

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

**JOHN M. HOLCOMB, JUDGE**

**LOCAL RULES**

**EFFECTIVE  
SEPTEMBER 18, 2023**



**BUTLER COUNTY COURTHOUSE  
101 HIGH STREET  
HAMILTON, OHIO 45011**

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COMMON PLEAS COURT  
BUTLER COUNTY, OHIO  
PROBATE DIVISION

LOCAL RULES

Conduct and operations in the Probate Division of the Butler County, Ohio Court of Common Pleas (Butler County Probate Court) are governed by the applicable Rules of Superintendence for the Courts of Ohio supplemented by Local Rules of practice adopted by the Butler County Probate Court. The Rules of Superintendence may be found on the Ohio Supreme Court's website at: [Supreme Court of Ohio - Home \(supremecourt.ohio.gov\)](https://supremecourt.ohio.gov) and are incorporated in their entirety into these Local Rules by reference.

The Butler County Probate Court's Local Rules of Practice are numbered to correspond with the numbering of the Rules of Superintendence for the Court of Ohio. The effective date of these Butler County Probate Court Rules is September 18, 2023. For individual Rules amended on or after September 18, 2023, the effective date of the amendment is set forth immediately following the new or amended paragraph.

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## **B.C.L.R. 2.1          Special Terms**

The following words, phrases, and abbreviations and their meanings are defined terms used throughout these Rules:

1. Civ. R. – refers to the applicable Ohio Rule of Civil Procedures as amended from time to time including the enactment of additional Rules.
2. Court – refers to the Butler County Probate Court.
3. B.C.L.R. – refers to the Local Rule of Butler County Probate Court adopted pursuant to Sup. R. 5(A).
4. BCPC – refers to a Butler County Form prescribed for use in the Butler County Probate Court. The form number follows the reference and is available on the Court's website.
5. Fiduciary – refers to all types of fiduciaries under the jurisdiction of probate court as defined in R.C. § 2109.01.
6. R.C. – refers to the applicable section of the Ohio Revised Code as amended from time to time including the enactment of additional sections.
7. SPF – refers to a Standard Probate Form prescribed for use by the Ohio Supreme Court.
8. Sup. R. – refers to the applicable Rule of Superintendence as amended from time to time including the enactment of additional Rules.
9. App. R. – refers to the Ohio Rules of Appellate Procedure as amended from time to time including the enactment of additional Rules.

## **B.C.L.R. 5.1          Local Rules**

The Butler County Probate Court hereby adopts the following Local Rules of practice. These Rules are meant to supplement the Ohio Rules of Civil Procedure, The Ohio Rules of Superintendence, the Ohio Revised Code, and any other applicable authority.

## **B.C.L.R. 5.2          Effective Date and Application**

These Local Rules are effective beginning September 18, 2023, and apply to all cases on or after that date, regardless of whether the case is pending, reopened, or newly filed.

## **B.C.L.R. 5.3          Amendments**

- (A) The Court may amend these Rules from time to time, if the Court determines that doing so would be necessary or beneficial to comply with changes in Ohio Revised Code, Ohio Rules of Superintendence, Ohio Rules of Civil Procedure, or to increase the efficiency of the Court.
- (B) For Rules amended on or after September 18, 2023, the effective date of the amendment is set forth immediately following the new or amended paragraph.

#### **B.C.L.R. 5.4            Court Discretion**

The Court may modify or waive the application of any of these Rules if the Court determines, in its sole discretion, that the particular circumstances warrant it. Modifications or waivers in one circumstance do not create a precedent that the Court will grant a modification or waiver in similar or different circumstances.

#### **B.C.L.R. 5.5            Case and Jury Management Plan**

- (A) All civil actions, except actions to sell real estate, shall be set for a scheduling conference / report hearing after completion of service of summons as required by the Rules of Civil Procedure, unless otherwise ordered by statute. At the time of the hearing, counsel of record must be present and have full authority to advise the Court of all of the following:
  - 1. Nature of the case;
  - 2. Time needed for discovery and exchange of expert witnesses, if necessary;
  - 3. Estimated time needed for trial; and
  - 4. Status, if any, of settlement negotiations.
- (B) Any objections or exceptions to any matter, including but not limited to exceptions / objections to Inventory or accountings, may be set for pretrial within thirty (30) days.
- (C) An Itemized Evidence Inventory (BCPC 719) is expected to be completed by counsel and submitted for any contested hearing.
- (D) The Local Rules of the General Division of the Butler County Court of Common Pleas shall apply to all trials by jury and are incorporated in these Rules by reference.

#### **B.C.L.R. 5.6            Court Technology**

- (A) The Probate Court authorizes the use of electronic return receipts from the United States Postal Service and commercial carriers for certified mail service. Electronic proof of service shall be deemed in compliance with the service requirements of the Civil Rules. The use of electronic return receipts is not mandatory.
- (B) The Court authorizes the use of audiovisual devices and technologies for all actions and proceedings, the use of such devices and technologies to be determined by the assigned judicial officer on a case-by-case basis.
- (C) The Court may permit an appearance by videoconference or telephone in certain situations in which attendance in person would be an undue burden or expense or would affect the health, safety, or comfort of the participants. The Court, on its own motion and by notice to all parties, may require or permit all or some of the participants to appear by videoconference or telephone. Any party desiring to appear for a hearing or conference by videoconference must make a request by written application no later than five (5) days prior to the scheduled event. The application must be accompanied by a proposed entry.
- (D) The Court will not permit telephone or videoconference appearance where a citation to appear has been issued unless prior written consent of the Court is granted.
- (E) The Court will not accept electronic signatures / doc-u-sign or digital notarizations on any documents without prior written permission of the Court.

## **B.C.L.R. 5.7            Electronic Transmission Filings**

(A) In conformity with Civil Rule 5(E), pleadings, motions, applications, and other filings may be filed with the Court by U.S. Mail, facsimile machine, or email filing subject to the following conditions:

1. Application of Rules and Orders – This Rule has been instituted solely for the convenience of those filing documents with the Court. The Court does not assume any new or additional responsibilities, obligations, or liabilities by virtue of this Rule, except as expressly provided in this Rule. The sender assumes all responsibilities, obligations, and liabilities for using this method of filing. This Rule pertains only to the method of filing and does not override, alter, amend, revoke, or otherwise change any Local or Civil Rule respecting the requirements of any filings such as obtaining the consent of parties and counsel or obtaining signatures or the authorization to sign for opposing counsel.
2. Filings Not Accepted: The following documents may NOT be filed by facsimile or email transmission:
  - a. Any filing commencing a proceeding for which the Court must collect an initial case deposit or a specific filing fee and / or for which the Court is required to effectuate service of summons;
  - b. Any document for which a party is obligated to pay costs to the Court;
  - c. Due to the confidentiality of the proceedings, pleadings, motions, applications, or other filings in matters involving an adoption;
  - d. Any document that is considered confidential or sealed with the Court, including but not limited to Expert Evaluations, Confidential Disclosure Forms, Bank Certificates/ Statements, or Authorizations to Release Information;
  - e. To deposit a will or to file a will or trust;
  - f. To deposit for safekeeping an instrument or power of attorney nominating a guardian;
  - g. To tender a surety bond;
  - h. Any waivers, consents, or documents signed by persons other than the attorney of record, fiduciary, applicant, petitioner, or complainant;
  - i. Any affidavits or certified, exemplified, or authenticated copies of documents;
  - j. Applications for Certificate of Transfer of Real Estate;
  - k. Any account; or
  - l. To make any filing for which a filing by mail is prohibited under R.C. § 2109.021.
3. Filings Accepted:
  - a. Except as provided in these Rules, all pleadings, motions, applications, or other filings are permitted to be filed with the Court by facsimile or email. The Court is authorized to reject, or if filed, strike any document that does not meet the requirements of the Court.
4. Facsimile Cover Page:

All facsimile filings shall be accompanied by a cover page that states all of the following information:

  - a. Date of transmission;
  - b. Name, Telephone Number, Email, and / or Facsimile Number of the person transmitting the document;
  - c. Case number and caption of the case in which the document is to be filed;
  - d. Title of the document to be filed; and
  - e. The number of pages being transmitted.



5. Facsimile Machine / Email:
  - a. The telephone number of the facsimile machine available for fax filings for the Court is (513) 887-3625. This line is available twenty-four (24) hours a day, seven (7) days per week for fax filings. Any faxes sent to an alternate number may be rejected prior to filing, or if filed, stricken from the record upon discovery.
  - b. The email for filing is [probfilings@bcOhio.gov](mailto:probfilings@bcOhio.gov). This email is available twenty-four (24) hours a day, seven (7) days per week for filings.
6. Document Restrictions:
  - a. A “fax transmission” as referred to in this Rule may contain more than one document, but cannot apply to more than one case number. Motions and other filings making reference to or incorporating other documents attached to the motion or other filing as an exhibit shall be considered part of a single filing for purposes of this Rule. If exhibits are not sent with the facsimile, the Court will reject the document for filing.
  - b. A “fax transmission” as referred to in this Rule may not contain more than fifteen (15) pages excluding the cover page.
7. Filing Acceptance or Rejection:
  - a. The Court is authorized to reject any facsimile transmission filing if the sender fails to include a cover page as required by Local Rule;
  - b. The Court is authorized to reject any facsimile transmission if there are court costs due;
  - c. The Court is authorized to reject any facsimile transmission that is illegible or unable to be preserved according to the requirements of Sup. R. 26.
8. Date and Time of Filing:
  - a. Subject to other provisions of this Rule, all documents filed by fax or email shall be considered filed with the Court as of the date and time the Clerk timestamps the document received, during regularly scheduled hours, as opposed to the date and time of the facsimile or email transmission. The risks of transmitting a document to the Court by facsimile or email shall be borne entirely by the sender. Anyone using facsimile filing is urged to verify receipt of such filings by the Court.
9. Original Filing – A document filed by fax shall be accepted as the “original” if the person sending the fax complies with all of the requirements set forth in this Rule. **The person making a fax filing shall not file any original source document with the Court, and any such document will be refused or discarded by the Court.** However, until the case is closed and all opportunities for direct appeal are exhausted, the filer must maintain in their records, and have available for production on request by the Court, the original source document of any document filed by fax with original signatures as otherwise required under the applicable Rules, together with the original copy of the facsimile cover sheet used for the subject filing.
10. Signatures – Facsimile and email filings shall contain a signature followed by the typed name of the person signing the source document.
11. User or Technical Errors – The Court is not responsible for any filing that is made untimely as the result of a technical failure of the Court’s system, or of the user’s computer hardware or software, or internet service provider.

## **B.C.L.R. 8.1                    Appointment of Counsel or Fiduciaries in Proceedings**

- (A) The Court shall maintain a master list of attorneys who have expressed a willingness to accept appointments for service as:
  - 1. Counsel for persons for whom a civil commitment or civil institutionalization is sought;
  - 2. Counsel for persons for whom a guardian is sought or for whom a guardianship has been established;
  - 3. To serve as Guardian Ad Litem;
  - 4. To represent a biological parent in an adoption proceeding; or
  - 5. In any case in which the Court deems the appointment is necessary and proper.
- (B) The Court shall maintain a master list of attorneys who have expressed a willingness to accept appointments to serve as a fiduciary in an Estate, Guardianship, or Trust.
- (C) The Court may appoint counsel not on the master list if the Court deems the appointment is necessary and proper.

## **B.C.L.R. 8.2                    Appointment Process**

- (A) Appointment of Counsel or Fiduciaries in a proceeding for whom the Court deems the appointment is necessary and proper shall be done in a manner that shall ensure equitable distribution of appointments among persons on the appointment list and according to counsel's availability to take the appointment. The determination of equitable distribution shall take into account the individual appointee's education and professional experience and their particular knowledge of the types of specific issues presented by the particular case to which they are appointed, as well as the number of times that they have been appointed with respect to the times others have been appointed.
- (B) Counsel interested in appointments should submit a letter to the Court expressing a willingness to be appointed, and in what capacity, with a Certificate of Good Standing from the Ohio Supreme Court and proof of legal malpractice insurance which shall be maintained in the Court's master file. The Court will issue an entry of appointment in each case or procedure counsel is appointed as attorney or fiduciary.
- (C) The procedure by which all such appointments are made shall be reviewed periodically to ensure the equitable distribution among the persons on the master lists maintained by the Court.

## **B.C.L.R. 8.3                    Compensation**

The manner of compensation and rate at which persons appointed will be compensated for services provided as a result of appointment, including if applicable, a fee schedule, shall be set by order of the Court, in accordance with applicable statutes and administrative rules.

## **B.C.L.R. 9.1            Court Security Policy and Procedures Plan**

- (A) The Court has adopted and implemented a Court Security Policies and Procedures Plan that complies with Sup. R. 9. The plan is reviewed and amended as needed, is confidential, and is not available for public access.
- (B) All persons entering the Butler County Courthouse for any reason are subject to security screening upon entering the building.

## **B.C.L.R. 16.1            Mediation**

The Court adopts this Rule as a means of offering alternative dispute resolution of contested matters in the Butler County Probate Court.

### **(A) Uniform Mediation Act**

- 1. The Court intends this Rule to implement the Uniform Mediation Act, R.C. § 2710 (“UMA”). If there are any inconsistencies, the UMA controls resolution of the issue.

### **(B) Statement of Purpose**

- 1. The purpose of mediation is to promote greater efficiency and public satisfaction through the facilitation of the earliest possible resolution of disputed cases in the Butler County Probate Court. The Court has established this mediation process to increase access to justice, to increase parties’ participation in the court process and their satisfaction with the outcome, to allow cases to settle more quickly and with less expense to the parties, and to expand the dispute resolution resources available to the parties.

### **(C) Definitions**

- 1. All defined terms in the UMA have the same meaning for purposes of this Rule.

### **(D) Confidentiality of Proceedings**

- 1. All mediation communications related to or made during the mediation process are governed by the UMA, the Rules of Evidence, and other pertinent procedural Rules.
  - a. Agreement to Mediate – In furtherance of assuring confidentiality in mediation proceedings, parties and non-parties desiring confidentiality of mediation communications must execute a written “Agreement to Mediate” before the mediation session. If a new or different person attends a subsequent session, his or her signature must be obtained prior to proceeding further in the process.
  - b. Privilege – All communications, negotiations, or settlement discussions between participants in the course of a mediation are not subject to discovery or admissible in evidence; they must remain confidential and are protected from disclosure, except as otherwise provided by law.
  - c. Mediator May Not Testify – The mediator is prohibited from being called as a witness in any subsequent legal proceeding, unless the parties agree otherwise under the terms of a settlement agreement.

## **B.C.L.R. 16.2      Initiation of Mediation**

### **(A) Mediation Referral**

1. Referral Process – The Court, on its own motion or the motion of any of the parties, may refer disputed issues to mediation in whole or in part by filing an order of referral to mediation. Within thirty (30) days after the date of that order, the mediator or the parties must jointly file a notice of scheduled mediation, which must, at a minimum, indicate the date, time, place, and contact information for the mediation.
2. Domestic Violence – All parties and attorneys must advise the Court of any domestic violence allegations known to them to exist or to have existed in the past, or which become known to them following entry of the order of referral to mediation but before conclusion of all mediation proceedings, when allegations involve any two (2) or more persons whose attendance is required by the referral order.
3. Eligibility of Cases – The Court will determine the eligibility and appropriateness of each referral before the commencement of the mediation process and may decline any referrals the Court deems inappropriate.
4. Outside Referrals – If a dispute involves such issues as mental health, developmental disability, or aging adults, but a guardianship case has not been filed, a party may file a motion to refer the matter to mediation. A case will be referred to mediation if mediation is likely to resolve the dispute as a less restrictive alternative to guardianship.

### **(B) Selection and Assignment of Mediator**

1. The Court will select the Mediator, taking into consideration the qualifications, skills, expertise, and caseload of the mediator, in addition to the type, complexity, and requirements of the case.

### **(C) Mediator Conflict of Interest**

1. In accordance with R.C. § 2710.08(A) and (B), the mediator assigned by the Court to conduct a mediation must disclose to the parties, attorneys, and any non-party participants any known or possible conflicts that may affect the mediator's impartiality as soon as such conflicts become known to the mediator. If any attorney or mediation party requests that the assigned mediator withdraw because of the facts so disclosed, the assigned mediator must withdraw and request that the Court appoint another mediator.

## **B.C.L.R. 16.3      Mediation Process**

This Rule governs the process for all mediations. The mediator may have additional procedural policies that the parties must follow.

(A) Mediation Procedure – In accordance with all applicable provisions of this Rule, if the Court deems a case appropriate, mediation will be scheduled. A mediator may meet with the parties individually before bringing the parties together for any reason, including, without limitation, further screening. A mediator may schedule multiple mediation sessions, if necessary and mutually acceptable to the parties, for the resolution of the issues in part or in their entirety. The Court will utilize procedures for all cases to accomplish all of the following:

1. Participation – The procedures will ensure that all parties are allowed to participate in mediation, and, if the parties wish, that their attorneys and other individuals they designate are allowed to accompany them and participate in mediation.

2. Domestic Violence – The procedures will provide for screening for potential domestic violence both before and during mediation.
3. Referrals – The procedures will enable appropriate referrals, if necessary, to attorneys and other support services for all parties, including victims of and suspected victims of domestic violence.
4. Prohibited Uses – The procedures will prohibit the use of mediation in any of the following circumstances:
  - a. As an alternative to the prosecution or adjudication of domestic violence;
  - b. In determining whether to grant, modify, or terminate a protection order;
  - c. In determining the terms and conditions of a protection order; and
  - d. In determining the penalty for violation of a protection order.

(B) Mediation Case Summary

1. At least five (5) court days before the mediation, the parties must submit to the mediator a short memorandum stating the legal and factual positions of each party, as well as other material information each party believes would be beneficial to the mediator, including, without limitation:
  - a. A summary of material facts;
  - b. A summary of legal issues;
  - c. The status of discovery;
  - d. A list and explanation of special damages and a summary of all injuries or damages; and
  - e. Settlement attempts to date, including demands and offers.

(C) Party and Non-Party Participation – The following requirements apply to participation in the mediation by parties and non-parties:

1. Mandatory Participation
  - a. Parties who are ordered into mediation in formal cases must attend scheduled mediation sessions. The Court may order parties to return to mediation at any time in formal cases. Party representatives with authority to negotiate a settlement and all other persons necessary to negotiate a settlement, including insurance carriers, must attend the mediation sessions. If the parties, their attorneys, or the insurance representatives do not attend the mediation sessions, the mediator must report the non-compliance to the Court.
2. Attorneys
  - a. The Court or the mediator may require the attendance of the parties' attorneys at the mediation sessions if the mediator deems it necessary and appropriate.
3. Necessary Party
  - a. If any party's attorney becomes aware of the identity of a person or entity whose consent is required to resolve the dispute, but that person or entity has not yet been joined as a party in the pleadings, they must promptly inform the mediator as well as the Court.
4. Disclosure of Relationship
  - a. The following relationships between opposing parties must be disclosed in any and all cases:
    - i. Related by blood, adoption, or marriage;
    - ii. Have resided in a common residence; or
    - iii. Have known or alleged domestic violence at any time before or during the mediation.

5. Nonparties

- a. By participating in mediation, a nonparty participant, as defined in R.C. § 2710.01(D), agrees to be bound by this Rule and submits to the Court's jurisdiction to the extent necessary for enforcement of this Rule. Any non-party participant has the rights and duties under this Rule attributed to parties, except as provided by R.C. § 2710.03(B)(3) and § 2710.04(A)(2).

(D) Stay of Proceedings

1. All Court Orders will remain in effect during the mediation process, and may not be stayed or suspended without further Court order. Mediation will not stay discovery, which may continue through the mediation process, unless the parties agree otherwise and the Court approves.

(E) Continuances

1. It is the Court's policy to resolve matters as expeditiously as possible. The Court will only grant continuances of scheduled mediations for reasonable cause shown after a mutually acceptable further date has been determined. Only the Court may grant a continuance. Except as authorized by the Court, the existence of pending motions is not reasonable cause for a continuance, and the Court will not grant a continuance unless the mediation can be scheduled before the final pretrial conference.

(F) Termination

1. If the mediator determines that further mediation efforts would not benefit the parties, he or she must inform all interested parties and the Court in writing that the mediation is terminated.

**B.C.L.R. 16.4       Results of Mediation**

(A) Mediation Memorandum of Understanding

1. The mediator, parties, or their attorneys, if applicable, as agreed by the parties, may promptly prepare a written memorandum memorializing the agreement reached by the parties. The mediation memorandum may be signed by the parties and attorneys. If the mediation memorandum is signed, it will not be privileged pursuant to R.C. § 2710.05(A)(1). The written mediation memorandum may become an order of the Court after review and approval by the parties and their attorneys, if applicable. No oral agreement by the attorneys or with parties or an officer of the Court will be considered unless made in open court.

(B) Mediator's Report

1. At the conclusion of mediation, and in compliance with R.C. § 2710.06, the mediator must inform the Court of the status of the mediation. The mediator's report must include all of the following:
  - a. Whether the mediation occurred or was terminated;
  - b. Whether the parties reached a settlement on some, all, or none of the issues;
  - c. Attendance of the parties;
  - d. Whether future mediation sessions are scheduled, including the date and time; and
  - e. Any other information the Court may request or the mediator may deem important.If the parties reached full agreement, the report must include the parties'

agreement as to who is responsible for outstanding court costs and who will prepare any necessary entries.

(C) Failure to Participate

1. If any person fails to participate in or attend mediation without reasonable cause after being ordered to do so by the Court, the Court may impose sanctions against the offending person, which may include, without limitation, the award of attorney's fees and other costs, contempt, or other appropriate sanctions at the discretion of the Court.

**B.C.L.R. 26.1      Court Records Management and Retention**

The Court maintains a Schedule of Record Retention and Disposition in conjunction with the requirements in the Rules of Superintendence for the Courts of Ohio. The Records Retention Schedule is filed under Case No. PI09-08-0110 and is reviewed annually.

**B.C.L.R. 53.1      Butler County Probate Court Hours of Operation**

- (A) The Butler County Probate Court and its offices located at 101 High Street shall be open for the transaction of business from 8:30 A.M. to 4:30 P.M. daily, except Saturday, Sunday, and legal holidays. Any variations to this schedule will be posted as early as possible by the Court.
- (B) Marriage License Office hours are 8:30 A.M. to 4:00 P.M. daily, except Saturday, Sunday, and legal holidays. Appointments are preferred – walk-ins will be accepted on a first come, first served basis, though appointments will have priority. Any variations to this schedule will be posted as early as possible by the Court.
- (C) In instances of inclement weather, please contact the Butler County Emergency Number at (513) 785-5800 for closures.

**B.C.L.R. 54.1      Conduct in the Butler County Probate Court**

- (A) Counsel and pro se litigants shall not initiate or institute any discussion on a pending case with the Judge or Magistrate(s) unless all counsel and pro se parties of record are present or have been reasonably requested or notified to be present at a specific time fixed by the Court.
- (B) Inappropriate or ex parte emails, correspondence, or other communications may be ignored, deleted, or forwarded to the appropriate parties or authorities. If presented for filing, such communications may be rejected prior to filing, or if filed, stricken from the record upon discovery, and may subject the lawyer, law firm, or pro se litigants to such other sanctions as the Court deems appropriate.

**B.C.L.R. 55.1      Inspection of Butler County Probate Court Records**

- (A) No Court file or other Court record may be removed from the Court without a written order signed by the Probate Judge. Any violation of this Rule may result in the issuance of a citation for contempt.
- (B) Civil commitment case files, adoption case files, and other filings and records designated by law

or by the Probate Court as confidential shall not be examined by any person without the express authorization of the Probate Judge or a Probate Court Magistrate. When authorized, such examination shall take place within the presence of the Probate Judge, a Probate Court Magistrate, or a Probate Court Deputy Clerk. Violation of this Rule may result in the issuance of a citation for contempt.

- (C) Pursuant to Sup. R. 55(B), copies of records may be obtained at a cost per page as authorized by the Probate Judge. The charge for copies is ten (10) cents per page. If the request is to have the record certified, the charge is two dollars (\$2.00) per page, pursuant to R.C. §2101.16(A).

#### **B.C.L.R. 56.1          Motions to Extend Time**

- (A) Motions to extend time in the administration of an estate, guardianship, or trust must be signed by the fiduciary and the attorney of record. Failure of the fiduciary to sign the motion may result in the motion being rejected or, if filed, denied or stricken from the record.
- (B) A proposed entry must be submitted simultaneously with a motion to extend.

#### **B.C.L.R. 56.2          Continuance of Scheduled Hearings**

- (A) Motions for continuance of a hearing shall be submitted in writing with the proper caption and case number.
- (B) No continuance shall be granted in the absence of proof of reasonable notice to or consent by all parties previously notified of the hearing or a party's counsel. Failure to object to the continuance within a reasonable time after receiving notice shall be considered consent to the continuance.
- (C) It is the responsibility of the filer to obtain possible new hearing dates from all parties.
- (D) A proposed entry must be submitted simultaneously with a motion for continuance, leaving the date and time blank for the new hearing date.
- (E) Upon receipt of a motion to continue, the Court will contact counsel / filer, and if no return call is received within three (3) days of the Court's first call to counsel / filer, the Court will choose a date on the docket and schedule the hearing. If counsel / filer is unable to appear at the time the Court chooses, counsel must file another motion for continuance and comply with all requirements of B.C.L.R. 56.2.

#### **B.C.L.R. 57.1          Filing and Judgment Entries**

- (A) All applicants filing pro se (not represented by an attorney) must complete a Self-Representation Acknowledgement (BCPC 638).
- (B) All applicants filing pro se (not represented by an attorney) must provide to the Court a valid government issued photo identification and proof of current address.
- (C) All documents presented for filing must be computer-generated or typewritten and wholly legible. The clerk may reject for filing any document(s) that are partially or wholly illegible or are not suitable for digital imaging.
- (D) The Court will accept two-sided printing.
- (E) Inappropriate or ex parte emails, correspondence, or other communications may be ignored, deleted, or forwarded to the appropriate parties or authorities. If presented for filing, such



communications may be rejected prior to filing, or if filed, stricken from the record upon discovery, and may subject the lawyer, law firm, or pro se litigants to such other sanctions as the Court deems appropriate.

- (F) Pursuant to Sup. R. 57(C), it is the responsibility of each attorney of record, fiduciary, and any party proceeding without the aid of an attorney to advise the Court in writing of a change of address by filing a Statement of Permanent Address (BCPC 721). Failure to comply with this Rule may lead to dismissal of the case, removal of the fiduciary, and / or disallowance of fiduciary and / or attorney fees.
- (G) The Court may deny, dismiss, or reject forms that deviate from the format of the Standard Probate Forms or the local forms provided by the Court. Such forms may be rejected prior to filing or stricken from the record upon discovery and may subject the lawyer, law firm, or pro se litigants to such other sanctions as the Court deems appropriate.
- (H) Notarized or authenticated documents with white-out will not be accepted for filing or, if filed, shall be stricken from the record upon discovery. Any other documents with corrections / deletions made with white-out may, subject to the Court's discretion, be accepted.
- (I) No hearing shall be scheduled before document(s) are filed and case number assigned. When scheduling a hearing date, the Court will contact counsel / filer, and if no return call is received within three (3) days of the Court's first call to counsel / filer, the Court will choose a date on the docket and schedule the hearing. If counsel / filer is unable to appear at the time the Court chooses, counsel must file a motion for continuance and comply with all requirements of B.C.L.R. 56.2.
- (J) Proof of service / certificate of service shall state the date, type of service, manner of service, the name and / or business of each served with the address to which service was directed, and shall be signed in accordance with Civil Rule 11.
  - 1. If proof of service / certificate of mailing is required for a scheduled hearing, said proof of service shall be filed no less than five (5) business days prior to the scheduled hearing. Failure to file proof of service no less than five (5) business days prior to the hearing may result in the hearing being continued for cause.
  - 2. When filing proof of service (certified mail receipts), the green card must be taped to the back of the notice that was issued.
  - 3. Electronic proof of service for certified mail or express mail provided to the Court through the United States Postal Service electronic return receipt program shall be deemed adequate evidence of service in accordance with the service requirements of Civ. R. 73 and Civ. R. 4.0 through 4.6.
- (K) All filers in all case types must attach an addendum (BCPC 639) to their initial application, petition, or complaint listing the names of all parties, their street address, phone number, and email address, if known. For any minor child or person adjudicated incompetent, the name and address of said person's Legal Guardian(s) or Legal Custodian(s) shall be stated.
- (L) The Supreme Court of Ohio and / or the Butler County Probate Court may modify, create, or discard forms as changes to Rules or applicable statutes occur. When such changes occur, the Court may add a notation with the effective date to discard previous versions. **When this occurs, the Court may reject a form presented that has been modified or discarded, or may request that additional form(s) be filed.**

- (M) The Court will only timestamp one (1) original filing. Provided counsel or pro se litigant provides a self-addressed stamped envelope, the Court, within three (3) days of timestamping the filing, will make and send one (1) copy of the timestamped filing(s) to the attorney of record or pro se filer. In the event of a multi-page filing, the Court will only make a copy of the timestamped front page of the document.

## **B.C.L.R. 58.1          Deposits for Court Costs**

- (A) Deposits shall be required upon the initial filing of any action or proceeding. The Court shall maintain and make available a current list of deposits required. The deposit required shall be applied as filings occur.
1. Upon final disposition of a case, all pre-paid-but-unearned deposits shall automatically be refunded to the attorney of record, or the fiduciary / applicant if there is no attorney of record. Prior to making the final distributions and filing the final account, the attorney should check the case balance.
  2. All pre-paid-but-unearned costs twenty-five dollars (\$25.00) or less upon final disposition of the case shall be transferred to the Indigent Guardian Fund.
- (B) The deposit required shall be applied as filings occur, and additional deposits may be required at the time of filing any Application, Motion, Transfer, Report, Inventory, or Accounting.
- (C) Counsel of record for the party charged with paying court costs shall be responsible for paying the same. This Rule does not prohibit counsel from seeking reimbursement from their clients for such costs. In pro se proceedings, the fiduciary / applicant / party shall be responsible for paying all court costs.
- (D) In cases where a filing incurs the payment of a filing fee, payment of the fee is due when the filing is presented. The Court may return the document(s) unfiled to the filing party or, if filed, the Court will not release any copies of the filing until costs are received. This Rule does not apply if one (1) of the following apply:
1. There are sufficient funds in the case deposit to pay the filing fee and the filing party is the party who paid the initial case deposit;
  2. The filing is a final entry which disposes of a civil case type. In these instances, the Court will receive the entry and contact the appropriate party / parties to pay the costs as set forth in the entry. The entry will then be timestamped upon receipt of the costs from the appropriate party / parties; or
  3. The Court determines, in its discretion, that the filing should be filed in the absence of the filing fee.
- (E) No action or proceeding will be closed, nor final entries released, until all costs are paid in full or waived by Court entry.
- (F) The Court will accept only the following methods of payment for costs:
1. Cash;
  2. Money Order; or
  3. Checks, as follows:
    - i. Law Firm, Attorney, or IOLTA checks;
    - ii. Fiduciary checking account checks for decedent's estates, guardianships, and testamentary trusts;
    - iii. Certified checks; or

- iv. Credit cards through the Court's website only after a case has been established and a case number assigned.

#### **B.C.L.R. 58.2      Witness, Guardian Ad Litem, or Extraordinary Fees**

- (A) Upon the filing of a Praecipe for Subpoena of Witness, the party shall deposit for each witness an amount sufficient to pay the witness as prescribed in R.C. § 2335.06 and Civ. R. 45(B), or other amounts as the Court deems appropriate.
- (B) Prior to the appointment of a Guardian Ad Litem, or anytime thereafter, a party shall deposit an amount determined by the Court appropriate to satisfy the services of a Guardian Ad Litem. Prior to the release of any deposit for services rendered, a Guardian Ad Litem shall submit an Application and Proposed Entry for the approval of fees.
- (C) If the Court determines the necessity and reasonableness of an accommodation that is extraordinary in the course of the proceedings, a party shall deposit an amount deemed sufficient to the Court.

#### **B.C.L.R. 59.1      Wills**

- (A) Upon presentation of a will, the Court shall make an initial determination as to whether the purported will shall be admitted to probate. If a will presented to probate contains alterations, interlineations, or extraneous markings, the Court may enter an Interlocutory Order Denying Admission of the Will and schedule a hearing pursuant to R.C. § 2107.181. If a will presented appears to be a copy of an original will, the Court may order that an Application to Admit Lost, Spoliated, or Destroyed Will be filed pursuant to R.C. § 2107.26 - § 2107.28.
- (B) Where the will names a Trust (Revocable or Irrevocable) as a beneficiary, a copy of the executed Trust or Memorandum of Trust shall be displayed to the Magistrate or Judge prior to or at the time of filing the Inventory, unless ordered filed by the Court. If ordered filed, the Trust or Memorandum of Trust shall be kept in a separate confidential file.
  - 1. If the will names a Trust as a beneficiary, the name and residence address of its current trustee must appear on Side 2 of the Next of Kin form (SPF 1.0).

#### **B.C.L.R. 59.2      Safekeeping or Deposit of Wills – R.C. § 2107.07 and 2107.08**

- (A) Only the original will may be deposited with the Court for safekeeping. The depositor must complete a Certificate of Deposit of Will (BCPC 438); the Court will provide a copy of BCPC 438 as a receipt for the deposit of the Will.
- (B) When filing a Complaint for Validity of Will, it is not necessary to deposit the will for safekeeping prior to filing the Complaint. The Court will order it be deposited upon declaring its validity.
- (C) Upon the death of the depositor, the Court will release the deposited will to a person entitled upon the filing of BCPC 438(D) with proof of the depositor's death and satisfactory proof of identification.

### **B.C.L.R. 59.3      Certification of Examination of Wills on Deposit (Ohio Sup. R. 59(A))**

Prior to or simultaneously with an Application to Admit Will for Probate, Application to Administer an Estate, or Application to Relieve Estate from Administration, an examination pursuant to Sup. R. 29(A) shall be completed and evidenced by a Classification and Certificate of Examination (BCPC 412), unless an application for an exception is granted (Sup. R. 76).

### **B.C.L.R. 59.4      SPF 1.0 – Identification and Status of Interested Parties: TESTATE**

- (A) A fully completed list of the Surviving Spouse, Children, Next-of-Kin, Legatees, and Devisees (SPF 1.0) shall be filed with each Application to Probate Will.
- (B) The status of any person / organization identified in the Last Will and Testament known to be missing, having predeceased the Testator, extinct, or otherwise unknown shall be stated on SPF 1.0.
- (C) Any person / organization using a Post Office Box to receive mail must also disclose their complete mailing address.
- (D) For any minor child, the name and address of their parent, or if none living, the name(s) and address(es) of the Legal Guardian(s), Legal Custodian(s), or person and relationship with whom the minor resides shall be stated.
- (E) For any person adjudicated incompetent, the Legal Guardian shall be stated.

### **B.C.L.R. 59.5      Unknown, Missing, Lost, Destroyed, or Otherwise Adeemed Property**

If, at the time of filing an Application for Admission of Will to Probate or anytime thereafter, including at the time of filing the Inventory and Appraisal or Assets and Liabilities, there exists any devise, legacy, or bequest of specific property identified in the Last Will that is unknown, missing, lost, destroyed, or otherwise not owned by the decedent at death, such specific property shall be stated in writing on a Declaration of Specific Bequest (BCPC 469) in lieu of being shown on the Schedule of Assets (SPF 6.1) or Assets and Liabilities (SPF 5.1).

### **B.C.L.R. 59.6      Notice and Service of Probate of Will – Ohio Sup. R. 59(B)**

In addition to the Certificate of Service of Notice of Probate of Will (SPF 2.4) as required, all persons listed on the Next of Kin (SPF 1.0) whose addresses are known shall be given Notice of Probate of Will (SPF 2.2) by a method provided in Ohio Civ. R. 73(E) or a signed Waiver of Notice of Probate of Will (SPF 2.1) must be submitted.

### **B.C.L.R. 60.1      SPF 1.0 – Identification and Status of Interested Parties: INTESTATE**

- (A) A fully completed list of the Surviving Spouse, Children, Next of Kin, Legatees, and Devisees (SPF 1.0) shall be filed with each Application for Authority to Administer Estate (SPF 4.0) unless one has been previously filed with an Application to Probate Will (SPF 2.0). A duplicate shall not be required with the SPF 4.0 application.
- (B) The status of any person identified in the SPF 1.0 known to be missing, to have predeceased the decedent, or address otherwise unknown shall be stated.
- (C) Any person with a Post Office Box to receive mail must also disclose their complete mailing address.

- (D) For any minor child, the name and address of their parent, or if none living, the name(s) and address(es) of the Legal Guardian(s), Legal Custodian(s), or person and relationship with whom the minor resides shall be stated.
- (E) For any person adjudicated incompetent, the name and address of the Legal Guardian shall be stated.

#### **B.C.L.R. 60.2          Application for Authority to Administer Estate (SPF 4.0)**

- (A) For estimated value of estate, a notation such as “to be determined” or “unknown” shall be deemed incomplete, unless supported by an Affidavit. Otherwise, it may be rejected by the Clerk or later stricken from the Court’s record without a hearing.
- (B) An estimated value of the estate will not be incomplete in the following circumstances:
  - 1. Estate is being opened to pursue a claim for wrongful death or survival action as a result of personal injury and there are no probable assets to be administered; or
  - 2. Estate is being opened solely for the purpose of filing or continuing a cause of action in favor of or against the decedent’s estate.

In such circumstances as 1) or 2) listed above, the applicant shall file a Classification Form and Certificate of Examination for Estates (BCPC 412).
- (C) Applicant shall file an appropriate Fiduciary’s Bond (SPF 4.2) unless otherwise provided in this Rule, by exception provided by Ohio Revised Code, or by specific order of the Court in a particular case.
- (D) In intestate estates, the fiduciary or counsel for the fiduciary shall give notice of the appointment to those persons entitled to inherit who did not waive notice or receive notice of the hearing on the appointment of fiduciary within seven (7) days of their appointment as administrator. The fiduciary or counsel for the fiduciary shall file an Affidavit / Certificate of Service with sufficient proof of said service attached.
- (E) Whenever a fiduciary resides outside Butler County, all of the decedent’s assets shall remain in Butler County. This restriction shall not apply to a fiduciary who resides in an Ohio county contiguous to Butler County. For good cause shown, the Court may dispense with this requirement.
- (F) Upon motion of any interested person, or upon the Court’s own motion, the Court may order that all intangible property be held in joint control and possession of the fiduciary and counsel for the estate or such other suitable person or entity as the Court may approve.

#### **B.C.L.R. 60.3          Bond**

- (A) All applicant(s) for appointment as any fiduciary shall file an appropriate Fiduciary Bond (Estates – SPF 4.2), (Guardianship – SPF 15.3), or (Trusts – BCPC 481), unless otherwise provided in this Rule, by an exception provided for in Ohio Revised Code, or by specific order of the Court in a particular case.
- (B) The Fiduciary bond shall be in a penal sum not less than double the estimated value of the personal property, plus annual real property rentals, plus any gross income that may come into the possession or under the control of the fiduciary.
- (C) All applications shall contain a good faith estimate of the value of all assets and gross annual

income the applicant anticipates will come into his hands as fiduciary. If an applicant is unable to determine an estimate of the assets at the time of the application, the applicant must post a minimum bond of ten thousand dollars (\$10,000.00) prior to the Court issuing letters of authority.

1. In guardianship cases in which the proposed ward does not have any assets or income with the exception of Social Security benefits, an Affidavit of Indigency (BCPC 502) may be filed in lieu of bond.
- (D) A fiduciary may apply for a reduction in the bond amount at any time upon showing adequate proof that the value of the assets and income has substantially declined as evidenced by the filing of the Inventory or most recent account.
- (E) The Court may dispense with the bond requirement in a guardianship of the estate if there is no personal property and the fiduciary provides proof that all income is paid to a lawful representative payee or to a health care facility providing for the long-term care of the ward.
- (F) The Court may dispense with the bond requirement on any funds that the guardian of an estate deposits into a restricted account at a financial institution in compliance with R.C. § 2109.13. The fiduciary must provide written verification of deposit restrictions to the Court.
- (G) If an exception to the bond requirement is granted by the Court, the Court may at any time order that bond be obtained if the Court finds it proper or necessary, or if an interested party upon a written motion establishes that bond should be required in that case.

#### **B.C.L.R. 60.4          Notice / Waiver of Application for Appointment of Fiduciary (SPF 4.4) Waiver of Right to Administer Estate (SPF 4.3)**

- (A) Sup. R. 60(A) – Any person or their attorney filing an Application for Authority to Administer Estate (SPF 4.0) shall give Notice (SPF 4.4) to the decedent's surviving spouse and to all next of kin that are residents of Ohio by any method authorized under Civ. R. 73(E), unless such person has waived their right to administer the estate with form SPF 4.3. If no waiver is obtained, the applicant or their attorney shall be responsible for issuing the Notice and Citation of Hearing on Appointment of Fiduciary (SPF 4.4). The notice shall contain the date, time, and place of the hearing, and shall be served no less than seven (7) days prior to the hearing. After completion of service, the applicant or attorney shall file with the Court an Affidavit / Certificate of Service of Notice with evidence of said service no less than five (5) days prior to the scheduled court hearing.
- (B) Sup. R. 60(B) – If there is no surviving spouse or next of kin residing in Ohio, the applicant or their attorney shall give notice within seven (7) days after the appointment to all persons entitled to inherit and shall file an Affidavit / Certificate of Service within seven (7) days of completion of notice stating the person(s) served, their address(es), and method of service. Evidence of such service shall be filed simultaneously with the Affidavit / Certificate.

#### **B.C.L.R. 60.5          Fiduciary Acceptance**

All applicants for the appointment of fiduciary shall sign and file the Fiduciary Acceptance (Estates – BCPC 423), (Guardianships – SPF 15.2), or (Trusts – BCPC 482) prior to being appointed and being issued the Letters of Authority.

## **B.C.L.R. 60.6      Appointment of Special Administrator – R.C. § 2113.15**

Where the application is for the appointment of a Special Administrator, the Court, in its discretion, may waive or modify the notice requirements, set or waive bond, limit powers, and / or require the filing of expedited status report(s) or any other filings the Court deems reasonable and appropriate.

## **B.C.L.R. 60.7      Additional Documents Required (Testate and Intestate)**

- (A) Upon the filing of a new estate, the applicant or the attorney for the estate shall file a copy of decedent's death certificate or other evidence of death acceptable to the Court. This requirement may be waived by the Court for good cause shown. The copy of the decedent's death certificate shall be kept in a separate confidential file.
- (B) Pursuant to Sup. R. 57(C), it is the responsibility of each attorney of record, fiduciary, and any party proceeding without the aid of an attorney to advise the Court, in writing, of a change of address by filing a Statement of Permanent Address (BCPC 721). Failure to comply with this Rule may lead to dismissal of the case, removal of the fiduciary, and / or disallowance of fiduciary and / or attorney fees.
- (C) Upon the filing of a new Full Administration Estate, the applicant shall file a Classification Form for Estates and Certificate of Examination (BCPC 412).
- (D) All applicants filing pro se (not represented by an attorney) must provide to the Court a valid government issued photo identification and proof of current address.
- (E) All applicants filing pro se (not represented by an attorney) must complete a Self-Representation Acknowledgement (BCPC 638).
- (F) In a testate estate, if the person named as Executor in the will or nominated as an executor by power as described in R.C. § 2107.65 chooses not to accept the trust, that person shall file a Declination (BCPC 402).

## **B.C.L.R. 61.1      Appraisers**

- (A) Appointment of Appraiser (SPF 3.0) shall be filed prior to or in conjunction with the Inventory and Appraisal. It is not necessary to file an Appointment of Appraiser if the value of the personal property is readily ascertainable, such as a vehicle, or if the fiduciary determines in good faith the personal property of household goods, tools, jewelry, and furniture have a combined fair market value of less than six thousand dollars (\$6,000.00).
- (B) An Appointment of Appraiser (SPF 3.0) shall be filed in all estates where there is real property.
- (C) Where the estate includes assets of special or unusual character, the fiduciary may appoint one (1) or more qualified person(s) to appraise those assets.
- (D) The name and address of the appraiser(s) shall be typed or printed underneath each appraiser's signature on the Appraiser's Certificate (SPF 6.0). In lieu of the appraiser's signature, a copy of the actual appraisal signed by the appraiser may be attached to the SPF 6.0.
- (E) The Court shall maintain a list of persons whom the Court has preapproved as suitable and disinterested appraisers for real / personal property, from which the fiduciary may appoint an appraiser.

1. For appointment of an appraiser not preapproved and for purposes of that estate only, the fiduciary shall make application for the appointment and shall set forth the reasons for such appointment and the qualifications of the proposed appraiser.
- (F) The following persons shall be disallowed from being appointed as appraiser in the respective estate:
1. A person related by blood or marriage to the decedent;
  2. A beneficiary of the estate; or
  3. A person related by blood, marriage, or employment to the fiduciary or attorney representing the estate.
- (G) No appraiser or broker shall be permitted to purchase or acquire, directly or indirectly, any of the property he or she appraises.

### **B.C.L.R. 61.2          Inventory and Appraisal**

- (A) An Inventory and Appraisal is due within three (3) months after the date of the fiduciary's appointment, unless the Court grants an extension of time upon application. Upon its original filing or amended versions thereafter, the Inventory and Appraisal (SPF 6.0) and the Schedule of Assets (SPF 6.1) shall be filed simultaneously at all times. Failure to file both forms simultaneously will result in the filing being rejected, or if filed, stricken from the record upon its discovery.
- (B) The Inventory and Appraisal shall state the decedent's interest and respective value(s) as of the date of death, not as of the date of filing the Inventory (R.C. § 2115.02).

An Inventory and Appraisal submitted reflecting zero assets will be rejected, or if filed, stricken from the record upon its discovery. If there are no probate assets, such as in a wrongful death proceeding, an Affidavit in Lieu of Inventory (BCPC 461-I) may be submitted for filing in lieu of filing an Inventory and Appraisal.

### **B.C.L.R. 61.3          Inventory and Appraisal (Real Estate)**

- (A) The following shall be identified on the Schedule of Assets (SPF 6.1) regarding real property located within Ohio:
1. Street Address;
  2. Auditor / tax assessor parcel or identification number; and
  3. Decedent's interest, as a fraction or percentage.
- (B) Not later than the date on which the Inventory (SPF 6.0) and the corresponding Schedule of Assets (SPF 6.1) are due to be filed, an examination of record title to each parcel of real property in the estate from the time it was acquired by the decedent shall be conducted and evidenced by filing a fully completed Statement of Counsel Concerning Examination of Record Title (BCPC 462). Only an attorney licensed to practice law in Ohio shall sign the statement.
- (C) In lieu of an appointment of appraiser for real property, the fiduciary may designate and declare the valuation of the real property by the County Auditor by attaching a printout of the tax value listed through the respective County Auditor's office or website to the Appointment of Appraiser form (SPF 3.0).



#### **B.C.L.R. 61.4      Inventory and Appraisal (Personal Property)**

- (A) Each item of personal property shall be identified as being tangible or intangible.
- (B) Household goods, tools, jewelry, and furniture wherein the fiduciary determines in good faith of having a fair market value of less than six thousand dollars (\$6,000.00) may be considered assets the value of which is readily ascertainable and which need not be appraised. Upon the filing of Exceptions to the Inventory by any interested party, the Court may order that an appraisal of personal property be made.
- (C) The value of motor vehicles may be obtained from any nationally recognized valuation guide. A printout or document verifying the value and the source of said valuation shall be attached to the Schedule of Assets (SPF 6.1).
- (D) When submitting an Inventory and Appraisal (SPF 6.0) and a Schedule of Assets (SPF 6.1) to the Court, the party filing the document shall omit personal identifiers from the document. Personal identifiers include social security numbers and all financial account numbers. Personal identifiers shall be filed on the Confidential Disclosure form (SPF 45(D)). The responsibility for omitting personal identifiers from a document submitted to the Court shall rest solely on the party filing the document. The Court is not responsible for personal identifiers that, due to the inadvertence of the filer, are on filings in the public record. The Court may refuse to accept a document for filing that contains personal identifiers or may allow it to be part of the public record if accepted for filing.

#### **B.C.L.R. 61.5      Hearing and Notice on Inventory**

- (A) A fiduciary who is not the surviving spouse shall give written notice to the surviving spouse of the date, time, and location of the taking of the Inventory unless waived by signature on page 2 of the Inventory and Appraisal (SPF 6.0).
- (B) A hearing on the Inventory shall be scheduled not later than thirty (30) days after the filing of the Inventory and Appraisal. Attendance by the fiduciary and attorney is not required unless exceptions are filed or otherwise ordered by the Court.
- (C) Upon the setting of a hearing on the Inventory, the fiduciary or attorney for the estate shall serve Notice of the Hearing (SPF 6.3) upon the following, unless a Waiver of Notice of Hearing (SPF 6.2) is filed:
  - 1. Intestate (No Will) – by serving all Next of Kin identified on page 1 of the Surviving Spouse, Next of Kin (SPF 1.0); or
  - 2. Testate (Will) – by serving all vested beneficiaries identified on page 2 of the Surviving Spouse, Next of Kin (SPF 1.0).
- (D) In addition to the persons required to be served notice listed above, the executor or administrator shall send a copy of the Notice of Hearing and the Inventory and Appraisal to the decedent's next of kin or beneficiary's attorneys of record, if any.

(E) Notice of the Hearing on Inventory (SPF 6.3) may be served by ordinary mail or by personally delivering a copy of the notice to the person entitled to receive it. Evidence of the notice shall be documented by filing an Affidavit of Service of Notice of Inventory (BCPC 407) which sets forth the manner of service and to whom service was issued. A copy of the Notice issued with evidence of service attached shall be filed simultaneously with the Affidavit of Service. Said Affidavit shall be filed not less than five (5) days prior to the scheduled hearing.

#### **B.C.L.R. 61.6      Motor Vehicles**

- (A) All motor vehicle transfers must be transferred using form BCPC 414. If attempting to get an amended or subsequent approval for the same vehicle, a Motion and Entry to vacate the previous Application must be filed prior to or simultaneously with a new BCPC 414.
1. Motor vehicle transfers in testate estates may be made after the appointment of a fiduciary.
  2. Motor vehicle transfers in intestate estates must be made after the Inventory and Appraisal is filed and must be accompanied by an Application to Distribute in Kind (SPF 10.1) or an Application to Sell Personal Property (SPF 9.0).

#### **B.C.L.R. 61.7      Newly Discovered Assets or Inventory Error(s)**

- (A) Upon discovery of one (1) or more new probate assets after an initial Inventory is filed, the fiduciary shall file a Report of Newly Discovered Assets (BCPC 413). Unless otherwise directed by the Court, a Report of Newly Discovered Assets will not be scheduled for hearing and notice to interested parties will not be required.
- (B) Upon discovery of any error other than a newly discovered asset relating to an Inventory and Appraisal (SPF 6.0), the fiduciary shall file an Amended Inventory and Schedule of Assets (SPF 6.1).
1. When filing an Amended Inventory, both the Inventory (SPF 6.0) and Schedule of Assets (SPF 6.1) must be filed simultaneously. Upon the filing of an Amended Inventory and Schedule of Assets, the fiduciary or attorney for the estate shall issue notice as required in B.C.L.R. 61.5.
  2. If the original Inventory and Appraisal was approved prior to the filing of an Amended Inventory and Schedule of Assets, a Motion and Entry Vacating the Entry Approving the Original Inventory must be filed.

#### **B.C.L.R. 61.8      Management of Real Estate by Executor or Administrator**

- (A) Except as otherwise provided below, the executor or administrator shall, not later than six (6) months after the date of appointment, make application to the Court for an order authorizing the executor or administrator to manage real property identified in the Inventory of the estate pursuant to R.C. § 2113.311 [2113.31.1].
- (B) No application shall be required if:
1. The will contains specific provisions concerning the management of the real property;
  2. The heirs or devisees entitled to real property have assumed the management of said real property; or
  3. The executor(s) or administrator(s) are the sole heirs or beneficiaries of the estate.

- (C) This Rule, where necessary, shall be interpreted consistently with R.C. § 2113.30, and if the

decedent was in the real estate rental business, an application to continue decedent's business shall be filed within four (4) months following appointment of said executor or administrator.

#### **B.C.L.R. 62.1      Bond Premiums**

Bond premiums shall be regarded as an administrative expense and may be paid when due. No application need be made for authority to pay bond premiums. Current proof of payment of bond premiums must be included with each account filed.

#### **B.C.L.R. 62.2      Rejection of Creditor Claim**

- (A) If a claim has been rejected, a copy of the rejection and proof of service shall be filed with the Court. An estate shall not be closed until all claims have been resolved.
- (B) A claimant who has brought suit on a rejected claim shall file notice of the same in the estate administration proceeding.

#### **B.C.L.R. 62.3      Insolvent Estates**

- (A) When an estate appears to be insolvent, a full administration shall be required. The fiduciary or attorney for the estate shall file a Report of Insolvency (SPF 24.0), Schedule of Claims (SPF 24.2), and Judgment Entry Setting Hearing and Ordering Notice (SPF 24.1).
- (B) The fiduciary or attorney for the estate shall issue Notice of Hearing on Representation of Insolvency (SPF 24.2) with copies of Report of Insolvency (SPF 24.0) and Schedule of Claims (SPF 24.2) attached to the Notice to all creditors, claimants, the surviving spouse, the custodians of minor children who are not the children of the surviving spouse, and other persons having an interest in the estate as devisees, legatees, heirs, and distributees who have not waived notice by personal service or by certified mail in accordance with R.C. § 2117.17. Service of notice shall not be less than ten (10) days prior to the date set for the hearing.
- (C) The fiduciary or attorney for the estate shall file Verification of Service – Notice on Representation of Insolvency (SPF 24.3) not less than five (5) days prior to the scheduled hearing with a proposed Judgment Entry of Insolvency (SPF 24.6). Failure to file proof of service no less than five (5) days prior to the hearing may result in the hearing being continued for cause.
  - 1. Proof of service / certificate of service shall state the date, manner of service, name, and / or business of each served with the address to which service was directed and shall be signed in accordance with Civil Rule 11.
  - 2. When filing proof of certified mail service (certified mail receipts), the green card must be taped to the back of the notice that was issued.

#### **B.C.L.R. 63.1      Sell Personal Property**

- (A) Pursuant to Sup. R. 63, an Application to Sell Personal Property (SPF 9.0) shall not be granted prior to the filing of the Inventory and Appraisal. The Court may, upon application and for good cause shown, grant an application to sell prior to the filing of the Inventory and Appraisal.
- (B) An Application to Sell Personal Property (SPF 9.0) is required in all intestate estates and in all testate estates where there is no power to sell in the will.
- (C) No property that the spouse desires to take at the appraised value or property specifically bequeathed, unless necessary for the payment of debts or to which distribution in kind has been

demanded prior to the sale, shall be sold without the written consent of the surviving spouse or other beneficiary. If sale is prior to the expiration of time that a surviving spouse may elect to take the property at the appraised value, not less than ten (10) days' notice of the sale shall be given to the surviving spouse (SPF 9.2).

- (D) The Court, upon its own or upon the application of any interested party, may request a hearing to determine whether the sale is in the best interest of the estate.
- (E) If sale is to be public, notice and advertisement of the sale shall be pursuant to R.C. §2113.41.
- (F) A Report of the Sale must be filed within thirty (30) days after such public or private sale.

#### **B.C.L.R. 64.1      Additional Requirements for Decedent's Estate Accounts**

- (A) Court costs are due at the time of filing an account.
- (B) A Fiduciary's Account is due within six (6) months after the date of the fiduciary's appointment unless the Court grants an extension of time upon application. Upon its original filing or amended versions thereafter, the Fiduciary Account (SPF 13.0) and the Receipts and Disbursements (SPF 13.1) shall be filed simultaneously at all times. Failure to file both forms simultaneously will result in the filing being rejected, or if filed, stricken from the record upon its discovery.
- (C) A Status Report (BCPC 463) and an Assets Remaining in Fiduciary Hands (SPF 13.2) must accompany all Partial Accountings filed with the Court.
- (D) When submitting a Final and Distributive Account (SPF 13.0) and Receipts and Disbursements (SPF 13.1), the fiduciary may list an anticipated receivable (i.e., income tax refund) as a receipt and the assignment of such receivable as a disbursement.
  - 1. The fiduciary shall execute such assignment, and each beneficiary shall sign accepting the assignment and acknowledging that the asset will be distributed according to the Last Will and Testament for testate estates or the Statute for Descent and Distribution for intestate estates.
  - 2. Upon request by the Court or a beneficiary, the fiduciary shall file the assignment with the Court.
- (E) Every account presented to the Court shall include:
  - 1. An itemized statement of all receipts of the fiduciary;
  - 2. An itemized statement of all disbursements and distributions made by the fiduciary;
  - 3. Where real estate has been sold, the accounting must contain the gross amount of the sale price and a copy of the closing statement must be attached to the Receipts and Disbursements (SPF 13.1);
  - 4. All fiduciaries must sign the account where multiple fiduciaries have been appointed, unless otherwise ordered by the Court;
  - 5. A copy of the paid funeral bill, whether paid from probate or non-probate assets, must be attached to the Receipts and Disbursements (SPF 13.1) unless previously filed with the Court;
  - 6. When submitting a Fiduciary Account (13.0) and Receipts and Disbursements (SPF 13.1) to the Court, the party filing the documents shall omit personal identifiers from the documents. Personal identifiers include social security numbers and all financial account numbers. Personal identifiers shall be abbreviated or filed in full on the Confidential

Disclosure form SPF 45(D). The responsibility for omitting personal identifiers from a document submitted to the Court shall rest solely on the party filing the document. The Court is not responsible for personal identifiers that, due to the inadvertence of the filer, are on filings in the public record. The Court may refuse to accept a document for filing that contains personal identifiers or may allow it to be part of the public record if accepted for filing;

7. An Affidavit in Lieu of Current Account (BCPC 461-A) and a Status Report (BCPC 463) affirming there are no assets in the hands of the fiduciary may be filed in lieu of a current account where an estate has been opened for purposes of pursuing a claim for wrongful death or for purposes of filing or continuing a cause of action for or against a decedent's estate;
  8. The fiduciary shall retain copies of all bank statements for the accounting period for production upon the demand of the Court.
  9. The Court may accept receipts for distributions signed by an agent under a valid power of attorney that is currently in effect.
    - a. The power of attorney must be provided to the Court at the time of filing the account that contains the distribution.
- (F) A hearing on the account shall be scheduled not less than thirty (30) days after the filing of the Fiduciary Account and Receipts and Disbursements. Attendance by the fiduciary and attorney is not required unless exceptions are filed or otherwise ordered by the Court.
- (G) Upon the setting of a hearing on the Account, the fiduciary or attorney for the estate shall serve Notice of the Hearing (SPF 13.5) upon the following, unless a Waiver of Notice of Hearing (SPF 13.7) is filed:
1. Intestate (No Will) – by serving all Next of Kin identified on page 1 of the Surviving Spouse, Next of Kin (SPF 1.0); or
  2. Testate (Will) – by serving all vested beneficiaries identified on page 2 of the Surviving Spouse, Next of Kin (SPF 1.0).
- (H) Notice of the Hearing on Account (SPF 13.5) may be served by ordinary mail or by personally delivering a copy of the notice to the person entitled to receive it. Evidence of notice shall be documented by filing an Affidavit of Service (BCPC 637) which shall set forth the manner of service and to whom service was issued. A copy of the notice issued with a copy of the notice attached shall be filed simultaneously with the Affidavit of Service. The Affidavit shall be filed not less than five (5) days prior to the scheduled hearing. **(September 18, 2023)**

## **B.C.L.R. 64.2      Additional Requirements for Guardian Accounts**

- (A) Court costs are due at the time of filing an account.
- (B) All Guardian's Accounts are due annually from the date of the appointment, and failure to file an account within the required time will subject the fiduciary to the citation and compliance process.
- (C) Every Guardian's Account presented to the Court shall include:
1. An itemized statement of all receipts of the guardian;
  2. An itemized statement of all disbursements and distributions made by the guardian:
    - a. Referenced by number or letter, date expenditure of funds was approved, and the date the disbursement was made;

- b. With regard to all disbursements made during the accounting period, all guardians shall attach a copy of the expenditure approving the disbursement and provide vouchers or other proof of payment. Acceptable vouchers or proof shall include but not be limited to:
      - i. Signed Receipts;
      - ii. Invoices that have been marked paid by the creditor;
      - iii. Cancelled checks;
      - iv. Check substitutes issued by financial institutions; or
      - v. Account statements that list the date, name of payee, and amount transferred.
  3. Where real estate has been sold, the accounting must contain the gross amount of the sale price and a copy of the closing statement must be attached to the Guardian's Account (SPF 15.8);
  4. When submitting a Guardian's Account (SPF 15.8) to the Court, the guardian filing the document shall omit personal identifiers from the document. Personal identifiers include social security numbers and all financial account numbers. Personal identifiers shall be filed on the Confidential Disclosure form 45(D). The responsibility for omitting personal identifiers from a document submitted to the Court shall rest solely on the party filing the document. The Court is not responsible for personal identifiers that, due to the inadvertence of the filer, are on filings in the public record. The Court may refuse to accept document(s) for filing that contains personal identifiers or may allow it to be part of the public record if accepted for filing;
  5. All corporate fiduciaries shall file a recapitulation of their accounts in conformity with the Guardian's Account (SPF 15.8);
  6. Upon the filing of a Guardian's Account, every guardian, except corporate guardians subject to R.C. § 1111.28, shall exhibit to the Court for its examination the securities shown in the account as being in the hands of the guardian or the certificate of the person in possession of the securities, if held as collateral or pursuant to R.C. § 2109.13 or R.C. § 2131.21, and a passbook or certified bank statement showing as to each depository the fund deposited to the credit of the guardianship; and
  7. A Bank Certificate (BCPC 15.81) for each individual account or investment must be completed and filed with each Guardian's Account.
- (D) All accounts must conform substantially to the following requirements:
1. Beginning Balance – Each account must begin with the total asset value shown on the Inventory for first accounts and the ending balance from the immediately preceding account for all subsequent accounts.
  2. Receipts – The account must add to the beginning balance all assets acquired or discovered, all income received, and other forms of financial gain since the beginning of the guardianship on first accounts or since the last accounting on subsequent accounts.
    - a. All receipts must be subtotaled by class (real property, annual rents, tangible or intangible property), with all subtotals added to determine the total receipts during the account period.

3. Disbursements – The account must subtract all expenses paid, distributions made, amounts lost, and other forms of expenditure since the beginning of the guardianship on first accounts, or since the last accounting on subsequent accounts.
  - a. All disbursements must be supported by corresponding receipts, vouchers, canceled checks, written acknowledgments, or other appropriate evidence of payment.
  - b. A bank or other financial institution statement that shows the date, amount, payee, and purpose of a payment may be used as appropriate evidence of payment.
  - c. All receipts and supporting documentation must be submitted to the Court in a format which can be scanned. For example, a receipt must be taped to a piece of paper.
  - d. All supporting documentation must be either clipped or rubber banded together prior to submission.
  - e. All documentation must be accompanied by a self-addressed stamped envelope if the documents are to be returned. If not, the Court will shred the documents upon approval of the accounting.
4. Ending Balance – The result from adding the total receipt to the beginning balance and then subtracting the total disbursements must be shown as the ending balance for the accounting period.

(E) Assets Remaining in Guardian's Hands

1. The account must itemize and describe the assets and their respective values that remain in the guardian's hands, which together comprise the ending balance shown on the account.
2. On all accounts that are not final accounts, the guardian must provide the Court with written proof, to the Court's satisfaction, of the identity and current value of all assets remaining in the guardian's hands.

**B.C.L.R. 64.3      Additional Requirements for Trust Accounts**

- (A) Court costs are due at the time of filing an account.
- (B) All Trustee Accounts are due annually from the date of the appointment, and failure to file an account within the required time will subject the fiduciary to the citation and compliance process.
- (C) The accounts of trustees shall, and the accounts of other fiduciaries may, show receipts and disbursements separately identified as to principal and income.
- (D) Every Trustee's account presented to the Court shall include:
  1. An itemized statement of all receipts of the trustee;
  2. An itemized statement of all disbursements and distributions made by the trustee, referenced by number or letter, date expenditure of funds was approved, if applicable, and the date the disbursement was made;

3. With regard to all disbursements made during the accounting period, all trustees shall attach a copy of the expenditure, if applicable, approve the disbursement, and provide vouchers or other proof of payment. Acceptable vouchers or proof shall include but not be limited to:
  - a. Signed Receipts;
  - b. Invoices that have been marked paid by the creditor;
  - c. Cancelled checks;
  - d. Check substitutes issued by financial institutions; or
  - e. Account statements that list the date, name of payee, and amount transferred.
4. Where real estate has been sold, the accounting must contain the gross amount of the sale price and a copy of the closing statement must be attached to the Trustee's Account (BCPC 486);
5. When submitting a Trustee's Account (BCPC 486) to the Court, the trustee filing the document shall omit personal identifiers from the document. Personal identifiers include social security numbers and all financial account numbers. Personal identifiers shall be filed on the Confidential Disclosure form 45(D). The responsibility for omitting personal identifiers from a document submitted to the Court shall rest solely on the party filing the document. The Court is not responsible for personal identifiers that, due to the inadvertence of the filer, are on filings in the public record. The Court may refuse to accept document(s) for filing that contains personal identifiers or may allow it to be part of the public record if accepted for filing;
6. All corporate fiduciaries shall file a recapitulation of their accounts in conformity with the Trustee's Account (BCPC 486);
7. Upon the filing of a Trustee's Account, every Trustee, except corporate trustees subject to R.C. § 1111.28, shall exhibit to the Court for its examination the securities shown in the account as being in the hands of the trustee or the certificate of the person in possession of the securities, if held as collateral or pursuant to R.C. § 2109.13 or R.C. § 2131.21, and a passbook or certified bank statement showing as to each depository the fund deposited to the credit of the trust; and
8. A Bank Certificate (BCPC 486-C) for each individual account or investment must be completed and filed with each trustee account.

#### **B.C.L.R. 64.4      Show Cause Hearings**

- (A) A fiduciary who has been cited shall personally appear in Court for a show cause hearing. Counsel shall not appear in lieu of a cited fiduciary unless the Court grants leave for the attorney to appear in that capacity.
- (B) No expenditure, sale, distribution, or fee may be approved while the fiduciary is delinquent in the filing of an Inventory, account, and / or any other deficiencies known to the Court.

#### **B.C.L.R. 65.1      Appraiser Fees in Land Sale Proceedings**

- (A) In land sale proceedings, the Court shall appoint as appraiser one suitable and disinterested person from the Court's list of appraisers. Compensation for such appraiser shall be determined by the Court. For appointment of an appraiser not preapproved and for purposes of that complaint only, the fiduciary shall make application for the appointment and shall set forth the reasons for such appointment and the qualifications of the proposed appraiser.



- (B) Attorney fees for real estate sold by judicial proceedings shall be collected and paid into the Court as costs from the net sales proceeds.
- (C) The guideline for attorney compensation shall be set by the Court as follows:
1. The first \$10,000.00 of the purchase price at the rate of 6%
  2. All above \$10,000.00 at the rate of 2%

In the event the real estate is not sold by judicial proceedings, the above guideline shall not apply and the attorney may include time spent on the sales case in an application for attorney fees filed pursuant to B.C.L.R. 71.1. The Court will consider whether the work benefitted the estate in determining such fee application.

- (D) Appraisers appointed under R.C. § 2127.22 shall be paid such compensation the Court thinks proper for services performed by them. Unless otherwise ordered by the Court, the amount of such compensation shall be determined at the time the fiduciary makes the return of their proceedings pursuant to R.C. § 2127.35.

## **B.C.L.R. 66                      Guardianships – Additional Rules**

This Rule governs guardianships of incompetent adults. A guardian of an incompetent adult must comply with all requirements in Sup. R. 66 unless a provision of this Rule specifically modifies a requirement. For Rules governing guardianships of minors, see B.C.L.R. 68.

- (A) A Statement of Expert Evaluation (SPF 17.1) filed concerning an application for the appointment of a guardian or the Guardian's Report (SPF 17.7) on the grounds of mental incompetency shall be maintained as a confidential record.
1. All applications for appointment of guardian of an incompetent adult must also include a statement of expert evaluation, dated not more than three (3) months after the individual has been evaluated.
  2. All statements of expert evaluation accompanying an Application for Appointment must be dated not more than three (3) months prior to the date the application is filed with the Court.
  3. All statements of expert evaluation must be typed and contain the physician's original signature in ink. Computer-generated signatures are not permitted.
  4. All statements of expert evaluation are required annually unless dispensed with by Court entry.
- (B) Notice of Hearing on Application for Appointment of Guardian
1. In addition to those entitled to notice of the hearing on the application for appointment of a guardian of an adult under R.C. § 2111.04(B), the Court may order that notice also be served on other persons in the same manner, at the Court's discretion.
  2. The Court shall follow R.C. § 2105.06, entitled "Statute for Descent and Distribution," for all notices.
- (C) Burden of Proof at Hearing on Application for Appointment of Guardian
1. At the hearing on the application for appointment of a guardian of the person and / or estate of an incompetent adult, the applicant bears the burden of proving, by clear and convincing evidence, both of the following:
    - a. The ward's incompetence; and
    - b. That no less restrictive alternatives exist to the proposed guardianship.

2. Existence of Powers of Attorney
    - a. If the proposed ward has executed a valid durable power of attorney or durable power of attorney for health care that remains in effect, the applicant must file true and accurate copies of the powers of attorney with the application for appointment of guardian.
      - i. At the hearing, the applicant must present satisfactory evidence of why one or both of the powers of attorney are ineffective in meeting the proposed ward's needs.
  3. Rebuttable Presumption
    - a. The Court establishes a rebuttable presumption that valid durable powers of attorney are less restrictive alternatives to guardianship.
- (D) The Guardian's Report (SPF 17.7) and Expert Evaluation (SPF 17.1) required by R.C. § 2111.49 shall be filed annually.
1. The guardian's report is required to be filed for the person and the estate.
  2. Who must file:
    - a. The guardian is responsible for the filing of the guardian's report;
    - b. If the guardian of the person and guardian of the estate are different, both guardians must cooperate and participate in filing their respective portions of the guardianship report and annual plan.
- (E) The Investigator's Report on Guardianship (SPF 17.8) shall be maintained as a confidential record.
- (F) None of the ward's assets may be accessed through an automated teller machine or debit card. Electronic payment of routine and recurring expenses may be permitted with prior Court approval (i.e.: phone bills, utility bills, medication, etc.).
- (G) Expenditure of Funds
1. No guardian of a ward's estate may expend any of the ward's funds without prior Court authorization.
  2. Court costs must be paid prior to reviewing the application to expend funds.
  3. The Application for Authority to Expend Funds (SPF 15.7) must describe the following:
    - a. The payee (i.e. nursing home, attorney, or creditor, etc.); and
    - b. The amount due and payable.
  4. All amounts must be exact. No estimated amounts are acceptable and must include:
    - a. The purpose of each proposed expenditure; and
    - b. Whether the proposed expenditures are recurring expenses or non-recurring expenses.
  5. If the expense is a recurring expense, the guardian must supply a copy of the documentation that supports the recurring expenses.
    - a. Electronic payment of routine and recurring expenses is permitted upon receiving approval of an Application for Authority to Expend Funds (i.e., phone bills, utilities bills, cable TV bills, medication bills, etc.).
    - b. Supporting Documentation – All disbursements in all accounts must be supported by corresponding receipts, vouchers, cancelled checks, written acknowledgments, or other appropriate evidence of payment. A bank or other financial institution statement that shows the date, amount, payee, and purpose of a payment may be used as appropriate evidence of payment.

6. An application to expend funds shall not be granted if an Inventory has not been filed or if an account is overdue, unless the guardian shows that delaying the authorization will be detrimental to the ward.
7. All fees for guardians / attorneys must be approved by motion and entry prior to filing the expenditure for such expenses.
8. A guardian is not permitted to make any expenditure or other disbursement unless approved in advance by Court order.

(H) Release of Funds

1. Court costs must be paid prior to the Court reviewing the application.
2. An application to release funds to a guardian may not be used to transfer funds from one bank to another.
3. All applications must contain a reason to release the funds and the exact amount being released. Estimated amounts will not be accepted.
4. If the application is to close a bank account, the most recent bank statement must be submitted with the application.

(I) Transfer of Funds

1. Court costs must be paid prior to the Court reviewing the application.
2. All amounts must be exact and the most recent bank statement must be submitted with the application.
3. A Verification of Receipt and Deposit (SPF 22.3) must be filed within seven (7) days of the date the Court grants the application for transfer of funds.
4. The application must have account numbers for existing and new accounts. Any new accounts are to be established prior to the filing of the application.

(J) Bond, Inventory, and Accounts

1. Every guardian of a ward's estate is required to post bond and file an Inventory, annual accounts, any required reports, and annual expert evaluations unless the Court orders otherwise.
2. All disbursements in accounts must be supported by corresponding receipts, vouchers, cancelled checks, written acknowledgments, or other appropriate evidence of payment. A bank or other financial institution statement that shows the date, amount, payee, and purpose of a payment may be used as appropriate evidence of payment.

(K) Prohibited Transactions

1. A fiduciary shall not make any payment, expenditure, or other form of disbursement by means of a cash transaction, whether in cash, debit card, or other electronic means unless authorized by law or by Court order and supported by a contemporaneously issued receipt showing the date of the transaction, the amount, the recipient of the funds, and the service, product, or other purpose for which the funds were expended.

(L) Authority to Sell Ward's Assets

1. No guardian of a ward's estate may sell, exchange, transfer, or otherwise dispose of any of the ward's assets until the guardian has filed an Inventory unless the guardian shows to the Court that delaying the transaction would be detrimental to the ward.
2. No guardian of a ward's estate may sell, exchange, transfer, or otherwise dispose of any of the ward's assets until the guardian has obtained court approval.
3. Before the sale, exchange, transfer, or disposal of any tangible personal property, the guardian must file with the Court an Application to Sell Personal Property (BCPC 526) and a Guardian's Entry Authorizing Sale of Personal Property (BCPC 527).

- a. If items are jewelry or any type of collectible item(s), the items must be appraised individually using a court-approved appraiser.
- b. If a vehicle is being sold, a copy of the Kelly Blue Book statement reflecting the vehicle's average trade in value shall be attached to the application.

(M) Veterans' Benefits

1. All guardianships of the ward's estate that involve veteran's benefits are subject to, and must comply with R.C. § 5905 as well as all Rules and regulations of the Department of Veterans Affairs.
2. All applications for authority to expend funds, including all applications to pay guardian or attorney fees, must also be approved by the Department of Veterans Affairs.

(N) Due to the manner in which the Supreme Court of Ohio has numbered Sup. R. 66.01 through 66.09 by using four (4) digits, this Court's Local Rules pertaining to guardianships shall be similarly numbered using the Sup. R. number and title.

## **B.C.L.R. 66.01      Definitions**

The requirements in this Rule apply to all guardianships unless otherwise noted.

## **B.C.L.R. 66.03      Local Guardianship Rule**

### **(A) Emergency Guardianship Procedures (Sup. R. 66.03(A))**

1. This Rule governs **emergency** guardianships of a mentally incompetent adult under R.C. § 2111.02(B)(3).
2. Synopsis – An emergency guardianship is an ex parte proceeding that materially affects the legal rights of the proposed ward without prior notice or opportunity to be heard, even though for a limited time and purpose.
3. An emergency must exist and it must be reasonably certain that immediate action is required to prevent significant injury to the person or estate of the incompetent.
  - a. The applicant bears the burden of proof by clear and convincing evidence.
4. Application
  - a. A person desiring to be appointed emergency guardian must prepare and file all documents provided on the Court's website for emergency guardianship proceedings.
  - b. All of the supporting evidence and other supporting documentation proving the need for the appointment must accompany the application.
5. Evidence
  - a. The applicant must file with the application a statement of expert evaluation, dated within ten (10) days of the date the application is filed, in addition to one (1) or more affidavits of persons having direct knowledge of the circumstances showing that the proposed ward faces an imminent risk of serious injury to his or her person or estate and why immediate Court action is required to prevent that injury.
  - b. The applicant may present additional supporting documentation evidencing the truth of the statements in the application and supporting affidavits. The physician that completed the statement of expert evaluation and / or the current treating physician must provide testimony at the initial emergency hearing.

- c. Less Intrusive Means – The affidavits and additional evidence the applicant files must also establish that no less intrusive means exist to prevent injury to the proposed ward’s person or estate without immediate Court intervention.
- d. Extension – If the emergency guardian desires to extend the emergency guardianship beyond the initial seventy-two (72) hours, he or she must apply to the Court for an extension, with a hearing and notice of the hearing as required by law.
  - i. The maximum extension is thirty (30) calendar days. The Court will not grant an additional extension.

(B) Complaints Against Guardians (Sup. R. 66.03(B))

- 1. Any person or entity who has reasonable cause to believe that a guardian has engaged in any act of wrongdoing, neglect, or other misconduct affecting the ward may file a written complaint.
- 2. The Court will not accept or act upon an oral or telephonic complaint against a guardian other than to provide the address to which to hand-deliver or mail the written complaint.
- 3. The Court will not accept an anonymous complaint.
- 4. A filing fee of twenty-five dollars (\$25.00) is charged for each complaint that is filed with the Court. The twenty-five dollars (\$25.00) is due at the time the complaint is filed.
- 5. Upon filing, the complaint will be timestamped and docketed. The Court will determine if the complaint will be kept confidential or be considered a public document that will be maintained in the Court’s file.
- 6. At the time the complaint is filed, the Guardianship Investigator will add the complaint to the guardianship complaint database for monitoring.
- 7. Within ten (10) days of the filing of the complaint, the Guardianship Investigator will:
  - a. Mail a receipt to the complainant acknowledging the filing of the complaint and a copy of this Rule.
  - b. Mail a copy of the complaint to the guardian, the ward, and the attorney, if any, along with a copy of this Rule.
  - c. Conduct an initial review of the complaint and the guardianship case.
    - i. Unless the complaint raises issues that the Court determines require immediate judicial action, the Court shall:
      - a) Send the complainant a letter dismissing the complaint as unsubstantiated / unspecified / insufficient and send a copy of the complaint and response to the guardian or guardian’s counsel;  
OR
      - b) Send a copy of the complaint to the guardian and / or guardian’s attorney and request a response to the complaint within fifteen (15) court days from the date of mailing. The forwarding letter shall advise the guardian and / or attorney that a failure to respond will result in a show cause hearing being set. The attendance of the guardian will be required. A copy of the forwarding letter shall be provided to the complainant;  
OR
      - c) Notify the guardian and / or guardian’s counsel and refer the matter to the Court Investigator for an investigation and a report within fifteen (15) court days from the date of referral;
      - d) Set the matter for a review hearing or conference;  
AND / OR

- e) When appropriate, refer the matter to the appropriate law enforcement agency pursuant to R.C. § 2101.26 if the complaint alleges abuse, neglect, or exploitation of the ward that is substantiated. When the Court refers a complaint to law enforcement, the Court may take such emergency action as it determines necessary to protect the interests of the ward while being cognizant of the need to have minimal impact on the investigation by law enforcement.
- 8. Upon the expiration of the period for the filing of responsive reports from the guardian or Court Investigator, or upon their earlier filing, the case file (including the written response(s), reports, and the complaint) shall be submitted to the Magistrate and within five (5) court days, the Magistrate shall do one (1) or more of the following:
  - a. Find the complaint to have been resolved, unsubstantiated, unspecified, or insufficient and advise the complainant, guardian, and / or counsel accordingly by letter;  
OR
  - b. Refer the matter to mediation under the Court's Mediation Rule (B.C.L.R. 16) with a copy of the referral order being sent to the complainant, the guardian, and / or guardian's counsel;  
OR
  - c. Set a review conference or show cause hearing with notice to the complainant, the ward, the guardian, and / or guardian's counsel and other interested parties;  
AND / OR
  - d. Appoint a Guardian Ad Litem to represent the best interests of the ward;  
AND / OR
  - e. Refer the matter to the Probate Judge for appointment of a Special Master Commissioner to investigate the issues and to report with findings and recommendations pursuant to R.C. § 2101.06 with notice to all interested parties. When the commissioner's report is filed, the Probate Magistrate shall set it for hearing with notice to the ward, the ward's attorney and Guardian Ad Litem, if any, the guardian and / or the guardian's counsel, and the complainant.
- 9. The filing of a complaint with the Court does not provide the complainant with standing in the case, if standing does not otherwise exist.
- 10. Except when administratively dismissing a complaint, when adopting an agreed mediation report, or acting in an emergency, the Court shall not act without a hearing.
  - a. The Judge or Magistrate shall issue a decision with respect to any hearing held on the complaint.
  - b. The Court's journalization of the Judge's or Magistrate's Decision will close the complaint.
  - c. The Court's actions may include dismissal, directives for remedial action, establishing periodic review dates, allocating costs and fees, referral to law enforcement or investigation, sanctions, removal, and any other actions permitted by law.

11. Within ten (10) days of the filing of the order, decision, or entry, the Guardianship Investigator will update the database to reflect the disposition of the complaint.
12. When the ward is a veteran and the Court appointed the guardian under R.C. § 5905, notice of the complaint, reports, hearings, and actions shall be given to the Administrator of Veteran's Affairs of the United States pursuant to R.C. § 5903.03.
13. The Court shall maintain, in an Administrative Case File, a record regarding the nature and disposition of any complaints filed under this Rule.
14. The foregoing procedure also applies to communications received from the ward; however, the ward is not required to use the designated form or pay the filing fee.
15. Notwithstanding the foregoing procedure, the Court expressly reserves the right to take immediate action on complaints if such action is necessary in order to protect the safety, health, or welfare of the ward.

(C) Incident Reports

1. Any guardian, attorney, or other person who has reasonable cause to believe that a ward is being abused, neglected, exploited, or otherwise subjected to danger of emotional, physical, or financial harm must immediately report it to the Court, describing in sufficient detail the basis for the belief.
2. The Court will determine if the incident report will be made a part of the official record.
3. The Court will promptly investigate all incident reports that it receives and will determine whether there is a reasonable basis for further action.
4. The Court may refer the matter to law enforcement. If referred to law enforcement, the Court may take such emergency action as it determines necessary to protect the interests of the ward while being cognizant of the need to have minimal impact on the investigation by law enforcement.

## **B.C.L.R. 66.04      Establishment of Guardianship**

(A) A minor or alleged incompetent who is not a citizen of the United States or a resident alien is not considered by this Court to be a resident of this County or to have a legal residence in this County for purposes of R.C. § 2111.02(A).

(B) Direct Services Exception

1. Notwithstanding Sup. R. 66.01(B) and 66.04(D), a guardian of a mentally incompetent adult ward whose incompetence is a result of a developmental disability may provide direct services to or for the benefit of the ward if the guardian is certified as a direct service provider under an applicable Medicaid waiver program.
2. This exception only applies if the guardian is related to the ward by blood, marriage, or adoption. In order to qualify for the direct services exception, the guardian must file an application for direct services exception accompanied by proof of the guardian's certification as a direct service provider.

(C) Expedited Guardianship Procedure

1. This Rule provides a means for accelerating the guardianship appointment process in situations that do not qualify for emergency guardianship under B.C.L.R. 66.03(A).
  - a. The purpose of this Rule is to enable a more prompt appointment of a guardian when an actual or perceived urgency exists, but the applicant cannot in good faith establish by **clear and convincing evidence** that the proposed ward faces an **imminent risk of serious injury** to his or her person or estate that would warrant an emergency guardianship.
  - b. This procedure is only available if the appointment of the applicant as guardian is uncontested.
2. Documents Required
  - a. If the applicant or attorney is requesting expedited guardianship services, the applicant or attorney must attach a motion and proposed entry detailing the reasons for the expedited hearing (BCPC 550).
  - b. In addition to all other documents required by statute, Superintendence Rule, or Local Rule, the filing must also contain a Waiver of Notice and Consent (SPF 15.1) signed by every person entitled to notice of the hearing under R.C. § 2111.04.
3. Hearing Schedule
  - a. Upon confirming that an applicant's filings are complete and in compliance with this Rule, the Court will schedule the application for hearing at the first available date and time after adequate time to complete the Court Investigator's report on proposed guardianship under R.C. § 2111.041.

(D) Effect on Powers of Attorney

1. If the Court appoints the guardian and the guardian is also the ward's designated and currently acting agent under a valid durable power of attorney or durable power of attorney for health care that remains in effect, the Court may order that one or both powers of attorney are deemed terminated and void, or may order that one or both powers of attorney remain effective for purposes that the Court directs.
  - a. If the guardian is permitted to use either or both powers of attorney, the guardian is accountable to the Court for all activities undertaken as agent under the powers of attorney.
2. If the Court appoints the guardian and the guardian is not the ward's designated and currently acting agent under a valid durable power of attorney or durable power of attorney for health care, the powers of attorney are automatically deemed terminated and void unless the Court orders otherwise.



## **B.C.L.R. 66.05      Responsibilities of Court Establishing Guardianships**

### **(A) Criminal Background Check (Sup. R. 66.05(A))**

1. All applicants for appointment as a guardian must submit with the application the results of a criminal background check through the Ohio Bureau of Criminal Identification and Investigation (“BCI”) and the Federal Bureau of Investigation (“FBI”).
  - a. The applicant must pay the cost of the criminal background check.
  - b. The requirements in this Rule do not apply if the applicant is a state agency or an attorney who files a certificate of good standing to practice law in Ohio from the Ohio Supreme Court in place of the criminal background check.
    - i. The attorney shall file with the Court a certificate of good standing on each case in which they are the applicant.
  - c. All background checks must be dated not more than ninety (90) days before the date of the application for appointment as guardian.
2. The Court reserves the right to require existing guardians to submit to and file the results of a criminal background check at any time and for any reason.

## **B.C.L.R. 66.06      Guardian Pre-Appointment Education; and**

## **B.C.L.R. 66.07      Guardian Continuing Education**

### **(A) Extensions of Time for Educational Requirements**

1. A guardian may apply for an extension of time to complete the guardian fundamentals course or a continuing education course by filing their application with the Court.
2. The application for extension of time must be filed prior to the actual final due date of the required education.
3. The application for extension of time must state facts showing that the guardian has not been able to complete the education requirement within the required time due to significant and prolonged circumstances that are beyond the reasonable anticipation and control of the guardian.
4. The maximum extension the Court will grant is sixty (60) days.
5. An extension of time does not change the deadline for completing later required education courses.

### **(B) Proof of Compliance**

1. The guardian must file with the Court a certificate of participation or completion issued by the provider of the Court (SPF 27.2).
2. The Court must receive the proof of compliance no later than the final due date as referenced above.

### **(C) Failure to Comply**

1. If a guardian fails to comply with the education requirements referenced above, the guardian shall not be eligible for new appointments to serve as a guardian until the requirement is satisfied.
2. If the deficiency in continuing education is more than three (3) calendar years, the guardian shall complete, at a minimum, a six (6) hour fundamentals course pursuant to Sup. R. 66.06(A) to qualify again to serve as a guardian.
3. The Court may impose any sanction the Court may deem reasonable under the circumstances, including removal of the guardian.

## **B.C.L.R. 66.08      General Responsibilities of Guardian**

### **(A) Ward's Death (Sup. R. 66.08(D))**

1. If the ward dies, the guardian must file an Application and Entry to Terminate the Guardianship (SPF 27.9) within thirty (30) calendar days after the death. In the alternative, a Suggestion of Death may be filed.
2. A copy of the ward's death certificate or obituary must accompany the Application or Suggestion of Death.

### **(B) Change of Residence (Sup. R. 66.08(E))**

1. If the ward relocates to a different principal residence and the relocation is intended to be permanent or for a period of more than ninety (90) calendar days, the guardian must notify the Court in writing or file a Notice of Application for Change of Address (SPF 27.3) and a proposed Entry (BCPC 27.3B) within thirty (30) calendar days after the relocation.
  - a. This notice is the responsibility of the guardian.
  - b. The guardian must also comply with the Local Rules concerning Guardianship of an Incompetent Adult if the relocation places an adult ward in a more restrictive setting.

### **(C) Legal Representation of Guardian (Sup. R. 66.08(F))**

1. An attorney who enters an appearance to represent a guardian, either at the initial application or later in the guardianship proceeding, is deemed to continue to represent the guardian until the attorney files, and the Court approves, a motion to withdraw from the representation in compliance with the Rule concerning the withdrawal (involuntary or voluntary) or removal of counsel (B.C.L.R. 75.9).
  - a. Attorneys from the same firm cannot be the attorney and the applicant.
2. A guardian must obtain Court approval prior to filing any case on behalf of the ward in any Court.
3. The guardian must obtain Court approval prior to retaining counsel to represent the ward in a legal matter.

### **(D) Guardianship Plan (Sup. R. 66.08(G))**

1. The guardianship plan required by Sup. R. 66.08(G) must be filed annually as an addendum to the guardian's report.
  - a. The guardian responsible for filing the guardian's report is also responsible for filing the guardianship plan.
  - b. If the guardian of the person and guardian of the estate are different, both guardians must cooperate and participate in filing their respective portions of the guardianship plan.

### **(E) Deposit of Wills (Sup. R. 66.08(L))**

1. In addition to the list of the ward's important legal papers that Sup. R. 66.08 (L) requires the guardian to file with the Court, the guardian must deposit the original(s) of all wills and codicils of the ward with the Court for safekeeping, pursuant to the procedure in R.C. § 2107.07.
  - a. The guardian must deposit the will(s) and codicil(s), if any, no later than the earlier of:
    - i. The date of filing the Inventory; or
    - ii. Thirty (30) calendar days after discovery of the ward's will(s) and codicil(s), if any.

<b>B.C.L.R. 67.1</b>	<b>Estates of Minors not more than Twenty-Five Thousand Dollars</b>
<b>B.C.L.R. 68.1</b>	<b>Settlement of Injury Claims of Minors</b>

- (A) Unless otherwise provided by law, a minor or alleged incompetent who is not a citizen of the United States or a resident alien is not considered to be a resident of this County or to have a legal residence in this County for purposes of R.C. § 2111.02(A).
- (B) This Rule applies to all proceedings for authority to settle minor's claims
- (C) Birth Certificate – Upon filing an application to settle a minor's claim, the applicant must simultaneously file a copy of the certified copy of the minor's birth certificate.
- (D) Guardianship – The Court requires the appointment of a guardian of the minor's estate if the net proceeds of the settlement exceed twenty-five thousand dollars (\$25,000.00) (as that amount may in the future be adjusted under R.C. § 2111.05). The guardianship must be established before the hearing on the settlement of the minor's claim.
- (E) Narrative – A signed written narrative setting forth the circumstances of the minor's injury must be filed with the application to settle the minor's claim. The narrative must also address, in general terms, the prognosis regarding future medical issues or treatment.
- (F) Statement by Physician – The application shall be accompanied by a current statement of an examining physician with respect to the injuries sustained, the extent of recovery, and the permanency of any injuries. **(September 18, 2023)**
- (G) A Motion to Approve Contingent Fee Agreement with a copy of the agreement and a proposed entry approving the contingent fee must be filed for approval.
- (H) Who Must Attend Hearing – The parent or parents with whom the minor resides or the person who has legal custody of the child and the guardian of the minor's estate, if any, and their respective attorneys, must attend the hearing on the settlement of the minor's claim. The minor must also attend the hearing unless the Court excuses the minor's attendance in advance.
- (I) Dispensing with Hearing – The Court may dispense with a hearing on an application to settle a minor's claim if all of the following apply:
  - 1. Representation – The applicant must be represented by an independent attorney who does not work for or represent the person or entity paying the claim.
  - 2. Settlement Value – The gross amount of the proposed settlement must not exceed ten thousand dollars (\$10,000.00).
  - 3. Claims – There must not be any disputed claims on any portion of the settlement proceeds.
  - 4. No Guardianship Required – The nature of the settlement must not require establishment of a minor guardianship under applicable law or Rule.
  - 5. Applicants are Parents – The applicant is one or both of the natural or adoptive parents of the minor and both parents have waived notice of the application and hearing and have consented to the proposed settlement.
- (J) Net Proceeds Under \$25,000.00
  - 1. If the net settlement proceeds do not exceed twenty-five thousand dollars (\$25,000.00), the Court will generally order that the funds be deposited into an impounded account in the name of the minor at a financial institution located within Butler County until the minor reaches the age of eighteen (18), in place of a minor guardianship.
    - a. Upon the minor reaching the age of majority, the person for whom the settlement was received may apply to the Court to have the funds released. Upon application and proper identification, the Court will prepare an Order Authorizing Delivery of Funds pursuant to R.C. § 2111.131 (BCPC 530).

- b. In lieu of a Report of Distribution, the applicant must file a verification of receipt and deposit with the Court no later than thirty (30) days after the entry approving the minor settlement.

(K) Report of Distribution

1. All applicants must file a Report of Distribution and a verification of receipt and deposit, if applicable, with the Court no later than thirty (30) days after the entry approving the minor settlement.
2. Failure to file the Report or verification in that time, or any approved extension, will subject the applicant and the attorney to additional hearings and / or sanctions.

## **B.C.L.R. 68.2          Structured Settlements used in Minor Settlement Claims**

All proposed settlements of a minor's claim that are to be paid, in whole or in part, by means of structured settlement must comply with the requirements in this Rule. In the event that parties involved in claims for injuries to minors desire to enter into a structured settlement, defined as a settlement wherein payments are made on a periodic basis, the following Rules shall also apply:

- (A) The application shall include an affidavit from an independent certified public accountant, actuary, certified financial planner, or equivalent professional, specifying the present value of the structured settlement and the calculations used to arrive at that present value determination.
- (B) If the settlement is to be funded by an annuity, the annuity shall be provided by an annuity carrier which meets or exceeds the following criteria:
  1. The annuity carrier must be licensed to write annuities in Ohio and, if affiliated with the liability carrier or the person or entity paying the settlement, must be separately capitalized, licensed, and regulated, and must have a separate financial rating.
  2. The annuity carrier must have a minimum of one hundred million dollars (\$100,000,000.00) of capital and surplus, exclusive of any mandatory security valuation reserve.
  3. The annuity carrier must have one (1) of the following ratings from at least two (2) of the following rating organizations:
    - a. A.M. Best Company: A++, A+, or A;
    - b. Moody's Investors Service (Financial Strength); Aaa, Aa1, or Aa2;
    - c. Standard & Poor's Corporation (Claims Paying / Solvency): AAA or AA;
    - d. Duff & Phelps Credit Rating Company (Claims Paying Ability Rating): AAA, AA+, or AA.
  4. In addition to the requirement of subsection (3) immediately above, an annuity insurer must meet any other requirement the Court considers reasonably necessary to assure that funding to satisfy periodic-payment settlements will be provided and maintained.
  5. A qualified insurer issuing an annuity contract pursuant to a qualified funding plan under these Rules may not enter into an assumption reinsurance agreement for the annuity contract without the prior approval of the Court, the owner of the annuity contract, and the claimant having the beneficial interest in the annuity contract. The Court shall not approve assumption reinsurance unless the re-insurer is also qualified under these Rules.

6. The annuity insurance carrier and the broker procuring the policy shall each furnish the Court with an affidavit certifying that the carrier meets the criteria set forth in subsection 3 above as of the date of the settlement and that the qualification is not likely to change in the immediate future. The broker's affidavit shall state that the determination was made with due diligence based on rating information which was available, or should have been available, to an insurance broker in the structured settlement trade.
  7. In the event the parties desire to place the annuity with a licensed insurer in Ohio that does not meet the above criteria, the Court may consider approving the same, but only if the annuity obligation is bonded by an independent insurance or bonding company, licensed in Ohio, in the full amount of the annuity obligation.
- (C) Documentation – A complete and accurate copy of all documentation relating to the proposed structured settlement must accompany the application to settle a minor's claim for the Court's review before the hearing.
  - (D) Disclosure of Defendant's Cost – A statement disclosing the total actual cost of the structured settlement annuity that the defendant must pay must also accompany the application. The Court will use that amount in determining the reasonableness of the fees payable to the attorney representing the minor's interests in the claim.
  - (E) After the filing of the Report of Distribution and Entry Minor's Claim (SPF 22.4), and provided that no monies remain as assets of the guardianship and no payments will be made to the minor under the terms of the structured settlement prior to the minor reaching eighteen (18) years of age, the guardianship may be terminated with the approval of the Court.

### **B.C.L.R. 68.3      Attorney Fees in Structured Settlements**

Attorney fees payable to legal counsel representing the interests of the minor in a minor's claim are subject to all the requirements and limitations in B.C.L.R. 71.2 (Contingent Fee Agreements).

### **B.C.L.R. 68.4      Withdrawal or Hypothecation**

No premature withdrawals or hypothecation of the structured settlement, whether during the minor's minority or after the minor attains the age of eighteen (18) years, is permitted without the Court's prior approval.

### **B.C.L.R. 70.1      Settlement of Wrongful Death and Survival Claims**

- (A) At the time of filing the Application to Approve Settlement and Distribution (SPF 14.0), the attorney or fiduciary shall file a copy of the paid funeral bill, if not previously submitted.
- (B) All interested parties to the distribution of the net proceeds of the settlement shall be listed by name, residence, and relationship to the decedent on the Application to Approve Settlement and distribution (SPF 14.0) and the Proposed Entry Approving Settlement or Distributing Wrongful Death Proceeds (SPF 14.2).
- (C) The term "interested parties who are subject to notice," as set forth in R.C. § 2125.02, shall include the surviving spouse, the children, and the parents of the decedent, or other next of kin who claim to have suffered damages.

- (D) The presence of the fiduciary of the estate shall be required at the hearing regarding an application to approve a wrongful death settlement or proposed distribution unless prior authorization by the Court is granted.
- (E) Unless otherwise ordered by the court, the fiduciary of the estate shall file a Report of Distribution (SPF 14.3) within 30 days of the filing of the Entry Approving Settlement (SPF 14.2).

## **B.C.L.R. 71.1      Counsel Fees**

- (A) Attorney fees are governed by the Rules of Professional Conduct and the Rules of Superintendence adopted by the Supreme Court of Ohio. The attorney has the ultimate responsibility to ensure that fees sought pursuant to this Rule comport with the Rules of Professional Conduct.
- (B) Counsel shall enter into a dated written fee agreement with the fiduciary prior to or upon the filing of an Application for Authority to Administer with the Court. A copy of the fee agreement shall be provided to any residuary beneficiary of the probate estate upon request. If the attorney for the estate is also the fiduciary or if the fiduciary is an attorney associated with the attorney for the estate, a copy of the fee agreement shall be provided to all residual beneficiaries of the probate estate promptly upon its execution.
- (C) An application and proposed entry is required to be filed in all full administration estates except as provided for in paragraph (M) below. The Application for Attorney Fees for the administration of a decedent's probate estate ordinarily shall be made at the time the fiduciary's final account is filed with the Court.
- (D) The Court may, upon application and for good cause shown, approve an Application for Partial Payment of Attorney Fees without a hearing prior to the time the fiduciary's final account is filed with the Court. The grounds for approving partial payment of attorney fees may include, for example, that the payment of attorney fees provides an income tax benefit to the estate, that the estate is involved in protracted litigation, or that the administration of the estate is extended beyond twelve (12) months from the date the fiduciary is appointed because of circumstances beyond the fiduciary's and the attorney's control. In all such cases, the application must state the total amount of the attorney fees and any anticipated extraordinary fees estimated to be requested for the complete administration of the decedent's probate estate. Ordinarily, partial attorney fee requests should not exceed 50% of the total amount of the attorney fees estimated to be requested for the complete administration of the decedent's probate estate.
- (E) When multiple attorneys have been retained by the fiduciary or fiduciaries for the probate estate, or when it is anticipated that attorney fees will be paid to more than one attorney or law firm, all fee requests may be considered by the Court simultaneously.
- (F) If counsel requests a fee that is not within the guideline set forth in paragraph (H) below, a written application signed by the fiduciary or attorney and supported by the attorney's time records for all services, including time for services both within and outside of the guideline, shall be filed with the Court. If all of the residuary beneficiaries of the probate estate and all other parties affected by the payment of said fees are adults not under legal disability who have consented in writing to the payment of such fee, the Court may approve the application without hearing. If all of the residuary beneficiaries of the probate estate and all other parties affected by the payment of said fees are not adults, are not under legal disability, or have not consented in writing to the payment of such fees, the application shall be set for a hearing before the Judge. Counsel shall serve notice of the hearing upon all residuary beneficiaries of the probate estate and all other

parties affected by the payment of said fees pursuant to Civ. R. 73(E) and return thereon filed with the Court. Consenting beneficiaries shall be deemed to have waived service of notice of hearing on attorney fees. No consents from the residuary beneficiaries of the probate estate or other parties affected by the payment of said fees are required where counsel's fee is two thousand five hundred dollars (\$2,500.00) or less.

- (G) Attorney fees for the administration of a decedent's probate estate, as set forth below, may serve as a guide in determining fees to be charged to the probate estate for legal services of an ordinary nature rendered as attorney for the fiduciary in the administration of a decedent's probate estate. The Court does not have, nor is there recognized, any minimum or maximum fees that will automatically be approved by the Court. Misrepresentation of this guideline may result in sanctions, including the disapproval of or partial or total disgorging of attorney fees.
- (H) Attorney fees calculated under this guideline shall be rebuttably presumed to be reasonable:
1. On all property subject to administration (Inventory value in addition to ordinary income) and for which the fiduciary is charged as follows:
    - a. For the first \$50,000.00 at a rate of 5.5%
    - b. All above \$50,000.00 and not exceeding \$100,000.00 at the rate of 4.5%
    - c. All above \$100,000.00 and not exceeding \$400,000.00 at the rate of 3.5%
    - d. All above \$400,000.00 at the rate of 2.0%
  2. For real estate sold by judicial proceedings, the attorney fees shall be calculated in accordance with B.C.L.R. 65.1. Attorneys shall not double-charge fees in estates which include proceeds of land sale actions.
  3. All other property that passes outside of probate as a result of the decedent's death shall be compensated at the rate of 1% of all such property, except for joint and survivorship property that passes to a surviving spouse, which shall be compensated at the rate of  $\frac{1}{2}$  of 1% (0.5%).
- (I) If a hearing is held on an attorney fee application, a party in interest may not later object to the payment of that fee upon the filing of the Final Account. If a hearing is not held, a party in interest may object to the payment of that fee upon the filing of the Final Account. Attorney's fees may be collected by the attorney upon the Court's approval of the application therefor, but payment of attorney fees shall not be considered final until the Final Account has been approved and, if exceptions were filed, the time for appeal has run.
- (J) Where the fiduciary is also the attorney for the estate, or where the attorney for the estate is associated with the fiduciary's law firm, reasonable attorney fees shall be rebuttably presumed to be one-half ( $\frac{1}{2}$ ) of the guideline amount as set forth in paragraph (H) above. This paragraph shall not apply if the fiduciary fee is waived.
- (K) An application to the Court for attorney fees for services rendered in an estate relieved from administration shall not be required, but such fees shall be disclosed as a liability of the estate.
- (L) An application to the Court for attorney fees shall not be required in summary release or transfer of real estate only proceedings where such fees are seven hundred and fifty dollars (\$750.00) or less.
- (M) Separate application to the Court for attorney's fees shall not be required in estates concluded by Certificate of Termination when such fees are within the guidelines in paragraph (H) or not exceeding two thousand dollars (\$2,000.00), whichever is greater.
- (N) Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing the accounts required by R.C. § 2109.30, et seq.

- (O) In cases involving both probate and non-probate assets, an attorney must follow the procedures set forth in this Rule to approve the amount of fees charged for work done handling the administration of the probate assets. If the attorney desires to waive fees for such work, a written waiver of such fees shall be filed with the Court and as such, fees shall not be collected from any other source.
- (P) Unless otherwise authorized by the Court, attorney fees should not be awarded for that portion of any time spent traveling to and from the Court that would not have been incurred but for the fact that the attorney has an office located outside Butler County or counties contiguous thereto.

## **B.C.L.R. 71.2      Attorney Fees in Guardianships**

This Rule governs attorney fees for representing a guardian in a guardianship of the person, estate, or both.

- (A) All attorney fees must be filed by the attorney.
- (B) Fees for representing a guardian must be computed on an hourly basis unless the Court approves a different method of computation in advance.
- (C) Attorney fees must be accompanied by a proposed entry and an invoice which must show the hourly rate, services rendered, time spent, and the date the service was provided.
- (D) Attorney fee application / motion must state where the fees are to be paid from (i.e.: trust, guardian of the estate, indigent fund, private funds, etc.).
- (E) If the attorney is also a guardian, attorney fees or guardian fees are to be filed, but the attorney cannot file for both guardian fees and attorney fees.
- (F) Attorneys from the same firm cannot represent each other.
- (G) All attorney fees must be filed prior to the final account being filed or the guardianship being closed.
- (H) If the guardianship is closed or the final account is already filed and the attorney fees have not been approved or paid, then the attorney fees will not be approved.
- (I) Court costs must be paid prior to the attorney filing for fees.
- (J) Attorney shall use reasonable efforts to file for fees within ninety (90) days from the last date services were rendered.
  - 1. Requests for attorney fees shall be made at least yearly to the Court but no later than April 15<sup>th</sup> of the next year.
    - a. If a request for attorney fees is filed after April 15<sup>th</sup> of the next year, the request may be denied.
    - b. The Court will not grant payment of attorney fees that are for services rendered prior to January 1<sup>st</sup> of the preceding calendar year.
- (K) If attorneys are paid from the indigent funds, the hourly rate is seventy-five dollars (\$75.00) per hour.



### **B.C.L.R. 71.3 Attorney Fees in Trusts**

This Rule governs attorney fees for representing a trustee of a testamentary trust or other trust that is subject to probate court jurisdiction.

- (A) All attorney fees must be filed by the attorney.
- (B) Fees for representing a trustee must be computed on an hourly basis unless the Court approves a different method of computation in advance.
- (C) Attorney fees must be accompanied by a proposed entry and an invoice which must show the hourly rate, services rendered, time spent, and the date the service was provided.
- (D) Attorney fee application / motion must state where the fees are to be paid from (i.e.: trust, guardian of the estate, indigent fund, private funds, etc.).
- (E) If the attorney is also a trustee, attorney fees or trustee fees are to be filed, but the attorney cannot file for both trustee fees and attorney fees.
- (F) Attorneys from the same firm cannot represent each other.
- (G) All attorney fees must be filed prior to the final account being filed or the trust being closed.
- (H) If the trust is closed or the final account is already filed and the attorney fees have not been approved or paid, then the attorney fees will not be approved.
- (I) Court costs must be paid prior to the attorney filing for fees.
- (J) Attorney shall use reasonable efforts to file for fees within ninety (90) days from the last date services were rendered.
  - 1. Requests for attorney fees shall be made at least yearly to the Court, but no later than April 15<sup>th</sup> of the next year.
    - a. If a request for attorney fees is filed after April 15<sup>th</sup> of the next year, the request may be denied.
    - b. The Court will not grant payment of attorney fees that are for services rendered prior to January 1<sup>st</sup> of the preceding calendar year.

### **B.C.L.R. 71.4 Contingent Fee Agreements**

- (A) In the event that any portion of a settlement involving claims for injuries to minors, claims involving adult wards, or claims for wrongful death is a structured settlement, defined as a settlement wherein payments are made on a periodic basis, and a contingent fee agreement is used, the present value of the settlement shall be used to fix and determine the attorney's contingent fees.
- (B) Contents of Fee Agreement – All fee agreements between a fiduciary and an attorney in wrongful death, survival, or minor's personal injury cases must be in writing. The fee agreement must clearly explain the scope of the attorney's services, the method of determining the fee, and when payment of the fee is due.
- (C) Prior Court Approval Not Required – The fiduciary is not required to apply for or obtain prior Court approval of a contingent fee agreement between the fiduciary and the attorney in wrongful death, survival, or minor's personal injury cases if the percentage fee charges do not exceed 33 1/3%, or 40% if an appeal is taken. The fiduciary must submit the fee agreement to the Court for review simultaneously with filing the application to approve the settlement.
- (D) Prior Court Approval Required – If the fee agreement between the fiduciary and the attorney is a contingent fee that exceeds the limitations shown in paragraph C above, or if the fee is computed by a method other than a contingent percentage fee, prior Court approval of the fee agreement is required. The fiduciary must apply to the Court for approval of the written fee agreement within

fifteen (15) days after the fiduciary and the attorney have signed the proposed fee agreement. The fiduciary and the attorney must show, to the Court's satisfaction, that reasonable cause exists to justify a higher percentage fee or different fee computation method in the particular case. Failure to obtain advance Court approval of the fee agreement within the required time may result in a reduction of the fee the Court approves upon final settlement of the matter.

- (E) Co-Counsel Fees – All fees payable to co-counsel must be paid from the fee the Court approves at the settlement hearing. The Court will not approve additional fees for co-counsel.
- (F) Fees for Processing Probate Approval – All additional attorney fees for processing the claim settlement through probate must be paid from the primary fee the Court approves at the settlement hearing. The Court will not approve additional fees for processing the settlement through probate, even if a separate attorney performs those services. The Court also will not approve additional fees for processing the settlement through probate as a reimbursable cost or expense.

### **B.C.L.R. 73.1      Guardian's Compensation**

- (A) Guardian's compensation shall be allowed in accordance with the following schedule:
  - 1. Corporate Guardians: Recognizing the competitive atmosphere in which corporate fiduciaries operate and which acts as a restraint on what they charge for their services:
    - a. A guardian may charge fees in accordance with its schedule for these services, which it may publish from time to time.
    - b. Published fee schedules are to be filed in the Court upon the effective date of this Rule and whenever a change is made or requested by the Court.
    - c. On each accounting where fees have been taken, an affidavit will be required asserting that the fees charged represent those published in its schedule during the period of the accounting.
  - 2. Individual Guardians:
    - a. Fees shall be determined by application and entry.
- (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 an application for fees or for additional 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 at least five (5) days 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 (1) guardian had been performing the duties.
- (E) 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 R.C. § 2109.30.2 and B.C.L.R. 64.2.

## **B.C.L.R. 73.2          Veterans Administration - Guardianships**

- (A) With respect to monies received from the Veterans Administration and revenue or profit from any property wholly or partially acquired, the compensation payable to guardians shall be based upon services rendered and shall not exceed five (5) percent of the amount of money received from the Veterans Administration during the period covered by the account required by R.C. § 5905.11.
- (B) In the event of extraordinary services by any guardian, the Court, upon petition and hearing, may authorize reasonable additional compensation. A copy of the petition and notice of hearing shall be given to the proper office of the Veterans Administration in the manner provided in the cause of hearing on a guardian's account or other pleading. No commission or compensation shall be allowed on the money or other assets received from a prior guardian or upon the amount received from liquidation of loans or other investments.
- (C) All applications for guardian compensation or attorney fees shall be set for hearing, and notice shall be given to the Veterans Administration office unless a waiver or consent is obtained from the Veterans Administration.

## **B.C.L.R. 74.1          Trustee's Compensation**

- (A) Trustee's compensation shall be allowed in accordance with the following schedule:
  - 1. Corporate Trustee: Recognizing the competitive atmosphere in which corporate fiduciaries operate and which acts as a restraint on what they charge for their services:
    - a. A trustee may charge fees in accordance with its schedule for these services, which it may publish from time to time.
    - b. Published fee schedules are to be filed in the Court upon the effective date of this Rule and whenever a change is made or whenever requested by the Court.
    - c. On each accounting where fees have been taken, an affidavit will be required asserting that the fees charged represent those published in its schedule during the period of the accounting.
  - 2. Individual Trustees:
    - a. Fees shall be determined by application and entry.
- (B) Additional compensation, reimbursement for expenses incurred, and fees of a trustee of a person may be fixed by the Court upon application.
- (C) The Court may require that an application for fees or for additional 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 at least five (5) days prior to the hearing.
- (D) The compensation of co-trustees in the aggregate shall not exceed the compensation which would have been payable if only one (1) trustee had been performing the duties.
- (E) Except for good cause shown, neither compensation for a trustee nor fees to the attorney representing the trustee will be allowed when the trustee is delinquent in filing the account as required by R.C. § 2109.30.3 and B.C.L.R. 64.3.

**B.C.L.R. 75                      Local Rules – Special Provisions**  
**B.C.L. R. 75.1                Adoptions**

(A) Required Checks

1. In all adoption proceedings involving minors, the Petitioner(s) and all household members age eighteen (18) years or older shall execute and file with the Court an Authorization for Release of Information form (BCPC 324) and supporting addendum (BCPC 639).
2. The results of the criminal background search (FBI / BCI Reports) shall be submitted to the Court by the appropriate agency prior to the date scheduled for the Interlocutory or Final Hearing pursuant to R.C. § 2151.86(B)(1).

(B) In all adoption proceedings involving minors, the Petitioner(s) shall file a preliminary estimate of all disbursements agreed to be made on the Petitioner's Account (SPF 18.9) at the time of the filing of the Petition for Adoption of Minor (SPF 18.0).

(C) In all adoption proceedings involving minors, a final Petitioner's Account (SPF 18.9) shall be filed not later than ten (10) days prior to the date of the final hearing. At the time of filing the final Petitioner's Account, all proposed documents required for finalization of the adoption must also be presented.

(D) In all adoption proceedings involving minors, the Petitioner(s) shall file an Affidavit (BCPC 308) containing the information required by R.C. § 3127.23.

(E) Putative Father Registry

1. In all cases in which a putative father registry certification is required, that certification shall be filed with the Petition for Adoption (SPF 18.0). If the certification is not filed with the Petition, the Court may reject the Petition for Adoption prior to filing, or if filed, stricken from the record upon discovery.

(F) A copy of the Court order granting custody of the child being adopted must be filed at the time of filing the Petition for Adoption of a Minor. This is not required for Step-parent Adoptions or Recognition of Foreign Adoptions.

(G) Upon request, the Court shall provide a list of qualified assessors. Petitioner's counsel shall inform the Court of the assessor selected using the Application for Appointment of Assessor (BCPC 318) and shall submit a proposed Entry Appointing Assessor (BCPC 319) and proposed Entry Ordering Home Study (BCPC 322) at the time of filing the Application.

1. If the Petitioner(s) and / or counsel wishes to select a qualified assessor that is not on the Court qualified assessors list, the Petitioner(s) and / or counsel shall submit, in addition to the above-referenced form(s), a copy of the assessor's / agency's credentials.

(H) The Request for Notification (JFS 01679) and Receipt of Social Medical History (BCPC 323) must be filed at the time of the initial adoption proceedings.

(I) Hearings:

1. No hearing shall be scheduled until all required document(s) and required deposit are received and a case number has been assigned.
2. Contested Adoptions
  - a. If the adoption is contested, the Court may conduct separate hearings concerning the necessity of consent and best interest of the child.
  - b. Only the Petitioner(s), Respondent(s), and their respective attorneys shall be present in the courtroom. Any witnesses shall wait outside the courtroom until called for testimony.

- c. The child that is the issue of the adoption shall be available at the consent hearing and / or best interest hearing, unless the Court orders otherwise.
  - 3. Uncontested Adoptions
    - a. If the adoption is uncontested, the Court will typically consolidate the consent and best interest hearings into one hearing.
    - b. Any written consent filed with the Court must be signed and dated not more than six (6) months prior to the date of filing the Petition for Adoption, unless the Court conducts a placement hearing.
    - c. The child that is being adopted is required to be present at the consolidated hearing.
  - 4. Objections
    - a. All objections to an adoption must be accompanied by the twenty-three dollar (\$23.00) filing fee or, if indigent, a Financial Disclosure (OPD-206R – Public Defender Form).
    - b. If any person wishes to contest the adoption, he or she must file a written objection with the Court within fourteen (14) days after receiving the Notice of Hearing on Petition for Adoption (SPF 18.2). The contesting party is required to appear at the hearing.
    - c. A final decree of adoption may be granted if the contesting party fails to file a written objection to the adoption petition OR fails to appear at the hearing.
  - 5. Indigency
    - a. The twenty-three dollar (\$23.00) filing fee for filing an objection may be waived if the contested party is found to be indigent.
    - b. The contesting party must file a written objection accompanied by a Financial Disclosure Form (OPD-206R – Public Defender Form). The contesting party must appear at the consent hearing and sign an affidavit of indigency. If the contesting party is found to be indigent, an attorney will be appointed to them and the hearing may be continued in progress for an evidentiary hearing.
- (J) Completeness of Filings
- 1. All documentation required by statute, Rules of Superintendence, or Local Rule for adoptions, including, without limitation, the homestudy, criminal background checks, and any required evidence of service, must be filed with the Court not later than ten (10) Court Days prior to the scheduled hearing date.
  - 2. If a case file is incomplete in any respect by the above-referenced deadline, the Court may continue the scheduled hearing to a future date.
- (K) Child Support
- 1. The Court does not notify child support agencies of the granting of an adoption of a minor child. The Petitioner(s) or the Petitioner's attorney are responsible for notifying the appropriate child support enforcement agency that an adoption has been granted by this Court.
- (L) Court Costs & Miscellaneous Items
- 1. In all adoption proceedings, all final costs shall be paid on or before the date of the final hearing.
  - 2. The Court will withhold the release of any certified copy of the Final Decree of Adoption (SPF 18.6 or 18.7), including the Ohio Department of Job and Family Services Certificate of Adoption (HEA2757), until all costs have been paid.

3. The Court will forward the Ohio Department of Job and Family Services Certificate of Adoption (HEA2757) to Ohio, Kentucky, or Indiana.
  - a. If the child was not born in Ohio, Kentucky, or Indiana, the Petitioner or Counsel shall send the Ohio Department of Job and Family Services Certificate of Adoption (HEA2757) to the child's birth state.
4. After the filing of the Final Decree of Adoption (SPF 18.6 or 18.7) and the final costs are paid, the Petitioner or Petitioner's counsel shall be responsible for obtaining a new birth certificate from the Ohio Department of Health, Division of Vital Statistics (HEA2709).
5. All adoption records shall be confidential and no person shall be entitled to review any adoption record without the express authorization of the Probate Judge. Request for copies of adoption records must be made in writing by filing a Request for Copy of Adoption Documents (BCPC 317).
  - a. No records shall be released without the requesting party appearing in person with two (2) valid forms of identification. If the requesting party resides out of state, the Court will accept a copy of the two (2) forms of identification along with a notarized Request for Copy of Adoption Documents (BCPC 317).

## **B.C.L.R. 75.2      Name Change and Name Conformity Proceedings**

This Rule governs name change and name conformity proceedings under R.C. § 2717. Name change, name conformity, and birth record correction proceedings serve different purposes. Each action has its own requirements. The Court will determine if the application is the appropriate procedure to accomplish the person's intent based on the circumstances.

### **(A) Choosing the Correct Proceeding**

1. Name Change – A name change proceeding seeks to change all or part of a person's name to a different name going forward.
2. Name Conformity – A name conformity proceeding is solely to correct misspellings, inconsistencies, or errors on one (1) or more official identity documents evidencing a person's current legal name. A name conformity corrects errors that occurred in the past. It does not change a person's name, but merely identifies conflicting problems in their official identity documents and corrects those problems by a Court Order so that all of the person's official identity documents are consistent and conformed to prove the applicant's chain of identity and reflect the legal name the person currently uses.
3. Birth Record Correction – A birth record correction proceeding only corrects clerical errors in the birth record of a person who was born in Ohio. A birth record correction proceeding may not be substituted for a name change proceeding or name conformity proceeding (B.C.L.R. 75.3 regarding birth record correction).

### **(B) Documentation Requirements on Name Change Proceedings**

1. An applicant seeking a name change must provide the following documents relating to the applicant or minor with the application:
  - a. Certified copy of birth certificate;
  - b. Copy of Social Security Card;
  - c. Copy of Driver's License or State issued ID Card (if any);
  - d. Any forms in which the applicant's name has previously been changed (if any), which may include any prior name change orders, divorce decrees, marriage licenses, or name change orders from Homeland Security; and

- e. Name changes will not be acted upon until the Court receives a completed BCI check for the applicant.
- 2. Upon review of the application, the Court may order the submission of other documents the Court deems relevant to the application.
- 3. All government issued ID's must be valid.
- 4. The applicant must redact (black out) social security numbers, driver's license numbers, and driver's license issuance and expiration dates on all documents submitted to protect the privacy and confidential information of the applicant or minor.

(C) Documentation Requirements on Name Conformity Proceedings

- 1. An applicant seeking to conform a legal name must provide all official identification documents relating to the applicant or minor with the application, including:
  - a. Certified copy of Birth Certificate;
  - b. Copy of Social Security Card;
  - c. Copy of Driver's License or State issued ID Card (if any);
  - d. Copy of Marriage Record (if any);
  - e. Copy of Divorce Decree (if any);
  - f. Copy of Passport (if any);
  - g. Copies of all other documents for which name conformity is sought; and
  - h. Name conformities will not be acted upon until the Court receives a completed BCI check for the applicant.
- 2. Upon review of the application, the Court may order the submission of other documents the Court deems relevant to the application.
- 3. All government issued ID's must be valid.
- 4. The applicant must redact (black out) social security numbers, driver's license numbers, and driver's license issuance and expiration dates on all documents submitted to protect the privacy and confidential information of the applicant or minor.

(D) Hearings on Adult Name Change and Adult Name Conformity Proceedings

- 1. Generally, the Court will not require a hearing and will dispense with notice on an adult name change or an adult name conformity proceeding. The Court may require a hearing if the Court determines that the application presents any irregularities or issues, or if the Court determines that the legal interests of another party may be affected by the proceeding. If the Court requires a hearing, it will determine the manner, scope, and content of the hearing notice.
- 2. All documentation must be supplied no later than ten (10) days before the date of the hearing.

(E) Hearings on Minor Name Change and Minor Name Conformity Proceedings

- 1. In uncontested name change proceedings and name conformity proceedings for a minor in which the consent of both natural parents of the minor is filed simultaneously with the application, the Court generally will not require a hearing and will dispense with notice. If an application for name changes of a minor or application to conform name of a minor is filed without the written consent of either the natural or adoptive parents, or if the Court determines that the application presents any irregularities or issues, the Court will schedule the application for a hearing. Notice of the hearing will comply with paragraph

(F) of this Rule. The applicant must appear at the hearing. The minor shall attend the hearing unless excused by the Court.

2. All documentation must be supplied no later than ten (10) days before the date of the hearing.

(F) Service of Notice on Minor Name Changes and Minor Name Conformity Proceedings

1. Any parent or alleged father who has not consented to a minor's name change or name conformity will be served by the Court with notice of the hearing pursuant to Civ. R. 73. If a parent or alleged father's whereabouts are unknown, the Court will require the applicant to publish notice of the hearing, at the applicant's expense, to the parent or alleged father who has not consented in a newspaper of general circulation in Butler County one time at least thirty (30) days before the hearing. The applicant must file proof of publication of the notice with the Court no later than ten (10) calendar days before the date of hearing on the application.
2. All documentation must be supplied no later than ten (10) days before the date of the hearing.

(G) Contested Proceedings

1. If any name change or name conformity proceeding becomes contested, the Court will convert the scheduled hearing date to a pretrial conference, during which the Court will set a new hearing date. At the pretrial conference, the Court will determine whether to excuse a minor who is the subject of the action from appearing at the hearing if the circumstances may create unnecessary emotional distress for the minor. The Court may decide to conduct an *in camera* (private) interview of the minor in lieu of their appearance at the hearing. The applicant and the person contesting the application must attend the pretrial conference personally or through their legal counsel.

(H) Confidentiality

1. If an applicant for a name change or name conformity desires the proceeding and the record to be confidential, the applicant must file an Application to Waive Publication Requirement and Seal File (SPF 21.6) supported by an affidavit or other sufficient proof that notice of the hearing or public access to the record would jeopardize the applicant's personal safety. If the Court grants the applicant's request, the Court will waive notice and seal the file during the pendency of the case. The file will remain sealed if the Court grants the name change.

(I) Hearings in Uncontested Matters

1. Name Change for Adult
  - a. In all uncontested name change proceedings for an adult, the Court will set the application for a non-appearance hearing in lieu of a formal in-person hearing. The applicant does not need to be present at the non-appearance hearing. If no one objects to the application on or before the non-appearance hearing date, the Court will review the filing, assure proper notice has been served, and make a ruling on the application. If someone does object to the application on or before the non-appearance hearing date, the Court will continue the hearing to a later date and set it for a formal in-person hearing.



## 2. Name Change for Minor

- a. In all uncontested name change proceedings for a minor in which the consent of both natural parents of the minor is filed simultaneously with the application for change of name, the Court will set the application for a non-appearance hearing in lieu of a formal in-person hearing. The applicant and the minor do not need to be present at the non-appearance hearing. If no one objects to the application on or before the non-appearance hearing date, the Court will review the filing, assure proper notice has been served, and make a ruling on the application. If someone does object to the application on or before the non-appearance hearing date, the Court will continue the hearing to a later date and set it for a formal in-person hearing.
- b. If an application for change of name of a minor is filed without both natural parents' consent, the Court will set the application for a formal in-person hearing. The applicant will be required to appear. The minor may attend but is not required to be present.

### (J) Proof of Publication

1. The applicant must file with the Court proof of publication of the proposed name change, if required, no less than ten (10) calendar days prior to the date of hearing on the application.

(K) The Court will withhold the release of any certified copy of Entries Granting the Name Change until all costs are paid.

## **B.C.L.R. 75.3      Birth Certificates & Registration**

(A) All legal documentation must be provided at the time of filing.

(B) All government issued ID's must be valid.

(C) All copies of the incorrect birth certificates must be an original or certified copy. Any other additional documentation is not required to be certified.

### (D) Confidentiality

1. If an applicant for a change of gender marker on a birth certificate desires the proceeding and the record to be confidential, the applicant must file a request for confidentiality, supported by an affidavit of why it would jeopardize the applicant's personal safety. A proposed entry must accompany the request. If the Court grants the applicant's request, the Court will waive notice and seal the file during the pendency of the case.

(E) The Court will withhold the release of any certified copies of Entries Granting the Birth Correction, Registration, or Gender Designation Marker Change until all court costs are paid.

## **B.C.L.R. 75.4      Mental Illness**

### (A) Civil Commitment of the Mentally Ill

1. "Mental Illness" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.
2. In proceedings for judicial hospitalization of an alleged mentally ill person, any person may sign the affidavit required under R.C. § 5122.11.

- a. If the affidavit is signed by the chief clinical officer of the hospital in which the person is or is to be hospitalized, or by the treating or examining physician, psychiatrist, or licensed clinical psychologist, the affidavit does not need to be supported by a certificate of examination.
  - b. If the affidavit is signed by anyone other than the chief clinical officer of the hospital in which the person is or is to be hospitalized, or by the treating or examining physician, psychiatrist, or licensed clinical psychologist, the affidavit must be supported by a current certificate of examination.
3. When an Affidavit (BCPC 801) has been accepted and an Order of Detention issued, the Court shall promptly appoint an attorney to represent the Patient / Respondent.
  - a. While the Patient / Respondent is being held pursuant to the Order of Detention, a “voluntary” commitment shall not be accepted, unless the record or entry has been signed and approved by the Patient or Respondent’s court-appointed counsel.
4. When the Patient / Respondent is placed on a 72-hour involuntary hold, the Affidavit (BCPC 801), Certificate of Examination (BCPC 802), and the involuntary hold must be filed with the Court no later than 3:00 PM on the third (3<sup>rd</sup>) day of the hold.

## **B.C.L.R. 75.5      Transfer of Structured Settlement Payment Right**

(A) Upon the receipt of any structured settlement applications:

1. All hearing dates will be selected by the clerk according to the Court docket and notice.
  - a. The Court will not contact parties to schedule structured settlement hearings.
  - b. If any party is unavailable for the hearing, a motion for continuance may be filed and considered by the Court.

(B) At the time of filing the application, supporting documentation must be provided that includes, but is not limited to, the following documents and / or information:

1. An addendum (BCPC 639) to their initial application, petition, or complaint listing the names of all parties, their street address, phone number, date of birth, and email address, if known. For any minor child or person adjudicated incompetent, the name and address of said person’s Legal Guardian(s) or Legal Custodian(s) shall be stated;
2. A statement of income;
3. Living expenses;
4. Other financial obligations of the person desiring to transfer the structured settlement payments;
5. A detailed statement as to how the sale proceeds will be applied and / or utilized by the applicant; and
6. A copy of the “in-force” illustration associated with the case which should include the following:
  - a. The precise owner of the policy;
  - b. The payout structure;
  - c. The name(s) of any beneficiary(ies) should the recipient die before the expiration of the term of payout (if this is part of the policy);
  - d. Any fees or charges associated with the assignment or transfer;
  - e. The precise mechanics of the transfer (i.e.: Will a new policy be issued? Will the current policy stay in force with simply a change in the recipient? Will the rights of any contingent beneficiary (if any) be reserved?).

- (C) If the transfer of the structured settlement payment rights is sought in whole, or in part, to pay the applicant's current creditors:
  - 1. The applicant shall provide documentation of the amounts owed to each creditor; and
  - 2. The Court may order that the purchaser issue payment directly to each creditor identified by the applicant.
- (D) All final orders must be completed and submitted at the time of filing the initial application.
- (E) Attorneys for transferee companies must serve both the prepared notice of hearing and the Court's notice of hearing upon all parties.
- (F) Disclosure of Defendant's Costs
  - 1. A statement disclosing the total actual cost of the transfer of structured payment must accompany the application.
- (G) Verification of Insurer's Qualifications
  - 1. If a new policy is to be issued and is to be funded by an annuity, an affidavit or other similar proof verifying that the insurer issuing the annuity funding the new policy meets the following qualifications must also accompany the application:
    - a. The new policy must accompany the application.
    - b. Licensing – The company issuing the annuity must be licensed and in good standing to write annuities in Ohio.
    - c. Capital Reserves – The Company issuing the annuity must have a minimum of one hundred million dollars (\$100,000,000.00) in capital reserves and surplus, exclusive of mandatory security valuation reserves.
    - d. Rating – The company issuing the annuity must have one (1) of the following present ratings:
      - i. A.M. Best Company: A++, A+, or A;
      - ii. Moody's Investors Service (Financial Strength); Aaa, Aa1, or Aa2;
      - iii. Standard & Poor's Corporation (Claims Paying / Solvency): AAA or AA; or
      - iv. Duff & Phelps Credit Rating Company (Claims Paying Ability Rating): AAA, AA+, or AA.
  - 2. Present Value Calculation – The application must also provide a signed statement from an independent certified public accountant, actuary, certified financial planner, or equivalently qualified professional specifying the present value of the annuity and the calculations used to arrive at that present value determination.

## **B.C.L.R. 75.6      Trusts**

- (A) All Testamentary and Wrongful Death Trusts are to be captioned under the decedent's name.
- (B) In Testamentary Trusts, a copy of the will creating the Testamentary Trust shall be filed with the Application for Appointment of Testamentary Trustee (BCPC 480).
- (C) All trusts must comply with applicable statutes, Rules of Superintendence, and Local Rules, including but not limited to Filing and Judgment Entries (B.C.L.R. 57.1) and Bond (B.C.L.R. 60.3).
- (D) Trust accounts are due annually and must comply with B.C.L.R. 64.3 and be accompanied by a Trust Beneficiaries List (BCPC 487) unless waived by the Court.

- (E) All trusts applications must be accompanied by a Trust Beneficiaries List (BCPC 487):
1. For any minor child, their date of birth and the name and address of their parent(s). If none living, the name(s) and address(es) of the Legal Guardian(s), Legal Custodian(s), or the person and relationship with whom the minor resides must be listed.
  2. For any person adjudicated incompetent, the name and address of their Legal Guardian(s) must be listed.
  3. Any person or organization with a Post Office Box must disclose both the Post Office Box and their street address.
- (F) Whenever a trustee resides outside Butler County, all of the decedent's assets shall remain in Butler County. This restriction shall not apply to a trustee who resides in an Ohio county contiguous to Butler County. For good cause shown, the Court may dispense with this requirement.

### **B.C.L.R. 75.7          Contested matters that are not civil actions**

- (A) All applications, exceptions, objections, or motions in contested matters shall be supported by a memorandum that is incorporated into or annexed to the motion. Service of motions shall be effected pursuant to the provisions of Civ. R. 73.
- (B) All motions shall be submitted for decision without oral argument unless the original motions or subsequent memoranda either in support of or in opposition to the motion contain the wording "Oral Argument Requested" in the caption. The Court may order oral argument on any motion.
- (C) All motions submitted must have a proposed entry attached.
- (D) Unless an extension of time is granted for good cause shown, any memorandum in opposition to a motion or memorandum of a co-party in support of the motion shall be filed within fourteen (14) days of the filing of the motion and the movant shall file any reply memorandum in support of the motion within seven (7) days of the filing of the last memorandum in opposition. No memorandum shall exceed fifteen (15) pages in length without leave of the Court. Unless an oral argument is requested, a motion shall be considered as submitted to the Court for decision upon the expiration of said time period.

### **B.C.L.R. 75.8          Marriage License**

- (A) General Information:
1. Marriage License applications must be submitted online at [Butler County Probate Court - Home \(bcOhio.gov\)](http://ButlerCountyProbateCourt-Home(bcOhio.gov)).
  2. Marriage License may be by appointment or walk-in visit between the hours of 8:30 AM – 4:00 PM daily, except Saturday, Sunday, and legal holidays. Any variations to this schedule shall be posted as early as possible by the Court.
  3. The Court will not issue a marriage license within thirty (30) days of any final entries including but not limited to divorce decrees or dissolution entries pursuant to App. R. 4(A), which states in part, "... a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App. R. 3 within thirty (30) days of that entry."

4. All US or State Government issued ID's must be valid at the time of applying for a marriage license. If either party does not reside at the address listed on their respective ID, proof of current address must also be submitted.

(B) Minors

1. If both persons applying are the age of seventeen (17) years of age, juvenile court must file consent to the marriage pursuant to R.C. § 3101.04.
2. If only one (1) person is the age of seventeen (17) years, that person must obtain the consent of juvenile court and the other party may not be more than four (4) years older than the minor.
3. The probate court will not issue a license until fourteen (14) calendar days after juvenile court grants consent, pursuant to R.C. § 3101.04.

(C) Marriage to an Incarcerated Person

1. A person wishing to marry a person currently incarcerated must:
  - a. Contact the prison / jail that the person is incarcerated in and verify their requirements prior to beginning the process to obtain the license;
  - b. Hire an attorney who is willing to accompany them to the Court to obtain the license and be sworn in as a deputy clerk. The attorney shall also accompany them to the prison and obtain the necessary signatures; and
  - c. Write a letter to the Court explaining why they wish to marry the inmate prior to their release date. The letter must also include the inmate's booking information and where he / she is located.
2. After obtaining all of the above, the prospective spouse and their attorney must contact the Court and schedule an appointment to obtain a marriage license and have the attorney sworn in as a temporary deputy clerk. Prior to coming to the appointment, the applicant will need to submit their application online and comply with all other requirements of obtaining a marriage license.

## **B.C.L.R. 75.9      Withdrawal / Removal of Attorney**

(A) Voluntary Withdrawal

1. An attorney may not voluntarily withdraw as legal counsel for a fiduciary or any other party to a probate proceeding without prior Court approval. The application to withdraw must demonstrate reasonable cause for the withdrawal. A proposed entry must accompany the application or motion.
2. Certification of Withdrawing Attorney
  - a. The application to withdraw must certify that the attorney has provided the client with a complete list of all deadlines and other critical dates in the case and that the attorney has, or will promptly upon the Court's approval of withdrawal, deliver all of the case files to the client.
3. Notice Before Ruling on the Application
  - a. The withdrawing attorney must certify to the Court that he or she has provided notice of the proposed withdrawal to the client, all other attorneys, unrepresented parties, and all other persons with an interest in the proceeding.

- b. If the attorney represents a fiduciary, the attorney must also provide notice of the proposed withdrawal to any bonding agencies acting as surety for the fiduciary.
- 4. Time Limitation
  - a. No attorney may withdraw within thirty (30) calendar days before any trial or dispositive hearing, unless the attorney shows, to the Court's satisfaction, that exceptional circumstances exist.
- (B) Involuntary Withdrawal
  - 1. Upon written notice to the Court, an attorney will be considered to have involuntarily withdrawn if the client terminates the attorney's services or if the attorney dies, becomes disabled, seriously ill, or if other similar circumstances beyond the attorney's control occur that make it impossible or impractical for the attorney to continue the representation.
  - 2. Substitution of Counsel
    - a. The attorney's client may promptly engage the services of another attorney, who must file a notice of appearance with the Court.
    - b. The new attorney must provide notice of the substitution to all other attorneys, unrepresented parties, and all other persons with an interest in the proceeding.
    - c. The Court will grant accommodations that are reasonably necessary to enable the substituted attorney to become familiar with the case to the extent that the accommodations do not prejudice the rights of any other person or entity with an interest in the proceeding.

## **B.C.L.R. 75.10      Release of Administration**

- (A) If the decedent died testate, the will shall be admitted to probate.
- (B) The commissioner shall be a resident of the State of Ohio unless the commissioner is named as executor in the Last Will and Testament or is the sole heir.
- (C) A copy of the paid funeral bill or contract showing who is responsible for payment of the funeral bill shall be filed with the Application to Relieve Estate from Administration.
- (D) A full administration is required if the estate is insolvent or if an action such as a land sale proceeding or will construction is anticipated.
- (E) If there is real estate to be transferred, an examination of record title to each parcel of real property in the estate from the time it was acquired by the decedent shall be conducted and evidenced by filing a fully completed Statement of Counsel Concerning Examination of Record Title (BCPC 462). Only an attorney licensed to practice law in Ohio shall sign the statement.
- (F) In lieu of an appointment of appraiser for real property, the fiduciary may designate and declare the valuation of the real property by the County Auditor by attaching a printout of the tax value listed through the respective County Auditor's office or website to the Assets and Liabilities (SPF 5.1). If the applicant chooses to have the real property appraised, an Appointment of Appraiser (SPF 3.0) must be filed.
- (G) An Application for Certificate of Transfer (SPF 12.0) is not required to be filed in a Release of Administration.
- (H) The value of motor vehicles may be obtained from any nationally recognized valuation guide. A printout or document verifying the value and the source of said valuation shall be attached to the Assets and Liabilities (SPF 5.1). All motor vehicle transfers must be transferred using form BCPC 414.

- (I) An application to pay attorney fees is not required to be filed in a Release of Administration, but attorney fees shall be shown as a liability of the Assets and Liabilities (SPF 5.1).
- (J) When filing an Amended Assets and Liabilities (SPF 5.1), the Entry Relieving Estate from Administration (SPF 5.6) must also be amended and filed simultaneously.
- (K) A Report of Distribution (BCPC 429) is required to be filed in all Releases of Administration within sixty (60) days of the date of the Entry Relieving Estate from Administration unless otherwise ordered by the Court.

#### **B.C.L.R. 75.11      Summary Release of Administration**

- (A) If the decedent died testate, the original will shall be filed for record only.
- (B) A copy of the paid funeral bill or contract showing who is responsible for payment of the funeral bill shall be filed with the Application for Summary Release (SPF 5.10).
- (C) An Application for Certificate of Transfer (SPF 12.0) shall be filed in a Summary Release of Administration. In lieu of an appointment of appraiser, the fiduciary may use the valuation of the real property by the County Auditor. A printout of the tax value shall be filed with the Application for Summary Release.
- (D) The value of motor vehicles may be obtained from any nationally recognized valuation guide. A printout or document verifying the value and the source of said valuation shall be attached to the Application for Summary Release (SPF 5.10). All motor vehicle transfers must be transferred using form BCPC 414.
- (E) An application to pay attorney fees is not required to be filed in a Summary Release of Administration.
- (F) When filing an amended Application for Summary Release (SPF 5.10), an amended Entry Granting Summary Release (SPF 5.11) shall be filed simultaneously.

#### **B.C.L.R. 75.12      Transfer of Real Estate Only**

- (A) A certificate of transfer of real estate may be approved pursuant to R.C. § 2113.61(D) without an estate being opened if all of the following apply:
  - 1. The sole probate asset is real estate;
  - 2. There are sufficient assets on hand to pay the debts of the decedent; and
  - 3. The decedent was not subject to Medicaid Estate Recovery.
- (B) If the decedent died testate, the will must be probated prior to the Court authorizing the Certificate of Transfer.
- (C) A Surviving Spouse, Next of Kin (SPF 1.0) and a Statement of Counsel Concerning Examination of Record Title (BCPC 462) must be filed simultaneously with the Application to Transfer Real Estate (SPF 12.0).

## **B.C.L.R. 75.12      Miscellaneous**

- (A) Attorneys shall not act as sureties in any case, nor shall they be permitted to become surety on the bond of any fiduciary.
- (B) No certified copies of entries, including but not limited to Entry Appointing Fiduciary (SPF 4.5), Letters of Guardianship (SPF 15.4), or Entry Appointing Trustee (BCPC 484) will be issued unless all required filings have been made.
- (C) If the Court determines that a Guardian Ad Litem is necessary or appropriate, the Court shall appoint a suitable and disinterested person as Guardian Ad Litem.
- (D) An Itemized Evidence Inventory (BCPC 719) is expected to be completed by counsel and submitted for any contested hearing.
- (E) Trial Court Jury Use and Management shall be the same as those Rules and regulations used by the Butler County Jury Commissioner, as set forth in the Butler County Common Pleas Court General Division Local Rules.

## **B.C.L.R. 76.1      Exception to the Rules**

Any Application for an Exception to a Rule of Superintendence or Local Rule must be typewritten, signed by the attorney or pro se applicant, cite reference to the applicable Rule for which an exception is sought, identify specific grounds upon which the exception is sought, and be filed with the Court no later than seven (7) days prior to the hearing set for which the matter is to be determined.

## **B.C.L.R. 78.1      Case Management in Decedent's Estate, Guardianship, and Trusts**

### **(A) Estates**

#### **1. Full Administration:**

- a. The fiduciary of every decedent's estate shall file a written Status Report (BCPC 463) whenever a Partial Account, Waiver of Partial Account, or an Affidavit and Entry in Lieu of a Partial Account is filed.
- b. If a full administration estate is not fully administered within two (2) years, the matter will be referred to a Magistrate to determine whether court intervention is necessary.

### **(B) Guardianships**

- 1. The guardian shall file all required filings by their assigned due dates. If a guardian fails to file any of the required filings in a timely manner, the guardianship will be referred to a Court Investigator to determine whether further court intervention is necessary.

### **(C) Trusts**

- 1. The trustee shall file all annual accountings and any other required filings in a timely manner. If there is a delinquency of more than one (1) year, the matter will be referred to a Magistrate to determine whether court intervention is necessary.



## **B.C.L.R. 78.2            Case Management and Pre-Trial Procedure for Civil Actions**

(A) The following shall apply to all civil actions filed in the Court unless otherwise provided by law or in these Rules:

1. Civil actions filed in the Court shall include actions seeking a determination of the validity of the will during the testator's lifetime filed pursuant to R.C. § 2107.081 and R.C. § 2731.03, other actions seeking declaratory judgments filed pursuant to R.C. § 2731.03, actions seeking the direction or judgment of the Court filed pursuant to R.C. § 2107.46, actions to contest the validity of a will filed pursuant to R.C. § 2107.71, actions to sell real estate filed pursuant to R.C. § 2127.10, actions seeking authority to lease real estate filed pursuant to R.C. § 2111.27, actions to improve a ward's real estate filed pursuant to R.C. § 2127.33, and any other actions filed in the Court to which the Rules of Civil Procedure apply.
2. All complaints filed with the Court must be accompanied by a classification form (BCPC 412) and addendum (BCPC 639) stating the name, address, and email address of all parties. For any minor child or person adjudicated incompetent, the name and address of said person's Legal Guardian(s) or Legal Custodian(s) shall be stated.
3. All civil actions shall be scheduled for a status / report hearing upon completion of service of summons.
4. Any civil action that is pending with no action for six (6) months shall be scheduled for a report hearing.
5. The Local Rules of the General Division of the Butler County Court of Common Pleas shall apply to all civil proceedings filed in the Court other than those listed above and are incorporated in the Rules by reference.

## **B.C.L.R. 78.3            Case Management in Other Case Types**

(A) The following shall apply to all cases filed in the Probate Court, other than those contained in B.C.L.R. 78.1 and 78.2:

1. Any cause or action that is pending with no action for six (6) months shall be referred to the Judge or a Magistrate to determine whether Court intervention is necessary.

## **B.C.L.R. 79            Dispute Resolution**

To promote efficiency and to facilitate the earliest possible resolution of cases, the Butler County Probate Court encourages the use of alternative dispute resolution in any probate matter. The Court may suggest settlement negotiations and / or the use of Mediation. See B.C.L.R. 16 for the Mediation Rules.