

## **JOINT LOCAL PROBATE RULES OF THE FAYETTE CIRCUIT COURT AND THE FAYETTE SUPERIOR COURT**

The Court being duly advised now establishes the attached Joint Local Probate Rules. All Probate Rules previously adopted by either Court are hereby revoked.

It is further ordered that these rules be spread of record on the Record of Judgments and Orders Book of the Courts and that they be printed and distributed to members of the Fayette County Bar, and two copies thereof transmitted to the Clerk of the Indiana Supreme Court and the Indiana Court of Appeals.

SO ORDERED this 31st day of December, 2004.

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Daniel Lee Pflum, Judge, Fayette Circuit Court

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Ronald T. Urdal, Judge, Fayette Superior Court

### PROBATE RULES

#### **LR21-PR00-PR-1**

##### ADOPTING OF LOCAL CIVIL RULES

All of the Local Civil Rules Approved by the Fayette Circuit and Superior Courts are to be considered a part of these rules.

#### **LR21-PR00-PR-2**

##### APPOINTMENT OF PERSONAL REPRESENTATIVE-GUARDIAN

All applications filed for appointment of personal representatives of decedent's estate, for appointment of guardians of incompetents, proofs of wills, all partial and final accounts made and filed by trustees, personal representatives and guardians, and orders thereon, shall comply with the applicable Probate Law of this State, and, as near as practicable, they shall be made on or according to the forms prescribed by the Court.

#### **LR21-PR00-PR-3**

##### PAYMENT OF COSTS

Publication costs shall be paid before any notice will be published. Any costs associated with or due prior to the filing of an Inheritance Tax Return shall be paid prior to the Court signing an order determining tax.

#### **LR21-PR00-PR-4**

##### NOTICES

Any notice which is required to be given shall be prepared by the personal representative in a sufficient number so that the Clerk may make publication where required and to mail copies to all persons entitled to the same. If the notice requires a hearing date the personal representative shall clear the date with the Court prior to giving the notice to the Clerk except for final accounts which date shall be at least fourteen (14) days after the notice is first published.

If notice is to be made by mail, the personal representative shall provide addressed, stamped envelopes. If notice is to be made by publication, the personal representative shall deliver a copy to the Connersville, News-Examiner after payment of costs.

#### **LR21-PR00-PR-5**

##### SALE OF REAL ESTATE

All petitions filed for the purpose of procuring an order to sell real estate, in addition to accurately describing the real estate to be sold, shall state one or more statutory grounds as the basis therefore, and shall in all respects comply with the provisions of IC 29-1-15-11, et seq.

#### **LR21-PR00-PR-6**

##### ACCOUNTS

All partial and final accounts filed by personal representatives, guardians, and trustees must be filed in duplicate. The Clerk shall place and keep one copy in the file of the estate or jacket containing the papers in the estate and the copy shall be placed in and made a part of the ARecords of Accounts@ required by law to be kept by the Clerk.

#### **LR21-PR00-PR-7**

##### INVENTORIES

All inventories filed by personal representative, guardian, commissioner or trustee, must be filed with the Clerk in duplicate. The original shall be placed by the Clerk in the jacket containing the papers in the estate or trust, and the copy shall be placed in, made a part of and remain in and constitute the "Record of Inventories".

**LR21-PR00-PR-8**

REPORTS

Personal representatives of decedent=s estate, guardians, commissioners, receivers and trustees, in making reports or accounts to the Court, must make such statements and explanations therein as will enable the Court to determine therefrom the correctness of such reports and the true condition of the estate and the assets represented by them.

**LR21-PR00-PR-9**

CREDITS

All items of credits for expenses, fees, and claims paid, and for legacies and distributive shares paid to beneficiaries, must be numbered consecutively from 1, upward, and the vouchers showing payments of such items must, likewise, be numbered, and arranged consecutively in proper numerical sequence, so as to correspond with the items in the report, and be so filed with the report so that the Court can readily check any of the items of credit with the vouchers.

Every item of credit must, in one or more words, show for what purpose the payment was made.

**LR21-PR00-PR-10**

ESTATES - FEES

The calculation of fees of Personal Representative shall be on the form entitled "Computation of Fees" which is now incorporated as a part of these rules, and affixed hereto and designated as "Exhibit A".

Fees for the services of personal representatives of decedent=s estates and their attorneys shall be based on the total gross value of the estate and shall be calculated according to the following schedule:

		<b>Attorneys Fees</b>	<b>Pers. Rep. Fees</b>
First	\$ 2,000	\$200	\$ 200
Next	\$ 5,000	10%	5%
Next	\$ 45,000	5%	2.5%
Next	\$ 50,000	4%	2%
Next	\$300,000	3%	1.5%
Over	\$400,000	2%	1%

Fees herein computed are intended to cover the usual and ordinary services that are reasonably anticipated. If an attorney or personal representative is required to do extraordinary work, then they

may petition the court for additional fees commensurate with the services rendered in addition to the basic fees.

If an inheritance tax is adjudicated without administration or the inheritance tax schedule lists assets which do not pass through the probate estate the personal representatives shall be entitled to a fee of one percent (1%) of such inheritance tax assets and the attorney shall be entitled to a fee of two percent (2%) of such inheritance tax assets.

If an attorney serves as personal representative and does not employ an attorney to perform the necessary legal services incident the duties of such personal representative, but he, or the legal firm of which he may be a member performs such legal services, then such attorney in such instance shall be allowed and paid, one-half of the allowable fees to the personal representative, and all of the allowable fees for the attorney for the personal representative.

Any fees in excess of the foregoing schedule should be fully explained in the account, or report, and the reasons stated for excessive amount.

#### **LR21-PR00-PR-11**

##### ESTATES - TAXES

Every Final Account by a Personal Representative must state whether any inheritance tax is or is not payable on any part of the estate of the decedent. If inheritance tax is payable, the countersigned receipt showing payment of the tax must be filed with the report.

Such reports shall further state whether or not the estate is subject to liability for Federal Estate Tax, and if so, whether or not the same is paid. If liable, the report shall include a copy of the Federal State Tax Closing Letter, and receipt or canceled check for the payment of the tax.

#### **LR21-PR00-PR-12**

##### CLAIMS

Any claim not approved by the personal representative within five (5) months of the first notice to creditors will be transferred to the civil docket. If the claimant is unrepresented a status conference will be held within 30 days after transfer. The claim will be set for trial within 60 days after transfer or the status conference.

#### **LR21-PR00-PR-13**

##### GUARDIANSHIPS - ACCOUNTS

Reports or accounts by guardians and trustees must state and show all investments and securities in which the assets of the ward or trusts are invested, the market value thereof and the penal sum of bonds of guardians and trustees and names and addresses of sureties, and that they are amply solve, age of the ward, his residence address, and the residence address of the guardian.

**LR21-PR00-PR-14**

**GUARDIANSHIPS - FEES**

In biennial, partial and final accounts the fees stated in the account for the services of guardians, trustees, and their attorneys shall be based on the total gross value of the assets, including personal property, real estates and income in possession or under the control and management of the guardian or trustee at the beginning to the period for which the account is made, as shown in the account, or at the end of such period if the same be larger than at the beginning of such period as shown by the account.

Guardianship fees shall be calculated according to the following schedules:

<b>Total Value of Estate</b>	<b>Rate for Gdn. or Trustee</b>	<b>Rate for Attorney</b>
First \$25,000	\$ 100	\$ 50
Next \$25,000	\$ 50	\$ 50
Next \$50,000	\$ 250	\$ 50
Next \$100,000	\$ 500	\$ 150
Over \$200,000	\$ 0	\$ 200

The above fees are intended to cover only the usual and ordinary services, Guardianships and trusts which are complex may warrant the charging of additional fees commensurate with services, in which case the Guardian, trustee or his attorney shall file a petition for the allowance of such additional fees, accordingly specifically setting forth the nature of the services rendered, the time involved and the reasons why the same should generate additional fees. Please provide such additional information and supportive evidence as you think will enable the Court to weigh the Claim for fees.

The calculation of fees of guardians, trustees and their attorneys shall be on the form entitled "Computation of Guardian and Trustee Fee" which is now incorporated as a part of these rules, and affixed hereto and designated as "Probate Exhibit B".

**LR21-PR00-PR-15**

**TRUST**

Except when required by IC 30-4-6 the Court will not docket any trust nor will it supervise the administration of any trust. On the effective dates of these rules all trusts now docketed will be removed except where IC 30-4-6 require the Court to continue jurisdiction.

With respect to a decedent=s estate docketed for the purpose of probate or administration which either establishes a trust or makes a devise to another trust, the Court will not continue jurisdiction over the administration of the trust after any distribution from the estate is made or delivered to the trustee. If the personal representative is the trustee he shall be discharged from liability as personal representative

but not as trustee and the estate will be closed upon distribution of all the assets other than those to be held in trust.

**PROBATE EXHIBIT A**

COMPUTATION OF FEES

ESTATE OF \_\_\_\_\_

PROBATE NO. \_\_\_\_\_

- 1. Inventories Value of Estate                   \$ \_\_\_\_\_
- 2. Income During Administration               \$ \_\_\_\_\_
- 3. Assets Omitted from Inventory             \$ \_\_\_\_\_
- Total   \$ \_\_\_\_\_
- 4. Inheritance Tax Assets Only                \$ \_\_\_\_\_

	<b>PERSONAL REPRESENTATIVE</b>	<b>ATTORNEY</b>
First \$ 2,000	\$100.00	\$200.00
Next \$ 3,000	5% \$ _____	10% \$ _____
Next \$ 45,000	2.5% \$ _____	5% \$ _____
Next \$ 50,000	2% \$ _____	4% \$ _____
Next \$300,000	1.5% \$ _____	3% \$ _____
Next \$400,000	1% \$ _____	2% \$ _____
IH Tax Assets	1% \$ _____	2% \$ _____
Total	\$ _____	\$ _____

ADDITIONAL FEES

CLAIMED                   \$ \_\_\_\_\_                   \$ \_\_\_\_\_

If additional fees are claimed, attach a detailed statement showing the nature of the services rendered, the time involved and the reasons why the same should generate additional fees. Please provide such additional information and supportive evidence as you think will enable the Court to weigh the claim for fees.