause shown where the

attorney can prove that he had no way of knowing of the conflict sufficiently in advance of the trial date to obtain competent counsel to substitute for him in the trial of the case assigned, or for other good cause shown in which the Court believes in the interest of justice the trial must be continued.

Pre-Trial Conferences shall be held in the Judge's Chambers, or at such other place as the Court may direct. Pre-Trials (not the Final Pre-Trial) may be held by conference telephone call at the request of counsel or upon the initiative of the Court. Counsel must request phone Pre-Trial three (3) days in advance of the scheduled Pre-Trial date. The party requesting Pre-Trial by phone conference shall be responsible for arranging the conference phone call.

Counsel who are to try the case shall be present at the pre-trial conference, with authority to discuss all phases of the case, with authority to negotiate toward settlement of the case, enter into stipulations, and conduct good faith negotiations. Counsel must be prepared to certify that they have conferred with each other prior to the pre-trial conference.

At all Pre-Trial conferences counsel, or parties, if not represented by counsel, shall be present at the Pre-Trial conference. If any party is a corporation, insurance company, or any other artificial legal entity, then a representative of that party, other than counsel for the party, must be present with authority to settle the case, unless otherwise excused by the Court or counsel shall have complete authority to settle the matter.

RULE 30 CONTINUANCES

Requests for continuances shall be submitted in writing by Motion and proposed journal entry which shall state:

- A. The reason for the request shall be noted. If the continuance is requested on the cause of a conflict with another Court, the Motion shall include the name of the Judge, name of the case, case number, the date and time of conflict and when the case was scheduled for trial.
- B. The Entry shall include language as follows: This matter has been continued to (day) , (date) , at (time) . The new date shall be obtained from the Deputy Clerk.
- C. A second continuance request by the same counsel for the same matter shall bear the signature of the client, as well as counsel's signature.
- D. Requests for continuances shall be made at least ten (10) days prior to the trial or hearing date, emergency and sufficient cause (such as illness) excepted.
- E. Counsel shall gain consent to the continuance by the adverse party or

his counsel, emergency excepted.

RULE 31 MOTIONS/MOTIONS FOR SUMMARY JUDGMENT

Motions for Summary Judgment shall be managed in compliance with Civil Rule 56. Motions for Summary Judgment shall be decided without oral argument, unless oral argument is requested and found to be necessary by the Court. Pursuant to Rule 56 (c), the Court shall set a hearing date by entry and cause notice to be served upon counsel.

The Court shall decide the Motion for Summary Judgment based upon the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts or evidence and written stipulations of fact timely filed. Documents not expressly mentioned in rule 56 (c) shall be attached to an affidavit and filed. To avoid exclusion by the Court, the documents must be properly filed with the Deputy Clerk. No document unfiled with the Deputy Clerk shall be considered.

ALL OTHER MOTIONS will be decided without oral hearing unless a request for oral hearing is made and it is determined necessary by the Court. The moving party shall file all appropriate supporting documents with the cases and authorities relied upon. Within fourteen (14) days of receipt of the Motion each party opposing the motion shall file a written response with supporting documentation. No other briefs shall be filed or accepted by the Court.

RULE 32 FINDINGS OF FACT AND CONCLUSION OF LAW

When a request under Rule 52 of the Ohio Rules of Civil Procedure is timely made for findings of fact and conclusion of law, the Court may direct the party making the written request to prepare within seven (7) days proposed findings of fact and conclusions of law and submit them to the Court and to opposing counsel and parties unrepresented by counsel.

Within seven (7) days thereafter, opposing counsel or a party unrepresented by counsel shall submit any objections or counterproposals to the Court in writing. Only those findings of fact and conclusions of law made or adopted by the Court shall be incorporated into the record.

RULE 33 PRO SE MOTIONS

The Court will accept a Pro Se Motion and schedule the Pro Se Motion for a hearing if all of the following apply:

- A. The motion contains all of the required information for filing including the case name and number;
- B. The motion is typed or legibly handwritten in ink;
- C. The original motion and one copy is provided to the Court;
- D. The motion states clearly the relief sought and with particularity the grounds for the relief;
- E. The motion is signed by the person seeking relief.
- F. A precipe for service is filed.

If the motion does not include all of the above, the Court will request a properly completed Pro Se Motion before scheduling a hearing.

RULE 34 PROBATE COURT COSTS AND DEPOSITS

The Court reserves the right to require advance deposits at any time and such advance deposits shall be in accordance with the following schedule:

- A. FULL ESTATE ADMINISTRATION (With or Without Will) \$200.00
Balance of costs due, if any, payable upon filing of account.
- B. RELEASE OF ESTATE FROM ADMINISTRATION (Will) \$175.00
Without Will \$150.00
- C. GUARDIANSHIPS \$200.00
- D. TRUSTS \$200.00

Balance of Deposit in Guardianships and Trusts returned after approval of Inventory. Cash basis thereafter.

- E. LAND SALE PROCEEDINGS \$75.00
- F. WILL CONTEST \$100.00
- G. WRONGFUL DEATH \$100.00
Otherwise Cash Basis Day of Hearing
- H. CIVIL ACTIONS NOT OTHERWISE LISTED \$100.00
(Declaratory Judgments, Will constructions, Determination of Heirs, and Concealed Asset Cases)
- I. SUMMARY LAND SALE \$50.00
- J. APPLICATION FOR ADOPTIONS \$200.00
- K. CHANGE OF NAME (When service is to be made) \$125.00

(Otherwise Cash Basis Day of Hearing)	
L. SUMMARY RELEASE	\$75.00
M. SHORT FORM RELEASE	\$75.00
N. RE-OPEN ESTATE	\$50.00
O. WILL – DEPOSIT ONLY	\$10.00
P. AUTHENTICATED COPIES ISSUED (plus \$0.10 per page for certified copies)	\$10.00
Q. BIRTH CORRECTION	\$50.00
R. BIRTH REGISTRATION	\$25.00
S. DISINTERMENT	\$75.00
T. MARRIAGE LICENSE	\$42.00
U. MINOR’S SETTLEMENT	\$200.00
V. COURT REPORTER	\$25.00
W. OHIO ESTATE TAX RETURN ONLY	\$50.00
X. CERTIFIED COPIES OF MARRIAGE RECORDS	\$ 2.00
Y. ALL COPIES	\$ 0.25
Z. CERTIFIED MAIL	\$ 7.00
AA. SPECIAL PROJECTS §2303.201(E)(1)	\$25.00

All other probate proceedings shall be on a cash basis due at time of hearing.

Upon depletion of any advance deposit, additional deposits may from time to time be ordered by the Court.

Upon termination of any case or action, any deposit balance will be returned to the attorney of record, and no further accounting shall be required.

The record of the Court is kept by a taping system and the Court shall assess a minimum fee of \$25.00 for each proceeding taped. All matters are taped, unless counsel waives a record. Waivers of records may be in writing or orally made before commencement of the proceeding.

Counsel requiring a stenographer to be present at a proceeding or to transcribe the tape record shall be responsible to secure said stenographer. Said counsel and stenographer shall contract for services privately; however, in no case shall the stenographer deliver a transcript without payment for services rendered. Counsel must advise the Court of arrangements made; said arrangements are subject to approval of the Court. In those cases where a transcript must be provided by the Court at no cost to the party, the Court shall handle all arrangements.

RULE 35 APPLICATION TO PROBATE A WILL (STANDARD FORM 2.0)

A. Notice of Probate of a Will shall require at least seven days written notice when complying with ORC §2107.13.

B. A request for examination of witnesses shall be in writing and filed at least two days prior to the hearing date.

C. If a will creates a charitable trust which subsequently may be required to be registered with the Attorney General of Ohio under ORC §109.26, there shall be included in the application to probate the will a concise statement setting forth the item number of the will which creates the trust, the name of the trustee or trustees designated therein, and the general nature of the trust.

D. All notices to those persons entitled to notice of an application to probate a will shall be prepared by the applicant or the attorney for the applicant. When the application is filed, it shall be accompanied by the notice form completed except for the date of hearing. The hearing date will be set and noted on the notice forms by the Court. Service of such notice and proof of such service shall be in accordance with Civ.R. 73 (E) and (F).

RULE 36 APPLICATION FOR LETTERS OF ADMINISTRATION

A. Before an application is made to admit the will to probate and/or to appoint an estate fiduciary, all attorneys or proposed fiduciaries are required to check the index of wills deposited pursuant to ORC §2107.07.

B. Any person who files an Application for Letters of Administration shall cause to be served upon such persons as required by law, written notice of the time and place of the hearing on the appointment. Waivers may be filed as permitted by the Ohio Rules of Civil Procedure. All written notices must contain the time and place of the hearing and shall be served upon such persons at least seven days prior to the date set for hearing.

C. If there is no known surviving spouse or next of kin, the notice shall be served upon such persons as are designated by the Court.

D. Any person who files an Application for Letters of Administration in an estate where there is no surviving spouse resident of Ohio and no known next of kin resident of Ohio, shall cause to be served on the spouse and all competent next of kin, if any, residing outside of the state, known to the applicant, a written notice of the time and place of the hearing.

The notice shall be served on such person at least seven days prior to the date of the hearing.

E. All nonresident fiduciaries are required to post bond pursuant to ORC §2109.04(A)(1).

**RULE 37 APPOINTMENTS AND COMPENSATION OF APPRAISERS
IN ESTATES AND LAND SALES PROCEEDINGS**

A. Fiduciaries, without special application to the Court, may allow to the appraiser as compensation for his services a reasonable amount agreed upon between the fiduciary and the appraiser.

B. Fees for appraisals shall be computed on the full value of the property appraised.

C. In agreeing upon the amount of compensation within the schedule set forth in paragraph A of this rule, the fiduciary and the appraiser shall take into consideration the time and work reasonably required in appraising the assets as well as the type and character of the property appraised.

D. If, by reason of the special and unusual character of the property to be appraised, the fiduciary is of the opinion that the appraisal requires the services of persons expert in the evaluation of such property, an expert appraiser may be appointed and reasonable compensation paid therefore, subject to the approval of the Court.

E. If the amount of compensation cannot be agreed upon, the fiduciary shall file an application for allowance of compensation for each appraiser. Otherwise, no court order is necessary and credit may be taken for payment in the next regular account as provided by law, subject to all exceptions which may be thereafter filed.

F. All appraisals of property located in Harrison County shall be done by Harrison County appraisers unless the appraiser lacks the expertise to appraise the subject item(s). All other appraisers shall be appointed by the Court prior to employment by the fiduciary.

G. All appraisals shall be submitted in written form and shall 1) identify the property with a general description; 2) be based upon a Market Value Data Approach to valuation; 3) list the amount appraised; 4) be dated and 5) be signed by the appraiser.

RULE 38 INVENTORY

A. Notice of filing of the inventory shall be given in accordance with ORC §2115.16. All waivers of hearing are to be filed at the time of the filing of the inventory. If all the waivers of hearing are not filed at the time of the filing of the inventory, the notices of hearing on inventory shall be prepared by the applicant or the attorney for the applicant and shall be submitted to the Court. The Court shall send the notices by certified mail to all of the following who are known to be residents of Ohio:

1. Surviving Spouse
2. Next of kin and beneficiaries under the will
3. Attorneys representing any of the above

Notices may be waived in writing by any for the foregoing.

B. The statutory time for filing of an inventory (ninety days from date of appointment of fiduciary) shall be adhered to and citations may be issued when filings are late unless application for an extension of time for filing has been granted. Applications for extension shall set forth the time needed and the accompanying judgment entry shall have a blank space for the Court to insert the number of days granted.

RULE 39 DEATH CERTIFICATES

All estates presented to the court for Probate or presented for a Release from Administration shall have included a death certificate for the decedent. Such death certificate shall be filed within thirty (30) days of the initial filing and no estate shall be closed without a death certificate filed.

RULE 40 CLAIMS FILED WITH THE COURT

A. In any estate where a claim had been filed with the Court pursuant to ORC §2117.06, the fiduciary shall file with the Court a copy of any rejection of claim. No estate shall be closed until all claims filed with the Court have been resolved.

B. Whenever the Court requires a hearing on claims or the fiduciary requests a hearing on claims pursuant to ORC §2117.17, the fiduciary shall file a schedule of all claims against the estate with the Court. The schedule of claims shall be filed with the fiduciary's application for hearing or within ten days after the Court notifies the fiduciary of a Court-initiated hearing.

C. A schedule of Debts shall be required to be filed by the fiduciary if:

1. The Court, upon its own Motion, shall so order;
2. Any interested person shall, by Motion, request such a filing (counsel may anticipate that such Motion will be approved without notice);
3. The estate appears at any time prior to six (6) months after appointment of the fiduciary to be insolvent;
4. Any claim is presented which is thereafter rejected in whole or in part by the fiduciary.

RULE 41 APPLICATION TO SELL PERSONALTY

In addition to the requirements of the Ohio Revised Code, a judgment entry and order of sale shall include an adequate description of the property to be sold and shall provide that the sale has been at the best price obtainable in the current market or at a price fixed by the Court. Except for good cause shown, an order of sale shall not be granted prior to the approval of the inventory or inventory and appraisal. No sale shall be confirmed until an affidavit is filed as required by ORC §2109.45 and §2113.42.

RULE 42 ACCOUNTS

A. The statutory time for the filing of an account shall be adhered to and citations may be issued when filings are late, unless an application for extension of time for filing has been granted. The application shall set forth the time needed and the accompanying judgment entry shall have a blank space for the Court to insert the number of additional days granted.

B. If a fiduciary is delinquent in filing an account or exhibiting assets and no extension has been granted, a citation may be issued, requiring the fiduciary to appear forthwith and to show cause why the account has not been filed or why the assets have not been exhibited.

C. Each fiduciary's account shall include an itemized statement of all receipts of all disbursements and distributions made during the accounting period as required by ORC §2109.301. The statements shall be referenced to the account by number, letter or date. The account shall also set forth, at the end thereof:

- (1) A recapitulation of cash receipts, disbursements and bank deposits, representing cash on hand at the end of the accounting period.
- (2) A statement of personal property on hand, other than cash, at the end of the accounting period, including a statement of any changes

- in the property during the period covered by the account.
- (3) A statement identifying all real estate owned by the ward or real estate to which the fiduciary holds legal title for, or on behalf of, the ward or beneficiary.
 - (4) A statement of compensation paid to the fiduciary and his counsel.

D. If land has been sold by the fiduciary during the accounting period, the account shall show the gross amount of the proceeds of sale and the distribution thereof, with the escrow statement or receipts of the land sale expenditures attached thereto.

E. Guardian Accounts for more than one minor shall show each ward's proportionate share of the credits and debits and shall separately state each ward's property at the end of the accounting period.

F. Receipts for distributive shares signed by persons holding power of attorney may be accepted, provided such power of attorney is recorded in the State of Ohio and a photostatic copy of the recorded power is attached to the account.

G. Exhibiting Assets.

- (1) The Court may require that all assets be exhibited at the time of filing a partial account.
- (2) Cash balances may be verified by exhibiting a bank statement, passbook, or a current letter from the financial institution in which the funds are deposited certifying the amount of funds on deposit to the credit of the fiduciary. Assets held in a safety deposit box of a fiduciary or by a surety company on fiduciary's bond may be exhibited by filing a current inventory thereof. The inventory shall be certified by the manager of the safety deposit box department of the financial institution leasing the safety deposit box or by a qualified officer of the surety company if the assets are held by a surety.

If the assets are held by a bank, trust company, brokerage firm, or other financial institution, such exhibition may be made by proper certification as to the assets so held.

For good cause shown, the Court may designate a deputy clerk of the Court to make an examination of the assets located in the county, not physically exhibited to the Court, or may appoint a commissioner for that purpose. The commissioner appointed shall make a written report of his findings to the Court.

H. A final or distributive account shall not be approved until all court costs have been paid.

I. The Court requires an itemized statement of activity with an account. The Court shall refuse to accept any account not accompanied by the itemized statement.

J. At the Court's discretion, an account shall not be accepted if an Ohio Estate Tax Return is required in the estate unless that Ohio Estate Tax Return has been filed with the Court or Auditor with Notice given to the Court.

K. A statement of the Computation of Attorney Fees and Fiduciary Fees shall be filed with the account in a form prescribed by the Court.

L. If land has been sold by the fiduciary during the accounting period, the account shall show the gross amount of the proceeds of the sale and the distribution thereof, with the escrow statement of receipts of the land sale expenditures attached thereto.

RULE 43 LAND SALES

A. In cases involving public sale the complainant shall, prior to the issuance of an order of sale, file with the Court evidence of title showing the record condition of the title to the premises described in the complaint, prepared and extended by a responsible abstract or title company or an attorney's certificate to a date subsequent to the date in which the complaint was filed.

B. In all cases where a public sale is authorized, complainant shall post a sign in a conspicuous place on the premises to be sold stating that the property will be sold at public sale and giving the time and place thereof. The complainant shall also give notice to all defendants of the time and place of sale at least twenty eight days and said notice shall also be published three weeks prior to the date of sale in the method provided by Civ. R. 4.1. Prior to the sale, the complainant shall file an affidavit stating: (1) that a sign was placed on the property; (2) that the required notice was given to the defendants at least three weeks prior to the date of sale; and (3) that the notice conformed to Civ. R. 4.1.

C. When an order of private sale is requested, excepting those cases where the consent of all necessary parties to the proceedings has been filed or cases involving the sale of fractional interests, the complainant shall be required, by affidavit or testimony under oath, to establish: (1) whether or not the sale has been the subject of prior negotiations; (2) the amount offered for the sale of the property; (3) the appraised value in the land sales proceedings; (4) the identity of

the prospective purchaser and counsel, if any; (5) whether or not the proposed transaction will be, or has already been, placed in escrow; and (6) the identity of the escrow agent.

D. The Court may, in its discretion, appoint a disinterested person, answerable to the Court, who shall investigate the circumstances surrounding the proposed transaction, view the property, ascertain whether the proposed sale is justified and report his findings in writing. The report shall be a part of the record. The compensation for the person performing these services shall be fixed by the Court, according to the circumstances of each case, and shall be taxed as costs.

E. In judicial land sale proceedings involving public sales the attorney for the plaintiff shall, before the Court will issue the order of sale for the Real Estate described in the petition, file with the Court, a preliminary binder for title insurance or a certificate of title prepared by and certified by an attorney-at-law. This rule may be waived only upon application and for good cause shown.

F. Where an order of private sale is prayed for, except in those cases where the consent of all necessary parties to the proceedings has been filed, or cases involving the sale of fractional interests, the complainant shall be required, by affidavit or testimony under oath, to establish whether or not the sale has been the subject of prior negotiations, the amount offered for the sale of the property, the appraised value in the land sale proceeding, the identity of the prospective purchaser and counsel, if any, whether or not the proposed transaction will be or already has been placed in escrow, and the identity of the escrow agent.

G. In all sales under ORC §2127.11 (Summary Proceeding) the application shall be set for hearing and the plaintiff shall give the defendants notice of the time and place of hearing in the method provided in Civil Rule 73E.

H. The bond required to be executed in land sale proceedings pursuant to ORC §2127.27 shall be filed in the case wherein the fiduciary received his appointment.

I. Every Administrator or Executor who sells real estate pursuant to the power of sale granted in ORC §2127.011 shall file a report of such sale prior to, or contemporaneously with, the filing of the final account, specifically setting forth the type of sale (private or public), the sale price, the appraised value, the name and address of purchaser, and so much of the legal description as will enable a title examiner to identify the property. (In most cases the description as carried on the tax duplicate will be adequate for this purpose.)

RULE 44 RELIEVING ESTATE FROM ADMINISTRATION

A. Appraisal of Assets.

1. Real Estate – The Court will accept the Harrison County auditor’s tax appraisal card valuation, or an appraisal by a real estate professional on his/her letterhead. A copy must be attached to Form 5.1.
2. Personal Property – If the property is money, stocks, bonds, or other property, the value of which is readily ascertainable, then no appraisal is necessary, as to those assets. If the property value is not readily ascertainable, then an appraiser shall be selected subject to the approval by the Court provided, however, household furnishings passing to the surviving spouse may be returned without an appraisal, subject to Court approval.
3. Motor Vehicles – The Court will accept NADA book values or equivalent, however, appraisal not necessary for the automobile selected by surviving spouse under §2113.532(A) ORC.

B. Commissioner – A commissioner shall be appointed by the Court for the following:

1. To make distribution in kind.
2. To sell personal property.
3. To pay outstanding debts.
4. To execute documents titled personal property.
5. In cases of insolvency to pay debts in proper priority and to make distribution.

C. Publication of notice to creditors and all interested persons:

1. Publication of notice is not required if assets are less than statutory limits and there is no surviving spouse and/or minor children of the decedent, and there is a paid funeral bill or waiver by the funeral director or a funeral payment agreement, and a Notice to Distributee (Form 10.4) is filed for each beneficiary.

2. Publication of notice is not required if assets are less than the statutory limits and the decedent is survived by minor children but no surviving spouse, and there is a paid funeral bill or waiver by the funeral director or a funeral payment agreement.
3. Publication of notice is not required if assets are less than \$85,000.00 and there is a surviving spouse who inherits the entire probate estate, and there is a paid funeral bill or waiver by the funeral director or a funeral payment agreement, and a Notice to Distributee (Form 10.4) is filed for each beneficiary.

RULE 45 GUARDIANS

- A. All applications must in compliance with Sup.R 66.01 – 66.09.
- B. All applications for appointment of a guardian shall be captioned in the name of the proposed ward.
- C. All applications for the appointment of a guardian on the grounds of mental incompetency, or for dismissal of such guardianship, or for declaration of competency, shall be accompanied by either a statement of a physician or, a statement that the prospective ward has refused to submit to an examination.
- D. Payment for the support, maintenance or education of a ward shall not be approved until such time as the guardian files an application to determine, separate and apart from the account, the amount to be allowed for the support, maintenance or education of the ward, and until an inventory has been filed.
- E. An application by a parent-guardian for the allowance of care and support of a minor shall allege, if such is the fact, that the father and mother are financially unable to provide the items for which the amount is sought.
- F. At the discretion of the Court, the Court may order a criminal background check any person seeking to become a guardian.

RULE 45.1 GUARDIANS HAVING TEN OR MORE WARDS

Any Guardian having ten (10) or more wards must inform this Court in writing prior to applying for a Guardianship in Harrison County. The Guardian shall be required to file their fee schedule annually by the 15th day of April which differentiates fees for guardianship work and for legal work.

RULE 45.2 GUARDIAN OF THE ESTATE – BONDING

Pursuant to R.C. §2109.04, an individual appointed as guardian of the estate of a minor or incompetent is required to post bond with a penal sum in an amount that is fixed by the Probate Court. In the event that the guardian is unable to post bond, or deems it inexpedient to post bond, the guardian shall be required to secure the services of legal counsel for the purpose of filing a Motion for Deposit of Personal Property pursuant to R. C. §2109.13. A Motion for Deposit of Personal Property shall be granted only where the guardian is an attorney, or where the guardian is represented by legal counsel. Said representation shall continue until a Verification of Receipt and Deposit (Probate Court Form 22.3) is filed with the Probate Court.

RULE 45.3 EMERGENCY GUARDIANSHIPS

Pursuant to R.C. §2111.02, if an Emergency Guardianship or other order is being sought to prevent significant injury to the person or estate of a minor or incompetent, the person seeking such order or appointment shall comply with the following procedure:

- A. File an Application of Appointment of Emergency Guardian or Issuance of Emergency Order.
- B. File an Affidavit in Support of the Application set forth above, which should include, but not be limited to the following information:
Information describing the imminent risk of significant injury to the person or property of the minor or incompetent; the nature or type of significant injuries that might result without court order; a description and location of property that might suffer significant injury; the date the imminent risk was discovered by the applicant; the reasonable efforts that the applicant has taken to otherwise prevent significant injury without court order:
- C. File Standard Probate Form 17.1A “Supplement for Emergency Guardian of Person”.
- D. Personally file with the Court the documents noted in A, B, and C of this Rule and remain available for a personal appearance before the judge or magistrate to respond to further court inquiry.
- E. Within thirty (30) days of the expiration of any emergency orders issued hereto, the emergency guardian shall submit a report to the Court stating any specific action taken to prevent substantial injury to the person or estate and accounting for the management of any assets of the minor or incompetent during such period of time. If a guardianship is commenced upon the expiration of the emergency orders, the Court may

dispense with this report if the guardian provides such information in the Inventory of the Ward's assets.

**RULE 46 ESTATES OF MINORS AND PROPOSED INCOMPETENTS
OF TEN THOUSAND DOLLARS OR LESS**

A. An application relating to a minor shall be submitted by the parent or parents or by the person having custody of the minor and shall be captioned in the name of the minor.

B. Only one application shall be filed on behalf of all minors of the same parents. The application shall indicate that amount of money or property to which each minor is entitled and to whom such money or property shall be paid or delivered.

C. If no guardian has been appointed for either the receipt or an estate of a minor or the receipt of a settlement for injury to a minor, the attorney representing the interests of the minor shall prepare an entry; (1) ordering the deposit of the funds in a local banking institution in the name of the minor; (2) impounding both the principal and interest; and (3) releasing the funds to the minor at the age of majority or upon further order of the Court. The entry shall be presented at the time the entry dispensing with appointment of a guardian or approving settlement is approved. The attorney shall further be responsible for depositing the funds and for providing the financial institution with a copy of the entry, both within seven days of the entry's approval. The attorney shall obtain a receipt from the bank and deposit it with the Court.

RULE 47 SETTLEMENT OF CLAIMS FOR INJURIES TO MINORS

A. In an application by a guardian for approval of a settlement of an action for personal injuries to his ward, irrespective of amount, the parent or parents of such ward, if any, living in the country, shall be entitled to three days notice by certified mail of the hearing on such application. The notice may be waived in writing.

B. The application may be accompanied by a current statement of the examining physician in respect to the injuries sustained, the extent of recovery thereof, and the physician's prognosis.

C. The presence of the injured minor and the parent may be required at the hearing on all applications.

D. The application shall state what additional consideration, if any, is being paid to persons other than the minor.

E. The application shall state what arrangement, if any, has been made with respect to counsel fee, which fees shall be subject to review by the Court.

RULE 48 SETTLEMENT OF CLAIMS FOR INJURIES TO MINORS UNDER TEN THOUSAND DOLLARS

A. Applications involving the payment of ten thousand dollars (\$10,000) or less shall be by the parent or parents or by the person having custody of the minor.

B. The application may be accompanied by a current statement of the examining physician in respect to the injuries sustained, the extent of recovery thereof, and the physician's prognosis.

C. The presence of the injured minor and the parent may be required at the hearing on all applications.

D. The application shall state what additional consideration, if any, is being paid to persons other than the minor.

E. The application shall state what arrangement, if any, has been made with respect to counsel fees, which fees shall be subject to review by the Court.

RULE 49 SETTLEMENT OF CLAIMS FOR WRONGFUL DEATH

A. Application for approval of settlement of a claim for wrongful death shall contain a statement of facts, including the amount to be received in settlement of the claim and the amount, if any, to be received in the settlement of the right of action for conscious pain and suffering. The statement shall include the proposed allocation of the compensation to be received in settlement of the action for wrongful death.

B. Unless waived by all interested parties, the application and proposed allocation shall be set for hearing and written notice shall be given to all interested parties.

C. The application shall state what arrangements have been made with respect to counsel fees, which fees shall be subject to review by the Court.

RULE 50 COUNSEL FEES IN CONNECTION WITH SETTLEMENT OF CLAIMS FOR WRONGFUL DEATH, CONSCIOUS PAIN AND SUFFERING; CLAIMS FOR PERSONAL INJURIES TO PERSONS UNDER GUARDIANSHIP; AND SETTLEMENT OF CLAIMS FOR PERSONAL INJURIES TO MINOR UNDER ORC §2111.18.

When representation is on a contingent fee basis, counsel will be allowed fees on the amount obtained, subject to the approval of Court.

RULE 51 COUNSEL FEES

A. Attorney fees relative to all matters shall be governed by the Code of Professional Responsibility, DR. 2-106.

B. Attorney fees for the administration of estates shall not be paid until the final account is prepared for filing unless otherwise approved by the Court upon application and for good cause shown.

C. Attorney fees may be allowed if there is a written application which sets forth the amount requested and will be awarded without hearing, provided the proper consents of beneficiaries have been filed with the Court.

D. The Court may set a hearing on any application for allowance of attorney fees regardless of the fact that the required consents of the beneficiaries have been given.

E. Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing the accounts required by ORC §2109.30.

F. If a hearing is scheduled on an application for the allowance of attorney fees, notice shall be given to all parties affected by the payment of fees, unless otherwise ordered by the Court.

G. An application shall be filed for the allowance of counsel fees for services rendered to a guardian, trustee, or other fiduciary. The application may be filed by the fiduciary or attorney. The application shall set forth a statement of the services rendered and the amount claimed in conformity with Paragraph A.

H. The Court does not have, nor is there recognized, any minimum or maximum fees which will automatically be approved by the Court. Prior to a fiduciary entering into a contingent fee contract with an attorney for services, an application for authority to enter into the agreement shall be filed with the Court.

Computation of Attorney's fees shall be filed with the Court on a form provided by the Court (Attached hereto as Appendix A) or in like or similar form providing the requested information and securing the appropriate signatures.

The Court shall approve/disapprove of attorney's fees by Entry attached to the Application for Allowance of Attorney Fees.

RULE 52 EXECUTOR'S AND ADMINISTRATOR'S COMMISSIONS

A. Where there is a claim for extraordinary services, an application shall be filed setting forth an itemized statement of the services rendered. The Court may require the application to be set for hearing with notices given to parties affected by the payment of fees.

B. Except for good cause shown, commissions will not be allowed if there is a delinquency in the filing of an account.

C. The commissions of co-executors or co-administrators in the aggregate shall not exceed the commissions which would have been allowed to one executor or administrator acting alone, except where the instrument under which the co-executors serve provides otherwise.

D. Where counsel fees of an extraordinary nature have been awarded for services to the estate which normally would have been performed by the executor or administrator; the said executor's or administrator's fee shall be reduced by the amount awarded to counsel for those services rendered unless, for good cause shown, the Court finds that such a ruling would be unfair.

An application by executors and administrators for extraordinary commission need not be filed where all the interested parties have consented in writing to the amount of executor's or administrator's commissions and the consent is endorsed on the final account or evidenced by separate instrument filed therewith.

RULE 53 GUARDIAN'S COMPENSATION

A. Guardian's compensation shall be set by local rule (See paragraph F) and the schedule of compensation set forth in the local rule shall be filed with the Supreme Court in accordance with CAP. Sup. R. 44.

B. Additional compensation, reimbursement for expenses incurred and fees of a guardian of a person may be fixed by the Court upon application.

C. The Court may require that applications for fees or compensation be set for hearing and that written notice of the time and place of the hearing and the amount applied for be given as required by the Court. A copy of the notice, with certified mail return receipt attached, together with an affidavit of the service of such notice, shall be filed prior to the hearing.

D. The compensation of co-guardians in the aggregate shall not exceed the compensation which would have been payable if only one guardian had been performing the duties.

E. A separate schedule of the computation of the guardian's compensation shall be set forth in the guardian's account as a condition of its approval. The computation shall be on a form (see Appendix C) as set forth in conformity with a local rule adopted and filed in accordance with CAP. Sup.R. 44. Except for good cause shown, neither compensation for a guardian nor fees to the attorney representing the guardian will be allowed when the guardian is delinquent in filing the account as required by ORC §2109.30.

F. Unless otherwise provided by law or ordered by the Court, a guardian may charge annually for his ordinary services an amount computed in accordance with the following schedule:

- (1) Income fee: 5% of the gross income plus an additional 2% of the gross income attributable to real estate, chargeable to income; the Court reserves the right to increase or decrease this percentage as deemed appropriate.
- (2) Principal Fee: \$3.00 per \$1000.00 on the first \$100,000; \$2.50 per \$1000.00 on the next \$200,000 and \$1.50 per \$1000.00 on the balance; of the fair market value of the corpus, annually chargeable to principal unless otherwise ordered.
- (3) Such guardian may, with the approval of the Court, be allowed a principal distribution fee upon the final distribution of any part of the corpus of the guardianship property equal to one percent (1%) of the fair value of the part distributed, and the amount shall be charged

against and deducted from such distribution or payment.

A minimum annual fee of \$300.00 will be allowed in each guardianship.

For purposes of determining compensation based on income, the following shall **NOT** be considered income:

- (a) Receipt of corpus by guardian;
- (b) Balances carried forward from one accounting period to another, and;
- (c) Investment and reinvestment of corpus, including conversion of corpus to cash.

For purposes of computing the compensations herein provided, the fair market value of the principal of the trust property shall be determined by the guardian as of the date of his appointment and as of each anniversary thereafter. The compensation so determined may be charged during the ensuing year. The annual fair market value of the principal shall be adjusted from time to time to reflect additions to and withdrawals from the principal of the trust estate, and the compensation for the remaining portion of the annual period shall be similarly adjusted to reflect such revised valuation.

Additional compensation for extraordinary services or allowance of expenses of a guardian; and the compensation of guardian of person only may be allowed upon application to the Court.

- G. **COMPUTATION OF GUARDIAN'S FEE: FORM.** The form to be filed pursuant to CAP. Sup. Rule 42 (E) for computation of Guardian's compensation shall be substantially as set forth in Appendix C.

RULE 54 TRUSTEE'S COMPENSATION

A. Trustee's compensation shall be set by local rule and the schedule of compensation set forth in the local rule shall be filed with the Supreme Court in accordance with CAP. Sup. R. 44.

B. Additional compensation for extraordinary services may be allowed upon application. The Court may require that the application be set for hearing and that notice thereof be given to interested persons. Such notice shall contain a statement of the amount for which compensation is applied.

C. A separate schedule of the computation of a trustee's compensation, conforming to the form in conformity with a local rule adopted and filed in

accordance with C.P. Sup. R.44, shall be filed with the Court at the time of payment of the fee.

D. The compensation of co-trustees in the aggregate shall not exceed the compensation which would have been paid if only one trustee had been performing the duties except where the instrument under which the co-trustees are acting provides otherwise.

E. Except for good cause shown, neither compensation for a trustee, nor fees to the counsel representing the trustee, will be allowed while the trustee is delinquent in the account or accounting required by ORC §2109.30.

G. Except where the instrument creating the trust makes provision for compensation, unless otherwise provided by statute or ordered by the Court, a testamentary trustee may charge annually for ordinary services performed in connection with the administration of each separate trust estate an amount computed in accordance with the following schedule:

- (1) Income Fee: 5% of the gross income plus an additional 2% of gross income attributable to real estate rentals where the fiduciary is managing such real estate, chargeable to income;
- (2) Principal Fee: \$3.00 per \$1,000 on the first \$100,000.00; \$2.50 per \$1,000 on the next \$200,000.00; and \$1.50 per \$1,000 on the balance of the fair market value of the corpus, annually chargeable to principal unless otherwise ordered.
- (3) Such trustee may, with the approval of the Court, be allowed a principal distribution fee upon the final distribution of any part of the corpus of the trust property equal to one percent (1%) of the fair value of the part distributed, and the amount shall be charged against and deducted from such distribution of payment. A minimum annual fee of \$300.00 will be allowed in each trust. For purposes of determining compensation based on income, the following shall **NOT** be considered income:
 - (a) Receipt of corpus by trustee;
 - (b) Balances carried forward from one accounting period to another ;
and
 - (c) Investment and reinvestment of corpus, including conversion of corpus to cash.

For purpose of computing the 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 his appointment and as of each anniversary thereafter. The

compensation so determined may be charged during the ensuing year. The annual fair market value of the principal shall be adjusted from time to time to reflect additions to and withdrawals from the principal of the trust estate, and the compensation for the remaining portion of the annual period shall be similarly adjusted to reflect such revised valuation.

Additional compensation for extraordinary services of a trustee may be allowed upon application to the Court. The Court reserves the right to increase or decrease this percentage as deemed appropriate.

H. **COMPUTATION OF TRUSTEE'S FEE; FORM.** The form to be filed pursuant to C.P. Sup. R. 43 (C) for computation of trustee's compensation shall be substantially as set forth in Appendix D.

RULE 55 EXCEPTION TO THE RULES

Upon application, and for good cause shown, the probate division of the Court of Common Pleas may grant exception to C.P. Sup. R. 18-46.

RULE 56 PRE-DEATH PROBATE OF WILL DECLARATORY JUDGMENT PROCEDURE AND FORM OF COMPLAINT

The Complaint need not name as parties defendant any persons beyond the scope of ORC §2107.081 (A) even though parties named in a prior will may not be necessary parties (see ORC §2107.081 (A)), they may be proper parties.

Deposit the original Will with the appropriate Court official who will record the Will in a special index for deposited Wills.

A Civil Action must then be filed with a request for Service, and the required deposit.

The Court shall index and docket this action in the same manner as any other Civil Action.

The Application and Entry for Appointment of Guardian ad Litem for minor and incompetent parties must now be filed. If there is a unanimous waiver, or the attorney so desires, the cause will be set for hearing.

The Court will issue Summons and Notice of Hearing (if date is set) to all parties, attaching a copy of the complaint.

Unless previously set, then 28 days after all parties are properly served, the cause will be set for hearing. The Court shall notify all parties of said hearing.

At the hearing:

- a. Appearances and testimony as to plaintiff's competency.
- b. Civil Rules apply to medical or psychiatric examinations. ORC §35.
A deposit is required.
- c. The Court may enter a consent final judgment.
- d. Upon being satisfied that the Will is properly executed, the Court may grant Default Judgment.
- e. The Will must be examined openly by the Court.
- f. Execution may be found proper by the Court if it appears from the face of the Will that its execution complies with the law of Ohio in force at the time of execution, pursuant to ORC §2107.28.

The Court, if the Will is found valid, prepares and files duplicate original Entries. One of the Entries is sealed with the Will in an envelope to be secured by the Court, and the other is public record in the Court file.

At the plaintiff's death, the Will shall be offered for Probate and the usual admission procedures followed. There is some debate as to the extent to which a Will should remain confidential in an action for declaratory judgment. One view would have the Will remain confidential from the defendants because a testator should have the right to make a Will that remains private until his death.

Furthermore, a testator may not wish to avail himself on this action due to his wish that the beneficiaries and bequests of his Will remain confidential especially from the heirs who have been excluded. Also, the testator's testamentary capacity and freedom from undue influence should be proved upon evidence other than the Will itself.

Another view would have the Will made available to defendants upon the filing of the Complaint or thereafter by discovery under the Civil Rules. Proponents of this view argue that defendants have a constitutional right to view the Will. In addition, the Will should be available as evidence of testamentary capacity and freedom from undue influence.

This Court adopts the position that the testator has the right to have the Will remain confidential unless otherwise ordered. The determination of testamentary capacity is not anticipated to be necessary to be determined from examining the Will or dispositive provisions thereof.

**COMMON PLEAS COURT, HARRISON COUNTY, OHIO
PROBATE DIVISION**

Case No. _____

PLAINTIFF

-vs-

COMPLAINT FOR
DECLARATORY JUDGMENT
(2107.081)

DEFENDANT

1. Plaintiff, at the time of the filing of this Complaint, is domiciled in Harrison County, Ohio and alleges he/she executed his Last Will and Testament on the _____ day of _____, _____, in the presence of the following witnesses. (indicate name and address)
a. _____
b. _____
2. Plaintiff has deposited the sealed original of his/her Last Will and Testament with this Court in accordance with ORC §2107.07.
3. Pursuant to ORC §2107.081, plaintiff has named as defendants all persons named in the Will as beneficiaries, and all of the persons who would be entitled to inherit from plaintiff under Ch. 2105 of the Revised Code had plaintiff died intestate on the date this Complaint is filed.
4. Plaintiff acknowledges that there is no existing declaration of validity of a Will of his under ORC §2107.081 in any Court in another County in Ohio.
5. Plaintiff believes this Last Will and Testament is validly executed pursuant to ORC §2107.03 and that he had the requisite testamentary capacity and freedom from undue influence pursuant to ORC §2107.02 Plaintiff believes that said Will is a valid instrument for purposes of the distribution of his estate upon his death.

WHEREFORE, plaintiff demands Judgment of this Court determining the validity of his/her alleged Last Will and Testament, and for such other and further relief in law and equity as shall be just and proper.

PLAINTIFF

**RULE 57 RULES TO EXPEDITE COMPETENCY PROCEEDINGS
PURSUANT TO SECTIONS 2152.51 TO 2152.59 RC.**

This rule is to ensure that proper notice of competency hearings is provided to the appropriate person, and to ensure that any proceedings on an underlying complaint are stayed pending the determinations under sections 2152.51 to 2152.59 Revised Code.

Juvenile competency proceedings shall be scheduled and heard on an expedited basis. Hearings in juvenile competency proceedings shall be held in strict compliance with applicable deadlines as established by statute or by this rule.

Upon the conclusion of each hearing, the Court shall provide written notice to the prosecuting attorney, the child's attorney, the child's guardian ad litem, and the child's parents, guardian, or custodian of the date, time, and place of the next scheduled hearing. Mailed notices shall not be required for any party or other individual designated in this rule to whom notice of the next hearing was provided in writing upon conclusion of the immediately preceding hearing.

Upon the filing of a motion for determination regarding a child's competency or upon the Court's own motion, the Court shall stay all delinquency proceedings pending a determination of competency. If, upon a determination of competency, the Court determines that the child is not competent, but could likely attain competency, the court order staying the delinquency proceedings shall remain in effect until such time as the child attains competency or the proceeding is dismissed.

RULE 58 RESTRAINTS

1. Restraints shall be removed prior to the commencement of a proceeding unless the Court determines on the record, after providing any party to be heard on the issue of physical restraint for that child at that hearing, that there is no less restrictive alternative to the use of physical restraint and that the physical restraint of the child is necessary because of the following:
 - a. The child represents a current and significant threat to the safety of the child's self or other persons in the courtroom;
 - b. There is a significant risk the child will flee the courtroom.
2. If the Court finds physical restraint to be necessary, the restraint shall be the least restrictive necessary to meet the risk requiring the restraint and in a manner which does not unnecessarily restrict the movement of the child's hands.

RULE 59 NOTICE TO FOSTER/KINSHIP CAREGIVERS PURSUANT TO OHIO REVISED CODE §2151.424

- A. In accordance with R.C. §2151.424, the Court will provide notice to foster and kinship caregivers of their right to attend hearings and provide information concerning the child(ren) in their care.
- B. To facilitate the Court in fulfilling its duty to provide proper notice of hearing to foster and kinship caregivers a Child Placement Form shall be completed and filed with the clerk the next business day or no later than 7 days following the initial placement and any change in placement of the child(ren).
- C. Information regarding the identity of and contact information for foster or kinship caregivers provided to assist the Court in fulfilling its duty to give notice under this rule is not accessible to the public, including to any party to a case. The Court shall maintain this information in its family/confidential file.

RULE 60 YOUTH ATTENDANCE AT HEARINGS

- A. A youth or child who is the subject of an abuse, neglect or dependency case is a party to his/her case and the right to notice of adjudicatory and dispositional hearings in accordance with the Ohio Rules of Juvenile Procedure.
- B. The Court shall presume that all youth who are subject to an abuse, neglect or dependency case do wish to attend all hearings related to the case unless the youth, or the youth's attorney, Guardian ad Litem or Court Appointed Special Advocate acting on his/her behalf, express otherwise. A youth or child who is the subject of an abuse, neglect or dependency case has the right to attend and is to be encouraged to attend or otherwise participate in any and all hearings related to his/her case if he/she so desires.
- C. At the Court's discretion, a youth or child may participate in such hearings by: attending all or part of the hearing; speaking with the Court in the presence of all parties; speaking to the Court in camera; observing the hearing; otherwise participating by submitting a letter, drawing and/or photograph to the Court and all parties through a Guardian ad Litem or Court Appointed Special Advocate, kinship caregiver, or the child's attorney.
- D. The Court has discretion to excuse a child or youth from any hearing or any portion of a hearing in the case if the Court finds that to be in the child's or youth's best interest based on factors such as the age of the child, the child's capacity for understanding and participating in the hearing, the nature of the proceedings, and other relevant factors aligned with the child's best interest in the case.

APPENDIX A

PROBATE COURT OF HARRISON COUNTY, OHIO

ESTATE OF _____ DECEASED
CASE NO. _____ DOCKET _____ PAGE _____
APPLICATION FOR ALLOWANCE OF ATTORNEY FEE

<u>Basis for Calculations:</u>	<u>VALUATION</u>	<u>FEE ASSESSED</u>
Probate Assets:		
Personal Property	_____)	_____
Income	_____)	_____
Real Property (sold)	_____)	_____
Other Assets:		
Real property (not sold)	_____)	_____
Non-Probate asset subject to		
Estate Tax: J&S Property	_____)	_____
Other Fees - Extraordinary	_____)	_____
Services (itemize)	_____)	_____
	_____)	_____
	_____)	_____
	_____)	_____
	_____)	_____
	_____)	_____
	_____)	_____
	_____)	_____
	_____)	_____
	_____)	_____
	_____)	_____

TOTAL FEE =====

(s) Attorney for Estate (s) Administrator/Executor

ENTRY

The Court orders the sum of \$ _____ paid to Attorney _____
_____ for services tendered to the Estate, payable as an
expense of administration.

Date Probate Judge

APPENDIX B

COMPUTATION OF ADMINISTRATOR'S & EXECUTOR'S FEES
(Decedent's Estates)

ESTATE OF _____

No. _____ Doc. _____ Page _____

Basis for Calculations:

Probate Assets:	TOTAL
Personal Property _____)	
Income from Personal Property _____)	
Real Property (Sold) _____)	
_____)	
Other Assets:	
Real Property (Not Sold) _____)	
Not Administered, subject to Estate	
Tax, <u>EXCEPT</u> J & S Property _____)	
_____)	

-
1. Fees based upon probate assets:
 - 4% of first \$100,000.00 _____
 - 3% of next \$300,000.00 _____
 - 2% of balance _____
 2. Fee based upon other assets at 1% _____

TOTAL FEE
=====

ATTORNEY

ADMINISTRATOR/EXECUTOR

APPENDIX C

PROBATE COURT OF HARRISON COUNTY, OHIO

IN THE MATTER OF

CASE NO. _____ DOCKET _____ PAGE _____

COMPUTATION OF GUARDIAN'S/TRUSTEE'S COMPENSATION

PERSONAL PROPERTY

Income Fee \$ _____ x 5% (gross income)
\$ _____

\$ _____ x 2% (gross income)
attributable to real estate rentals where the
fiduciary is managing such real estate,
chargeable income.

\$ _____
PRINCIPAL \$ _____ x \$3.00 per \$1,000
on the first \$100,000

\$ _____
\$ _____ x \$2.50 per \$1,000
on the next \$200,000

\$ _____
\$ _____ x \$1.50 per \$1,000
on the balance
\$ _____

PRINCIPAL DISTRIBUTION UPON TERMINATION
(with approval of Court)

\$ _____ x 1%
\$ _____

\$===== TOTAL

ATTORNEY

GUARDIAN/TRUSTEE

APPENDIX D

COURT OF COMMON PLEAS, HARRISON COUNTY, OHIO PARENTING TIME GUIDELINES

Parenting time is a time for children to do things with the parent with whom they do not live. Activities that you do with them or skills you can teach them help the time be rewarding and enriching. Encouraging the children to find friends in your neighborhood also helps make it like home for them. Children clearly profit by continued meaningful contact with both parents. Children need the continuing and regular involvement of both parents to feel loved. No specific schedule will satisfy the change in needs of both children and parents over the years. Critical to the success of any schedule is that each parent be flexible, based upon the changing needs of the child, as the child grows older.

This Guideline Parenting Schedule takes into account the changing developmental needs of children. This schedule represents the minimum requirements for parenting time. It is each party's responsibility to tailor this schedule as necessary to meet the best interest of their child(ren). It is recognized that each situation and each child is different. Liberal parenting time arrangements are encouraged, as contact with both parents is important to the children. Absent such agreement each party shall follow these requirements. Specific items in each case's Order take precedence over this schedule as the court will strive to adopt a parenting schedule that is in the child(ren)'s best interests. Changes or modifications can be made by the court if need for such is shown. Any request to deviate from the following parenting schedule shall be supported by the filing of the proper motion.

NO PARENT IS PERMITTED TO MAKE PARENTING TIME ARRANGEMENTS OR MODIFY ORDERED PARENTING TIME ARRANGEMENTS DIRECTLY WITH THE CHILD(REN). THE PARENTS MUST PERSONALLY DISCUSS ANY ISSUES OR CONFLICTS INVOLVING PARENTING TIME WITHOUT USING THE CHILD(REN) AS INTERMEDIARY/INTERMEDIARIES.

- I. **REASONABLE PARENTING TIME:** This guideline schedule shall be considered reasonable parenting time. Additional parenting time arranged between the parents is strongly encouraged.

1. **WEEKLY SCHEDULE**

Birth to Six Months

The non-residential parent shall have parenting time weekly as follows:

Tuesday and Thursday for a period not to exceed three hours. A specific time of day is not set to accommodate shift work and the schedule of the baby so that the baby will be awake during its parenting time. Alternate Saturdays and Sundays on each weekend from 9:00 A.M. until 6:00 P.M. each day.

2. **MONTHLY SCHEDULE**

Ages Six Months through 18 Years

A. **WEEKENDS:** The non-residential parent shall have parenting time with the minor child(ren) every other weekend commencing at 6:00 P.M. Friday and terminating at 6:00 P.M. on Sunday.

B. (1) **HOLIDAYS:** Mother's Day and Father's Day shall be spent with the appropriate parent. Should such holiday occur during a non-residential parent's parenting time, said parent shall deliver the minor child(ren) to the residential parent by 9:00 A.M. Conversely, the non-residential parent shall have parenting time from 9:00 A.M. to 6:00 P.M. if the holiday occurs on a non-parenting time weekend.

(2) **CHRISTMAS:** In odd numbered years, the non-residential parent shall be entitled to parenting time Dec. 18th at 6:00 P.M. to Dec. 25th at 12:00 noon (if the child(ren) is (are) not in school. If the child(ren) is (are) in school, parenting time shall be from 6:00 P.M. of the last day of school to 12:00 noon on Dec. 25th.) In odd numbered years, the residential parent shall be entitled to parenting time from 12:00 noon, Dec. 25th to 7:00 P.M. on New Year's Day, Jan 1.

In even numbered years, the residential parent shall be entitled to parenting time Dec. 18th at 6:00 P.M. to Dec. 25th at 12:00 noon (if the child(ren) is (are) not in school. If the child(ren) is (are) in school, parenting time shall be from 6:00 P.M. of the last day of school to 12:00 noon on Dec. 25th.) In even numbered years, the non-residential parent shall be entitled to parenting time from 12:00 noon, Dec. 25th to 7:00 P.M. on New Year's Day, Jan 1.

(3) THANKSGIVING: In even numbered years, the non-residential parent shall be entitled to parenting time from Wednesday, 6:00 P.M. to Friday 6:00 P.M. In even numbered years, the residential parent shall be entitled to parenting time from Friday, 6:00 P.M. to Sunday, 7:00 P.M.

In odd numbered years, the residential parent shall be entitled to parenting time from Wednesday, 6:00 P.M. to Friday 6:00 P.M. In odd numbered years, the non-residential parent shall be entitled to parenting time from Friday, 6:00 P.M. to Sunday, 7:00 P.M.

(4) EASTER: In odd numbered years, the non-residential parent shall be entitled to parenting time from Thursday, 6:00 P.M., to 6:00 P.M. the day before school resumes. In even numbered years, the residential parent shall have the child from Thursday, 6:00 P.M., to 6:00 P.M. the day before school resumes.

(4)(A) SPRING VACATION: If any spring break in school occurs other than that described in paragraph (4) Easter, then in even numbered years, the non-residential parent shall be entitled to parenting time from 6:00 P.M. on the day school recesses for the break until 6:00 P.M. the day before school resumes excluding any time spent with the residential parent according to paragraph (4) Easter. In odd numbered years, the residential parent shall be entitled to parenting time from 6:00 P.M. on the day school recesses for the break until 6:00 P.M. the day before school resumes excluding any time spent with the residential parent according to paragraph (4) Easter.

(5) FOURTH OF JULY: In even numbered years, the non-residential parent shall have parenting time on July 3rd at 6:00 P.M. to 7:00 P.M. on July 5th except when the 4th of July falls on a Friday, Saturday, Sunday or Monday, at which time parenting time shall commence Friday night at 6:00 P.M. and continue to the end of the week end or end of the holiday, whichever is later, at 7:00 P.M.

In odd numbered years, the residential parent shall have parenting time on July 3rd at 6:00 P.M. to 7:00 P.M. on July 5th except when the 4th of July falls on a Friday, Saturday, Sunday or Monday, at which time parenting time shall commence Friday night at 6:00 P.M. and continue to the end of the week end or end of the holiday, whichever is later, at 7:00 P.M.

(6) **MEMORIAL DAY:** In even numbered years, the non-residential parent shall have parenting time on Friday, 6:00 P.M. to 7:00 P.M. on Monday. In odd numbered years, the residential parent shall have parenting time on Friday, 6:00 P.M. to 7:00 P.M. on Monday.

(7) **LABOR DAY:** In odd numbered years, the non-residential parent shall have parenting time on Friday, 6:00 P.M. to 7:00 P.M. on Monday. In even numbered years, the residential parent shall have parenting time on Friday, 6:00 P.M. to 7:00 P.M. on Monday.

(8) **MARTIN LUTHER KING DAY:** The non-residential parent shall have parenting time on Friday, 6:00 P.M. to 7:00 P.M. on Monday.

(9) **PRESIDENT'S DAY:** The non-residential parent shall have parenting time on Friday, 6:00 P.M. to 7:00 P.M. on Monday.

C. **BIRTHDAYS:** In even numbered years, the non-residential parent shall have the child on his/her birthday from 9:00 A.M. to 7:00 P.M. if a non-school day, or from 6:00 P.M. to 9:00 P.M. on a school day. In odd numbered years, the non-residential parent shall have the child on the day following his birthday for three (3) hours, 6:00 P.M. to 9:00 P.M., on a school day or week day and 10:00 A.M. to 6:00 P.M. on a Saturday or Sunday.

In odd numbered years, the residential parent shall have the child on his/her birthday from 9:00 A.M. to 7:00 P.M. if a non-school day, or from 6:00 P.M. to 9:00 P.M. on a school day. In even numbered years, the residential parent shall have the child on the day following his birthday for three (3) hours, 6:00 P.M. to 9:00 P.M., on a school day or week day and 10:00 A.M. to 6:00 P.M. on a Saturday or Sunday.

The child(ren) shall spend each parent's birthday from 9:00 A.M. to 7:00 P.M. if a non-school day, or from 6:00 P.M. to 9:00 P.M. on a school day with that parent unless otherwise ordered by the court or agreement of the parties.

D. **SUMMER PARENTING TIMES:** The non-residential parent shall have extended summer parenting time for four (4) weeks

duration. Such parenting time shall be continuous, except the parties may agree otherwise. Residential and non-residential parent shall cooperate with regard to their vacation time. The non-residential parent shall notify the residential parent by May 1 of the weeks to be taken for the extended parenting time.

The non-residential parent shall not interfere with extra curricular activities, but shall be responsible for transportation to summer extra curricular events and shall encourage participation in same. However, the residential parent shall not enroll the child(ren) in any summer extra curricular event that would disrupt the summer parenting time of the non-residential parent unless the non-residential parent agrees to the activity in writing.

Each parent may arrange an uninterrupted vacation of not more than two weeks with the child(ren). The non-residential parent shall schedule this during his/her four week summer parenting time, and the residential parent shall schedule this at a time other than the non-residential parents' four week summer parenting time. A general itinerary of the vacation shall be provided for the other parent, including dates, locations, addresses, and telephone numbers. Holiday and birthday celebrations with either parent shall not be missed, requiring scheduling of the vacation around these events or that the missed occasion be made up. Alternate weekends are missed during vacation, and are therefore not required to be made up.

- E. **WEEKLY PARENTING TIME:** The non-residential parent shall have one evening parenting time every week period from 6:00 P.M. to 9:00 P.M. The specific day is to be determined by the parents. If the parents cannot agree, the mid-weekday is Wednesday. The non-residential parent shall be responsible for assisting with homework and be responsible for transportation to and from activities.

*All times may be adjusted to avoid conflict with work schedules, but minimal adjustment is encouraged.

**Holiday parenting times have precedence over the regular parenting time. The regular parenting time schedule shall commence the following weekend. The parent who did not exercise parenting time for the holiday weekend shall exercise their parenting time this weekend and starting a new rotation of the schedule.

II. STATUTORY REQUIREMENTS:

1. RELOCATION NOTICE:

If the residential parent intends to move to a residence other than the last residence of court record, he/she shall file a notice of intent to relocate with this Court. Except as provided in ORC 3109.051(G)(2), (3), and (4) pertaining to incidents involving a conviction of domestic violence, a copy of such notice shall be mailed by the Court to the non-residential parent. On receipt of the notice, the court, on its own motion or on the motion of the non-residential parent, may schedule a hearing with notice to both parties to determine whether it is in the best interest of the children to revise the parenting time schedule for the children. Said notice shall be filed 60 days prior to the relocation.

2. RECORDS ACCESS NOTICE:

Except as specifically modified or otherwise limited by court order, and subject to statutory restrictions on files maintained by the Child Support Enforcement Agency and files maintained by any Education Institution when the non-residential parent is involved in a domestic violence situation, the non-residential parent is entitled to access under the same terms and conditions as the residential parent to any record that is related to the children and to which the residential parent is legally provided access, including school records. Any keeper of a record, public or private, who knowingly fails to comply with this order, is in contempt of Court.

Both parents shall have access to the children's school records. Both parents are encouraged to participate in parent-teacher conferences, school trips, school programs and other school events in which parents are invited to participate. The parent receiving the grade card shall give a copy to the other parent within a reasonable time.

Subject to Ohio Revised Code Section 2301.35(G)(2) and 3319.321(F), the non-residential parent shall be entitled to access any record related to the child(ren) under the same terms and conditions that access is provided to the residential parent.

3. DAY CARE CENTER ACCESS NOTICE:

Except as specifically modified or otherwise limited by court order, and in accordance with statutory requirements of a operating a daycare, the non-residential parent is entitled to access to any day care center that is or will be attended by the children with whom parenting time is granted, to the same extent that the residential parent is granted access to the center.

4. SCHOOL ACTIVITIES NOTICE:

Except as specifically modified or otherwise limited by the court order, and subject to Ohio law pertaining to the privacy of domestic violence victims or family members, the non-residential parent is entitled to access, under the same terms and conditions as the residential parent to any student activity that is related to the children to which the residential parent legally is provided access.

Subject to Ohio law pertaining to the privacy of domestic violence victims or family members, the non-residential parent shall have access to any student activity involving the child(ren) under the same terms and conditions that access is provided to the residential parent.

III. GENERAL COMMENTS AND REQUIREMENTS:

(1) The non-residential parent shall give twenty-four (24) hours advance notice of cancellation of parenting time.

(2) The residential parent shall advise when a child is ill and unable to visit with as much advance notice as practicable.

(3) Both parties shall have the child(ren) ready for commencement and termination of parenting time at the appointed time.

(4) Both parties shall be punctual. NO party shall have to wait beyond thirty (30) minutes of an appointed time. A parent who is late forfeits companionship for that period.

(5) The residential parent shall send sufficient clean clothes appropriate to the season and sufficient to last the entire parenting time period. If the planned parenting time activities require special or unusual clothing needs, the non-residential parent must notify the residential parent at least two (2) days in advance of the parenting time period. If the child does not have the type of clothing requested, the residential parent is under no obligation to comply with the request. All clothing sent by the residential parent must be returned immediately after the parenting time

period. Additionally, any clothing purchased by the non-residential parent and which the children are wearing upon their return to the residential parent after parenting time, shall be cleaned and returned by the residential parent to the non-residential parent at the next parenting time period.

The residential parent shall send sufficient bottles and all prescription or non-prescription medication taken by the child(ren) along with written instructions for the administration of the same and the name and telephone number of the physician. All bottles and unused supplies sent by the residential parent shall be returned with the child(ren). Each parent is to provide a car seat, diapers, and formula for the child during parenting time.

(6) Child(ren) shall not be taken to a bar during parenting time.

(7) It is encouraged that child(ren) shall not be left with friends or family members during a parenting time except if the non-residential parent is working or in an emergency.

(8) Disparaging remarks about the other parent SHALL NOT be made to the child(ren) or in the presence of the child(ren).

(9) The residential parent shall notify the non-residential parent of any illness or malady that requires medical attention. No surgery, except emergency surgery, shall be performed without a good faith effort to give notice to the non-residential parent.

(10) Unless agreed otherwise, transportation for parenting time shall be divided as follows: the non-residential parent shall pick up the child at the residence of the residential parent for the beginning of parenting time and the residential parent pick-up the child at the residence of the non-residential parent at the end of parenting time.

(11) Parenting time granted shall be exercised; parenting time not taken is lost. Parenting time not taken do to the actions of the residential parent is not waived, but shall occur on the next immediately following weekend.

(12) Parenting time requires communication and cooperation. Both parties shall cooperate with regard to parenting time.

(13) The child(ren) are not property. Parenting time questions shall be decided with a prime consideration of the best interest of the child(ren).

(14) Both parties shall recognize that the child(ren) have his/her own friends and activities and shall respect this fact. Regardless of where the children are living, their continued participation in extracurricular activities, school related or otherwise, shall continue uninterrupted. It shall be the responsibility of the parent with whom they are residing at the time of the activity to provide the physical and economic cost of transportation to these activities. The residential parent shall provide the non-residential parent with notice of all extracurricular activities, school related or otherwise, in which the children participate, schedules of all extracurricular activities (handwritten by the residential parent if no formal schedule is provided by the activity) and the name of the activity leader (including address and telephone number if reasonably available to the residential parent).

(15) Telephone Access:

The non-residential parent may call the child(ren) not more than three (3) times per week and speak with said child(ren) for not less than 15 minutes on each call.

The child(ren) is/are permitted to call the non-residential parent at least once per day at reasonable times. If the call is long distance, the child(dren) shall call collect.

The residential parent shall not interfere with or prevent telephone communication between the non-residential parent and the child(ren) nor shall the non-residential parent interfere with or prevent telephone communication between the residential parent and the child(ren) during parenting time.

16) This schedule does not affect support payments. Additional parenting time is encouraged, but that factor does not create a deviation in child support. Child support is not abated for any period of parenting time.

APPENDIX E

COURT OF COMMON PLEAS, HARRISON COUNTY, OHIO PARENTING TIME GUIDELINES LONG DISTANCE COMPANIONSHIP

Parenting time is a time for children to do things with the parent with whom they do not live. Activities that you do with them or skills you can teach them help the time be rewarding and enriching. Encouraging the children to find friends in your neighborhood also helps make it like home for them. Children clearly profit by continued meaningful contact with both parents. Children need the continuing and regular involvement of both parents to feel loved. No specific schedule will satisfy the change in needs of both children and parents over the years. Critical to the success of any schedule is that each parent be flexible, based upon the changing needs of the child, as the child grows older.

This Guideline Parenting Schedule takes into account the changing developmental needs of children. This schedule represents the minimum requirements for parenting time. It is each party's responsibility to tailor this schedule as necessary to meet the best interest of their child(ren). It is recognized that each situation and each child is different. Liberal parenting time arrangements are encouraged, as contact with both parents is important to the children. Absent such agreement each party shall follow these requirements. Specific items in each case's Order take precedence over this schedule as the court will strive to adopt a parenting schedule that is in the child(ren)'s best interests. Changes or modifications can be made by the court if need for such is shown. Any request to deviate from the following parenting schedule shall be supported by the filing of the proper motion.

NO PARENT IS PERMITTED TO MAKE PARENTING TIME ARRANGEMENTS OR MODIFY ORDERED PARENTING TIME ARRANGEMENTS DIRECTLY WITH THE CHILD(REN). THE PARENTS MUST PERSONALLY DISCUSS ANY ISSUES OR CONFLICTS INVOLVING PARENTING TIME WITHOUT USING THE CHILD(REN) AS INTERMEDIARY/INTERMEDIARIES.

II. REASONABLE PARENTING TIME: This guideline schedule shall be considered reasonable parenting time. Additional parenting time arranged between the parents is strongly encouraged.

Except as otherwise explicitly provided in this Order, when the non-residential parent resides more than 30 miles from the residence of the child, **the**

non-residential parent shall have the right to parenting time with the child as follows:

1. WEEKLY SCHEDULE

Birth to Six Months

The non-residential parent shall have parenting time weekly, if practicable, as follows:

Tuesday and Thursday for a period not to exceed three hours. A specific time of day is not set to accommodate shift work and the schedule of the baby so that the baby will be awake during its parenting time. Alternate Saturdays and Sundays on each weekend from 9:00 A.M. until 6:00 P.M. each day.

The residential parent shall send with the child(ren) on parenting time, clean clothing appropriate to the season and sufficient to last the entire parenting time period. The residential parent shall send sufficient bottles and all prescription or non-prescription medication taken by the child(ren) along with written instructions for the administration of the same and the name and telephone number of the physician. All bottles and unused supplies sent by the residential parent shall be returned with the child(ren) as well as all clothing, which shall be cleaned by the non-residential parent. Each parent is to provide a car seat, diapers, and formula for the child during parenting time.

2. MONTHLY SCHEDULE

Ages Six Months through 18 Years

1. Weekends – On weekends, beginning at 6:00 p.m. on the first, third, and fifth Friday of each month, and ending at 6:00 p.m. on the following Sunday. Except as otherwise explicitly provided in this Parenting Time Guideline, if a weekend period of parenting time by the Non-residential parent begins on a Friday that is a school holiday during the regular school term or a federal, state, or local holiday during the summer months when school is not in session, or if the period ends on or is immediately followed by a Monday that is such a holiday, that weekend period of parenting time shall begin at 6:00 p.m. on the Thursday immediately preceding the Friday holiday or school holiday or end at 6:00 p.m. on that Monday holiday or school holiday, as applicable.

2. Christmas Holidays in Even-Numbered Years – In even-numbered years, beginning at 6:00 p.m. on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 26.

Christmas Holidays in Odd-Numbered Years – In odd-numbered years, beginning at noon on December 26 and ending at 6:00 p.m. on New Year's Day or two days before school resumes after that Christmas school vacation whichever is later.

3. Thanksgiving in Odd-Numbered Years – In odd numbered years, beginning at 6:00 p.m. on the day the child is dismissed from school for the Thanksgiving holiday and ending at 5 :00 p.m. on the following Sunday.
4. Spring Break - If any spring break in school occurs other than that described in paragraph (5) Easter, then in even numbered years, the non-residential parent shall be entitled to parenting time from 6:00 P.M. on the day school recesses for the break until 6:00 P.M. the day before school resumes.
5. Easter Holidays – In even numbered years beginning at 6:00 p.m. on the day the child is dismissed from school and ending at 6:00 p.m. on the day before school resumes.
6. Extended Summer Parenting Time by the Non-Residential Parent

With Written Notice by May 1 – If the non-residential parent gives the residential parent written notice by May 1 of a year specifying an extended period or periods of summer parenting time for that year, the non-residential parent shall have parenting time of the child for forty-two days beginning no earlier than the day after the child's school is dismissed for the summer vacation and ending no later than seven days before school resumes at the end of the summer vacation in that year, to be exercised in no more than two separate periods of at least seven consecutive days each, as specified in the written notice. These periods of parenting time shall begin and end at 6:00 p.m.

Without Written Notice by May 1 – If the non-residential parent does not give the residential parent written notice by May 1 of a year specifying an extended period or periods of summer parenting time for that year, the non-residential parent shall have parenting time of the child for forty-two consecutive days beginning at 6:00 p.m. on June 15 and ending at 6:00 p.m. on July 27 of that year.

7. Child's Birthday – If the non-residential parent is not otherwise entitled under this Parenting Time Guideline to have parenting time with the child on the child's birthday, the non-residential parent shall have parenting time of the child beginning at 6:00 p.m. and ending at 8:00 p.m. on that day, provided that the non-residential parent picks up the child from the residential parent's residence and returns the child to that same place.
8. Mother's Day/Father's Day Weekend – Each year, beginning at 6:00 p.m. the Friday preceding Mother's Day/Father's Day and ending at 6:00 p.m. on Mother's Day/Father's Day, provided that if the non-residential parent is not otherwise entitled under this Parenting Time Guideline to have parenting time with the child, she/he shall pick up the child from the residential parent's residence and return the child to that same place.
9. Parent's Birthday's – The non-residential parent shall have parenting time with the child from 6:00 p.m. to 9:00 p.m. on the day of the parent's birthday. If the residential parent's birthday falls on a day that the non-residential parent has parenting time, the residential parent shall have parenting time from 6:00 p.m. to 9:00 p.m. on that day.

Notwithstanding the weekend periods of parenting time ORDERED for the non-residential parent, it is explicitly ORDERED that **the residential parent shall have a superior right of parenting time of the child as follows:**

1. Christmas Holidays in Odd-Numbered Years - In odd numbered years, beginning at 6:00 p.m. on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 26.
2. Christmas Holidays in Even-Numbered Years – In even-numbered years, beginning at noon on December 26 and ending at 6:00 p.m. on the day before school resumes after that Christmas school vacation.
3. Thanksgiving in Even-Numbered Years – In even-numbered years, beginning at 6:00 p.m. on the day the child is dismissed from school for the Thanksgiving holiday and ending at 6:00 p.m. on the following Sunday.

4. Easter Holidays – In odd numbered years beginning at 6:00 p.m. on the day the child is dismissed from school and ending at 6:00 p.m. on the day before school resumes.
5. Spring Break - In odd numbered years, the residential parent shall be entitled to parenting time from 6:00 P.M. on the day school recesses for the break until 6:00 P.M. the day before school resumes.
6. Summer Weekend Parenting time by the Residential Parent – If the residential parent gives the non-residential parent written notice by June 1 of a year, the residential parent shall have parenting time with the child on any one weekend beginning at 6:00 p.m. on Friday and ending at 6:00 p.m. on the following Sunday during any one period of parenting time by the non-residential parent during the non-residential parent's extended summer parenting time in that year, provided that if a period of parenting time by the non-residential parent in that year exceeds thirty days, the residential parent may have parenting time of the child under the terms of this provision on any two non-consecutive weekends during that period and provided that the residential parent picks up the child from the non-residential parent and returns the child to that same place.
7. Extended Summer Parenting time by the Residential Parent – If the residential parent gives the non-residential parent written notice by June 1 of a year, the residential parent may designate twenty-one days beginning no earlier than the day after the child's school is dismissed for the summer vacation and ending no later than seven days before school resumes at the end of the summer vacation in that year, to be exercised in no more than two separate periods of at least seven consecutive days each, during which the non-residential parent shall not have parenting time of the child, provided that the period or periods so designated do not interfere with the non-residential parent's period or periods of extended summer parenting time or with Father's Day Weekend.
8. Child's Birthday – If the residential parent is not otherwise entitled under this Parenting Time Guideline to have parenting time with the child on the child's birthday, the residential parent shall have parenting time of the child beginning at 6:00 p.m. and ending at 8:00 p.m. on that day, provided that the residential parent picks up the child from the non-residential parent's residence and returns the child to that same place.

II. GENERAL COMMENTS AND REQUIREMENTS

Except as otherwise explicitly provided in this Parenting Time Guideline, the terms and conditions of parenting time with the child that apply regardless of the distance between the residence of a parent and the child are as follows:

1. Surrender of Child by the Residential Parent – the residential parent shall surrender the child to the non-residential parent at the beginning of each period of the non-residential parent’s parenting time at the residence of the residential parent.
2. Return of Child by the Non-Residential Parent – the non-residential parent shall return the child to the residence of the residential parent at the end of each period of parenting time.
3. Surrender of Child by the Non-Residential Parent – the non-residential parent shall surrender the child to the residential parent, if the child is in the non-residential parent’s parenting time or subject to the non-residential parent’s control, at the beginning of each period of the residential parent’s exclusive periods of parenting time, at the residence of the non-residential parent.
4. Return of Child by the Residential Parent – the residential parent is ORDERED to return the child to the non-residential parent, if the non-residential parent is entitled to parenting time of the child, at the end of each of the residential parent’s exclusive periods of parenting time, at the residence of the non-residential parent.
5. The non-residential parent shall give twenty-four (24) hours advance notice of cancellation of parenting time.
6. The residential parent shall advise when a child is ill and unable to visit with as much advance notice as practicable.
7. Both parties shall have the child(ren) ready for commencement and termination of parenting time at the appointed time.

8. Both parties shall be punctual. NO party shall have to wait beyond thirty (30) minutes of an appointed time. A parent who is late forfeits companionship for that period.
9. The residential parent shall send sufficient clean clothes appropriate to the season and sufficient to last the entire parenting time period. If the planned parenting time activities require special or unusual clothing needs, the non-residential parent must notify the residential parent at least two (2) days in advance of the parenting time period. If the child does not have the type of clothing requested, the residential parent is under no obligation to comply with the request. All clothing sent by the residential parent must be returned immediately after the parenting time period. Additionally, any clothing purchased by the non-residential parent and which the children are wearing upon their return to the residential parent after parenting time, shall be cleaned and returned by the residential parent to the non-residential parent at the next parenting time period.

The residential parent shall send sufficient bottles and all prescription or non-prescription medication taken by the child(ren) along with written instructions for the administration of the same and the name and telephone number of the physician. All bottles and unused supplies sent by the residential parent shall be returned with the child(ren). Each parent is to provide a car seat, diapers, and formula for the child during parenting time.

10. Each parent is ORDERED to return with the child the personal effects that the child brought at the beginning of the period of parenting time.
11. Child(ren) shall not be taken to a bar during parenting time.
12. It is encouraged that child(ren) shall not be left with friends or family members during a parenting time except if the non-residential parent is working or in an emergency.
13. Each parent may designate any competent adult to pick up and return the child, as applicable.
14. Disparaging remarks about the other parent SHALL NOT be made to the child(ren) or in the presence of the child(ren).

15. The residential parent shall notify the non-residential parent of any illness or malady that requires medical attention. No surgery, except emergency surgery, shall be performed without a good faith effort to give notice to the non-residential parent.
16. Parenting time granted shall be exercised; parenting time not taken is lost. Parenting time not taken do to the actions of the residential parent is not waived, but shall be added to the next scheduled parenting time weekend.
17. Written notice shall be deemed to have been timely made if received or postmarked before or at the time that notice is due.
18. Parenting time requires communication and cooperation. Both parties shall cooperate with regard to parenting time.
19. The child(ren) are not property. Parenting time questions shall be decided with a prime consideration of the best interest of the child(ren).
20. Both parties shall recognize that the child(ren) have his/her own friends and activities and shall respect this fact. Regardless of where the children are living, their continued participation in extracurricular activities, school related or otherwise, shall continue uninterrupted. It shall be the responsibility of the parent with whom they are residing at the time of the activity to provide the physical and economic cost of transportation to these activities. The residential parent shall provide the non-residential parent with notice of all extracurricular activities, school related or otherwise, in which the children participate, schedules of all extracurricular activities (handwritten by the residential parent if no formal schedule is provided by the activity) and the name of the activity leader (including address and telephone number if reasonably available to the residential parent).

21. Telephone Access:

The non-residential parent may call the child(ren) not more than three (3) times per week and speak with said child(ren) for not less than 15 minutes on each call.

The child(ren) is/are permitted to call the non-residential parent at least once per day at reasonable times. If the call is long distance, the child(ren) shall call collect.

The residential parent shall not interfere with or prevent telephone communication between the non-residential parent and the child(ren) nor shall the non-residential parent interfere with or prevent telephone communication between the residential parent and the child(ren) during parenting time.

22. The periods of parenting time ordered above apply to the minor child the subject of this suit while that minor child is under the age of eighteen years and not otherwise emancipated.
23. This schedule does not affect support payments. Additional parenting time is encouraged, but that factor does not create a deviation in child support. Child support is not abated for any period of parenting time.

III. STATUTORY REQUIREMENTS:

1. RELOCATION NOTICE:

If the residential parent intends to move to a residence other than the last residence of court record, he/she shall file a notice of intent to relocate with this Court. Except as provided in ORC 3109.051(G)(2), (3), and (4) pertaining to incidents involving a conviction of domestic violence, a copy of such notice shall be mailed by the Court to the non-residential parent. On receipt of the notice, the court, on its own motion or on the motion of the non-residential parent, may schedule a hearing with notice to both parties to determine whether it is in the best interest of the children to revise the parenting time schedule for the children. Said notice shall be filed 60 days prior to the relocation.

2. RECORDS ACCESS NOTICE:

Except as specifically modified or otherwise limited by court order, and subject to statutory restrictions on files maintained by the Child Support Enforcement Agency and files maintained by any Education Institution when the non-residential parent is involved in a domestic violence situation, the non-residential parent is entitled to access under the same terms and conditions as the residential parent to any record that is related to the children and to which the residential

parent is legally provided access, including school records. Any keeper of a record, public or private, who knowingly fails to comply with this order, is in contempt of Court.

Both parents shall have access to the children's school records. Both parents are encouraged to participate in parent-teacher conferences, school trips, school programs and other school events in which parents are invited to participate. The parent receiving the grade card shall give a copy to the other parent within a reasonable time.

Subject to Ohio Revised Code Section 2301.35(G)(2) and 3319.321(F), the non-residential parent shall be entitled to access any record related to the child(ren) under the same terms and conditions that access is provided to the residential parent.

3. DAY CARE CENTER ACCESS NOTICE:

Except as specifically modified or otherwise limited by court order, and in accordance with statutory requirements of a operating a daycare, the non-residential parent is entitled to access to any day care center that is or will be attended by the children with whom parenting time is granted, to the same extent that the residential parent is granted access to the center.

4. SCHOOL ACTIVITIES NOTICE:

Except as specifically modified or otherwise limited by the court order, and subject to Ohio law pertaining to the privacy of domestic violence victims or family members, the non-residential parent is entitled to access, under the same terms and conditions as the residential parent to any student activity that is related to the children to which the residential parent legally is provided access.

Subject to Ohio law pertaining to the privacy of domestic violence victims or family members, the non-residential parent shall have access to any student activity involving the child(ren) under the same terms and conditions that access is provided to the residential parent.

IV. AIR TRAVEL ARRANGEMENTS FOR PARENTING TIME

IT IS ORDERED that, until a child reaches the age of five years, the following arrangements for air travel of that child shall control:

Surrender at the Non-Residential Parent's Residence – Adult to Accompany Child

Adult to Accompany Child – Each parent is authorized to designate a responsible adult known to the child to travel with the child between the residences of the parties. However, it is preferred that the parent be the actual person transporting the child between the residences

IT IS FURTHER ORDERED that the child shall not travel alone between the residence of the non-residential parent and that of the residential parent until the child reaches the age of five years.

Surrender at the Non-Residential Parent's Residence – Expenses

Expenses shared by the Non-Residential Parent and the Residential Parent – IT IS ORDERED that the non-residential parent shall pay all travel expenses, charges, escort fees, and air fares incurred for the child for transportation from the residence of the residential parent to that of the non-residential parent. IT IS FURTHER ORDERED that the residential parent shall pay all travel expenses, charges, escort fees, and air fares incurred for the child for transportation from the residence of the non-residential parent to that of the residential parent.

Child 5 Years of Age or Older

IT IS ORDERED that the following provisions shall govern the arrangements for the travel of the child to and from the non-residential parent after the child reaches the age of five years.

Return to Residential Parent's Residence

Notice of Place and Time of Parenting time – IT IS ORDERED that, if the non-residential parent desires to take parenting time of the child at an airport near the non-residential parent's residence, the non-residential parent shall state these facts in a notice letter to the residential parent.

- (a) the airport where the residential parent is to surrender the child;
- (b) the date and time of the flight on which the child is scheduled to leave;
- (c) the airline and flight number of the airplane on which the child is scheduled to leave;
- (d) the airport where the child will return to the residential parent at the end of the period of parenting time;
- (e) the date and time of the flight on which the child is scheduled to return to that airport; and
- (f) the airline and flight number of the airplane on which the child is scheduled to return to the residential parent at the end of the period of parenting time.

Flight Arrangements

Flight arrangements – IT IS ORDERED that each parent shall make airline reservations for the child only on major commercial passenger airlines on flights having no change of airplanes between the airport of departure and the airport of final arrival (a “nonequipment change flight”). IT IS FURTHER ORDERED that each parent shall make airline reservations for the child on flights that depart from a commercial airport near the residence of the other parent that offers regularly scheduled passenger flights to various cities throughout the United States on major commercial passenger airlines.

Delivery and Pickup by the Residential Parent

Delivery and Pickup by the Residential Parent – IT IS ORDERED that the residential parent shall deliver the child to the airport from which the child is scheduled to leave at the beginning of each period of parenting time at least two hours before the scheduled departure time. IT IS FURTHER ORDERED that the residential parent shall surrender the child to a flight attendant who is employed by

the airline and who will be flying on the same flight on which the child is scheduled.

IT IS FURTHER ORDERED that the residential parent shall take parenting time of the child at the end of the residential parent's period of parenting time at the airport where the child is scheduled to return and at the specific airport gate where the passengers from the child's scheduled flight disembark.

Pickup and Return by the Non-Residential Parent

Pickup and Return by the Non-Residential Parent – IT IS ORDERED that the non-residential parent shall take parenting time of the child at the beginning of each period of parenting time at the airport where the child is scheduled to arrive and at the specific airport gate where the passengers from the child's scheduled flight disembark.

IT IS FURTHER ORDERED that the non-residential parent, at the end of each period of parenting time, shall deliver the child to the airport where the child is scheduled to depart at least two hours before the scheduled departure time and surrender the child to a flight attendant who is employed by the airline and who will be flying on the same flight on which the child is scheduled to return.

Missed Flights

Missed Flights – IS ORDERED that any parent who has parenting time of the child at the time shall notify the other parent immediately if the child is not placed on a scheduled flight at the beginning or end of a period of parenting time. IT IS FURTHER ORDERED that, if the child should miss a scheduled flight, the parent having parenting time of the child when the flight is missed shall schedule another nonequipment change flight for the child as soon as is possible after the originally scheduled flight and shall pay any additional expense associated with the changed flight and give the other parent notice of the date and time of that flight.

The Non-Residential Parent's Residence

Expenses Shared by the Non-Residential Parent and the Residential Parent

– IT IS ORDERED that the non-residential parent shall purchase in advance the airline tickets (including escort fees) to be used by the child for the child's flight from the airport near the residence of the residential parent to the airport near the residence of the non-residential parent. IT IS FURTHER ORDERED that the non-residential parent shall make the necessary arrangements with the airlines and with the residential parent in order that the airline tickets are available to the child before a scheduled flight. IT IS FURTHER ORDERED that the residential parent shall purchase in advance the airline tickets (including escort fees) to be used by the child for the child's flight from the airport near the residence of the non-residential parent to the airport near the residence of the residential parent. IT IS FURTHER ORDERED that the residential parent shall make the necessary arrangements with the airlines and with the non-residential parent in order that the airline tickets are available to the child before a scheduled flight.

Miscellaneous Expenses

Miscellaneous Expenses – IT IS ORDERED that the expenses of a parent incurred in traveling to and from an airport as well as related parking and baggage handling expenses, are the sole responsibility of the parent delivering or receiving the child at the airport.

These supplemental rules concerning local practice in this Probate and Juvenile Division of this Court have been this date adopted by me thus superceding all previously adopted local rules until this Court adopts other rules.

_____, Judge
Matthew P. Puskarich

Certificate

In accordance with CPSupR 44, I have this date caused these rules to be filed with the Supreme Court by forwarding them by U.S. Mails, postage prepaid.

_____, Judge
Matthew P. Puskarich

Date: January 2, 2020