

ARTICLE 18: PROBATE PROCEEDINGS

18.00 GENERAL PROVISIONS

(a) The following rules are adopted as rules of the Circuit Court of Kane County, Illinois applicable to proceedings in Probate, Chancery, Eminent Domain, Administrative Review, and Miscellaneous Remedies.

(b) The definitions in the Probate Act of 1975 apply, and when used in this part of the Rules, unless the context requires otherwise:

- (1) “Court” refers to the Probate Division.
- (2) “Judge” means a Judge or associate Judge assigned to the Probate Division.
- (3) “Motion” includes every petition, application or other matter requiring the entry of an order.
- (4) Section references are to sections of the Probate Act, 755 ILCS 5/1-1 et seq.

(c) In the construction of these rules, the rules governing the construction of statutes shall apply.

(d) An action to contest administration or denial of a will, to enforce a contract to make a will, to construe a will or to appoint a testamentary trustee during the period of administration of an estate shall be filed in the Probate Division, shall be designated a “supplemental proceeding” and shall employ the same number as the estate to which it relates. The parties shall be designated as in other civil actions. The fee required by law shall be paid at the time the action is filed. Unless otherwise ordered by the Presiding Judge of the Probate Division, the action shall be heard by the Judge in the Probate Division to whom the estate has been assigned.

(e) If there is a change in distributive rights during the administration of an estate, including a change resulting from death, renunciation, disclaimer or other election provided by law, upon motion of any person or the Court’s own motion, an appropriate order shall be entered determining the substituted takers.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.01 PROOF AND DECLARATION OF HEIRSHIP - CHANGE IN DISTRIBUTIVE RIGHTS

(a) When a petition for admission of a will to probate or for letters of administration is filed, proof of heirship may be made by:

- (1) The testimony of witnesses examined in open Court, reduced to writing by the official court reporter, certified by the Court and filed with the clerk; or
- (2) Affidavit as provided in 755 ILCS 5/5-3; or
- (3) Deposition.

(b) Proof as to heirship shall be made by decedent's spouse or a person related to the decedent by consanguinity or adoption, unless no such person resides in the State or unless the attendance of the person would impose undue hardship or be ineffectual.

(c) When no petition for admission of a will to probate or for letters of administration is pending, a person seeking to obtain an order declaring heirship for a decedent shall file a verified petition which shall include:

- (1) The name and address of petitioner and his attorney;
- (2) The name and place of residence of the decedent at the time of his death;
- (3) The date and place of death; and
- (4) Sufficient facts to establish the identification of the decedent's heirs; and
- (5) The name and last known address of each of the heirs and whether an heir is a minor or a disabled person.

(d) If the order declaring heirship is incomplete or erroneous, an amended proof of heirship shall be made as provided in this Rule.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.02 ADMISSION OF WILL TO PROBATE - LETTERS OF ADMINISTRATION

(a) With a petition for admission of a will to probate, petitioner shall file a facsimile which accurately and permanently reproduces the will, and an affidavit of petitioner or his attorney that the facsimile is a copy of the will to be admitted.

(b) If it appears that the decedent was at the time of his death a citizen of a foreign country, or that any heir or legatee is a citizen of a foreign country, notice shall be given to the nearest consul or consular agent for the foreign country who is listed by the Department of State in the manner provided by 755 ILCS 5/6-10 or 755 ILCS 5/9-5, as the case may be.

(c) With a petition for probate of a handwritten will, in addition to a facsimile thereof, petitioner shall file a typewritten copy of the will, and an affidavit of the petitioner or his attorney that to the best of his knowledge the typewritten copy is correct.

(d) With a petition for probate of a will in a language other than English, in addition to a facsimile thereof, petitioner shall file a translation by a qualified translator who shall certify that the translation is correct.

(e) Testimony recorded at the hearing on the admission of a will to probate shall be reduced to writing, certified by the court and filed with the clerk. No testimony need to be given when a will is admitted by attestation clause or affidavit in accordance with 755 ILCS 5/6-4.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.03 BONDS: PERSONAL SURETIES

(a) If a bond with personal sureties is proffered, it must be accompanied by:

(1) A petition, verified by the representative, stating the estimated amount of claims and taxes, whether the adult heirs or legatees approve the bond, with their approvals attached; and

(2) Schedules of the proposed sureties respective property and net worth, executed under oath by each proposed surety. If all heirs and legatees agree, such schedule may be waived with the approval of the Court.

(b) If the proffered bond is approved by the Court, the petition and the schedules shall be filed with and become a part of the bond, and the personal representative or his attorney, within 7 days, shall mail copies of the schedules to each heir or legatee, (except any whose approval of the bond is on file) and file proof thereof with the clerk.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.04 EXCUSE OF SURETY ON GUARDIAN'S BOND IN CASH DEPOSITS

(a) The Court may excuse the requirement of surety on the bond of a guardian upon the following conditions:

(1) The sole asset of the ward's estate is a monetary distribution or insurance settlement which is to be deposited pursuant to 755 ILCS 5/24-21 for the benefit of the ward subject to order of Court.

(2) The name of the proposed depository shall be shown upon the petition for appointment.

(3) The order of appointment requires that such distribution or settlement shall be made payable jointly to the guardian, the attorney and the depository.

(4) Satisfactory depository receipt is filed with the Clerk of the Court as required by the Court.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.05 SURETY COMPANIES

(a) Authorization. Bond with a corporation or association licensed to transact surety business in this State as surety will be approved only if a current certified copy of the surety's authority to transact business in the State, as issued by the Director of Insurance, is on file with the Clerk of the Court, and verified power of attorney or certificates of authority for all persons authorized to execute bonds for the surety is attached to the bond.

(b) The Clerk of the Court shall maintain a current list of approved surety companies and shall publish the list at least quarterly.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.06 INVENTORIES

(a) An inventory that is required to be filed with the Court shall be verified and shall include:

- (1) a statement of the amount of money on hand,
- (2) a description of each parcel of real estate,
- (3) a detailed description of each item of personal estate,
- (4) a brief description of any encumbrance which affects an item and the current balance due on the encumbrance,
- (5) a statement of the approximate total value of the personal estate at the date of death,
- (6) a statement of the approximate annual income from real estate that is in the representative's possession, and
- (7) a statement of the amount of the representative's bond then in force, and whether surety, surety waived, corporate or individual.

(b) Consecutive item numbers, commencing with Arabic "1" shall be assigned to each item inventoried and carried forward into each account. Numbers so assigned shall be supplemented by additional consecutive item numbers for items added in subsequent inventories and accounts.

(c) Descriptions of real estate shall include the legal description of each parcel, street number, if any, and any improvements and encumbrances. If a beneficial interest in real estate is an asset of the estate, the name and address of the trustee and other identifying information shall be stated. As to each parcel of real estate listed, the inventory shall state whether the representative is in possession of the parcel, or, if not, the reason he is not in possession [755 ILCS 5/20-1].

(d) Descriptions of stocks, bonds, debentures and notes owned by decedent shall be sufficient to reasonably identify the instruments, including any coupons attached or date to which interest has been paid on the bonds, debentures and notes, and if secured, a description of the security.

(e) Descriptions of partnership interest shall include the partnership name and address and the approximate interest of the estate, if known.

(f) Descriptions of causes of action shall include the name of the person against whom the cause of action exists, its nature, and, if suit has been instituted, the title, name of the court where pending, and case number.

(g) An amended or supplemental inventory shall be filed and in addition shall be approved by a Judge if such inventory necessitates an increase in the bond posted by the personal representative.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.07 PERIODIC ACCOUNTING (SUPERVISED ADMINISTRATION AND GUARDIANSHIPS)

(a) Unless excused by the Court for good cause shown, a representative of a supervised estate shall present to the Court for approval an accounting of receipts and disbursements together with evidence of disbursements as required by 755 ILCS 5/24-1, to be followed by further accountings filed at least annually, until the estate is declared finally settled and closed.

(b) Unless excused by the Court for good cause shown, a guardian shall present to the Court for approval an accounting of receipts and disbursements together with evidence of disbursements as required by 755 ILCS 5/24-11(a), to be followed by further accountings filed at least annually thereafter, provided that the final accounting shall be presented within 30 days after the termination of the guardian's office.

(c) Upon presentation of an account, the attorney for the representative shall furnish receipts for any distributions set forth in the account and a certificate of the attorney and the representative stating that vouchers evidencing disbursements are in the possession of the representative or the attorney. The Court may require the presentation of vouchers for examination

(d) No final account of any estate shall be approved unless there shall be exhibited to the Court:

- (1) the receipt of the Clerk for final court costs;
- (2) the certificate of the Clerk that all claims filed have been allowed or dismissed and listing claims allowed and not yet shown paid of record;
- (3) receipts of claimants showing paid claims which were allowed and not paid of record, unless there is a finding of insolvency, and
- (4) evidence that Federal Estate Taxes and/or Illinois Estate taxes, if any, have been paid or are otherwise provided for.

(e) Except as hereinafter provided, in every estate in which an account has not been filed and approved as required by paragraphs (a) and (b) above:

- (1) The Clerk shall mail to the attorneys of record in the estate and the legal representative, a notice that the account is due.
- (2) If such account is not presented within the time provided in such notice the Court shall issue a rule directing the personal representative to account as required

or to appear on a date to be fixed by the Court to show cause why he should not do so.

(3) If the personal representative fails to account or to appear as directed or if, having appeared, fails or refuses to account as required or show cause why he should not do so, he may be found in contempt and his letters may be revoked and a successor appointed by the Court.

(4) At the time of the issuance of a Rule to Show Cause required by this Local Rule, the Clerk shall mail notice of the pendency of the contempt proceeding, and the return day thereof, to all persons interested in the administration of the estate, including unpaid creditors.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.08 NOTICE OF HEARING ON ACCOUNTS

(a) Notice of the hearing on a final account of an executor or administrator or on a current account that is intended to be binding pursuant to 755 ILCS 5/24-2 shall be given to the persons described in 755 ILCS 5/24-2, as follows:

(1) such notice shall be in writing accompanied by a copy of the account except where notice is to be given by publication.

(2) the notice shall contain the time, place and nature of the hearing and substantially the following sentence: "If the account is approved by the Court upon the hearing, in the absence of fraud, accident or mistake, the account as approved is binding upon all persons to whom this notice is given."

(3) the notice shall be given at least 7 days prior to the hearing in the manner as provided by Supreme Court Rule 11 except when notice is by publication as herein provided, and except that whenever the person resides outside of the United States, the notice shall be by airmail at least 21 days prior to the date of hearing.

(4) whenever the name or place of residence of any such person is unknown and upon due diligence cannot be ascertained, and an affidavit to that effect shall be filed with the Clerk of the Court by said executor or administrator, then notice shall be given to such person by publication thereof at least once in some newspaper of general circulation published in the County at least 21 days prior to the date of the hearing.

(5) proof of such notice shall be filed with the Clerk of the Court on or before the date of the hearing.

(6) no notice need by given to any person from whom a receipt in full is exhibited to the Court or who entered his appearance in writing and waives notice.

(b) Notice of the hearing on a final account of a guardian or a current account that is intended to be binding, pursuant to 755 ILCS 5/24-11(b), shall be given to the ward, if living, to each claimant whose claim has been filed and remains undetermined or unpaid, to the heirs at law or legal representative of a deceased ward, and where entitled, to the Chief Attorney of the Administrator or Veterans Affairs, as provided in Section (a)(1) of this Local Rule.

(c) At the time of presenting his account, the guardian shall show to the satisfaction of the Court all monies and securities of his ward shown in the account to be on hand, unless excused by the Court upon satisfactory evidence of their existence and whereabouts.

(d) Each account of a guardian shall state the place of residence of the ward and, if a minor, the facts as to his attendance at school or his occupation.

(e) Each current account shall disclose to the Court the pendency of any claim, suit, or proceeding by or against the estate or representative of the estate and, in estates of deceased persons, any other reason which prevents final distribution and termination of the estate.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.09 GUARDIANS AD LITEM AND APPOINTED COUNSEL IN PROBATE GUARDIANSHIP PROCEEDINGS FOR ALLEGED DISABLED PERSONS

(a) Appointment of Guardian Ad Litem. Pursuant to 755 ILCS 5/1-1 et seq. (“Probate Act”), in any proceeding seeking the adjudication of disability of an alleged disabled person (“Respondent”) and the appointment of a guardian of the person, or the estate, or both, the Court shall appoint a guardian *ad litem* (“GAL”) to report on the best interests of Respondent, unless the Court determines that a guardian *ad litem* is not necessary for protection of the Respondent or for a reasonably informed decision on the petition.

(b) Appointment of Counsel for Respondent. In addition to the appointment of a GAL, at any time after a petition is filed, including after receipt of the GAL’s report:

(i) the Court may appoint counsel for Respondent if the Court finds that it is in the best interest of Respondent;

(ii) the Court shall appoint counsel for Respondent if required by the Probate Act, if Respondent requests counsel or if Respondent takes a position adverse to the GAL.

The Court may choose an attorney to serve as court-appointed counsel for Respondent from the approved list hereinafter provided.

(c) Notification of Appointment. As soon as practicable after appointment, the Petitioner or attorney for Petitioner shall immediately notify the GAL or appointed counsel of the Court’s appointment, both by telephone notice and by serving in

accordance with Supreme Court Rules a copy of the Order of appointment, along with copies of the petition, the physician's report, and all pertinent pleadings and orders entered in the case. In the event a GAL or appointed counsel is not able to serve, either at the time of appointment or at any time thereafter, the GAL or appointed counsel shall immediately notify the Court through the probate administration office and the Court shall appoint a substitute or successor GAL or counsel for Respondent.

(d) Appearance of GAL/Counsel. Once appointed, the GAL or court-appointed counsel shall file and serve an appearance and shall remain a party to the proceedings and shall receive notice of all further proceedings concerning the respondent, until discharged by the Court. There will be no fee for the filing of an Appearance as a GAL or court-appointed counsel for Respondent. Unless previously discharged, the Court shall discharge the GAL at the conclusion of the performance of his or her respective duties as outlined herein and in the Probate Act. Discharge or withdrawal of Respondent's court-appointed counsel, if any, shall be in accordance with notice and other requirements of Supreme Court Rule 13.

(e) Duties of GAL. Once appointed, the GAL shall promptly undertake the duties set forth in Probate Act, including but not limited to Sections 11a-10 and 11a-11. The GAL shall begin investigation including personal observation of Respondent and shall inform Respondent orally and in writing about the contents of the petition for adjudication and the Respondent's rights. The GAL shall also attempt to elicit the respondent's position concerning the following: (i) whether Respondent wishes to exercise or waive any of his or her rights as listed in the summons (and 755 ILCS 5/11a-10), (ii) the adjudication of disability, (iii) the proposed guardian, (iv) a proposed change in residential placement, (v) changes in care that might result from the guardianship, and (vi) other areas of inquiry deemed appropriate by the Court. See, 755 ILCS 5/11a-10. The guardian *ad litem* shall also determine whether Respondent or the guardian *ad litem* wishes to present a motion pursuant to Section 11a-11(c) to request the appointment of one or more independent experts to examine the Respondent.

(f) GAL Report. On or before the hearing date, the GAL shall file a written report that details his or her observations of the Respondent, the responses of the Respondent to any of the inquiries detailed above, the opinion of the GAL or other professionals with whom the GAL consulted concerning the appropriateness of guardianship, and any other material issue discovered by the GAL. The filed original GAL report shall be impounded by the Circuit Clerk and shall not be open to viewing by the public. A courtesy copy of the GAL report shall be delivered to the Probate Judge c/o Room 360 of the Courthouse at least one (1) business day prior to the date set for hearing. The GAL shall appear at the hearing and be prepared to testify as to any issues presented in the guardian *ad litem* report.

(g) Appointment of GAL/Counsel on Termination or Modification. In the case of a termination or modification of guardianship, the Court may order the appointment or re-appointment of a guardian *ad litem* or of an appointed counsel for Respondent, and the

duties and obligations of each such office, and compensation therefor, shall be consistent with the provisions of Sections 11a-20 and 11a-21 of the Probate Act.

(h) Appointment Eligibility List. The Sixteenth Judicial Circuit Court shall maintain a list of individuals or entities qualified to be appointed in probate guardianship matters who have completed training as hereinafter provided and who are approved by the Presiding Judge of the Civil Division and the Judge(s) assigned to the Probate Court. The Court may divide the list into geographic areas of the county, such as north end, south end and mid-towns. The Court may arrange the list in alphabetical order and make appointments on a rotating basis from the list. The Court may make appointments which depart from the rotational sequence, if the Court determines that the issues presented by a particular case and/or the necessary experience and training of the guardian *ad litem* warrant such a departure. In addition to attorneys, the Court's list may include persons or entities who are not licensed attorneys, provided they are qualified as hereinafter provided.

(i) Qualifications for GAL Appointment. In order to serve as a guardian *ad litem*, the applicant shall meet the following minimum requirements:

(i) If an attorney applicant:

[a] the attorney shall be licensed and in good standing with the Illinois Supreme Court, including completion of MCLE requirements, and shall have been so licensed and in good standing for a minimum of 3 years.

[b] the attorney must maintain professional liability insurance coverage, and

[c] the attorney shall have completed the GAL Training Course sponsored by the Kane County Bar Association, or a minimum of 3 hours training regarding probate law and procedure sponsored by such other Illinois state or local bar association, or equivalent training and experience, subject to approval by the Presiding Judge of the Civil Division or the Probate Court.

(ii) If a non-attorney applicant, the applicant shall demonstrate qualifications, by training or experience for a minimum of three years, of working with or advocating for the developmentally disabled, mentally ill, physically disabled, the elderly, or persons disabled because of mental deterioration.

(j) Application for Placement on the Eligibility List

(i) **Attorneys.** An attorney licensed in the State of Illinois who has completed at least the minimum requirements noted above may apply to be placed on the approved list for probate court assignments as GAL or appointed counsel for alleged disabled adults. The attorney applicant shall submit an application form which shall be available from the probate administration office. The attorney applicant may also submit a resumé or letter of interest detailing relevant training and experience. The attorney shall also provide certification of attendance at relevant continuing education courses and proof of current professional liability coverage.

(ii) **Non-Attorneys.** A non-attorney claiming completion of at least the minimum requirements noted above shall complete an application form which shall be available

from the probate administration office, and may submit a resumé or letter of interest detailing relevant training and experience. The applicant shall also provide certification of attendance at relevant training courses, copies of all applicable state, agency or association licenses or certifications, and proof of applicable professional liability coverage.

(k) Compensation of GAL and/or appointed counsel. The Probate Act provides that the Court may allow the guardian *ad litem* and court-appointed Respondent's counsel reasonable compensation. In exercising the discretion to award such compensation the Court must consider the facts of the individual case, such as the size of the estate, the work done, the skill evidenced by the work, the time expended, the success of the efforts involved, good faith, and the efficiency with which the case was handled.

(l) GAL and/or appointed counsel acknowledge possibility of reduced fees or *pro bono* assignment. All attorneys who apply for inclusion on the approved list, and all previously-approved attorneys who wish to remain on the approved list acknowledge that they may receive reduced compensation from their normal hourly rates, and that fees requested may be reduced by the Court based upon the above factors and applicable case law. Attorneys on the list further acknowledge that certain cases to which they may be assigned may involve indigent parties, or that there may be no funds from which compensation may be paid, and therefore such cases may involve *pro bono* professional services.

(m) Non-attorney GAL compensation. Non-attorneys serving as guardians *ad litem* will also be entitled to reasonable compensation based on similar factors and applicable case law, as well as hourly rates consistent with the training and experience of the individual and a determination of a reasonable and customary rates for similar services in the locality. Non-attorney GALs also acknowledge that due to the circumstances and finances of particular cases, compensation may be reduced or unavailable.

(n) Pro Bono Limits. With respect to both attorneys and non-attorneys, inclusion on the Court's list will not require the acceptance of any more than one (1) pro bono case per year.

(o) Guidelines and Caps for GAL Time. It is expected that the usual guardian *ad litem* report, including appearance and presentation of the report on an initial Section 11a-11 hearing, will involve between 4 and 8 hours of billable work, depending on the individual circumstances of the case. The Judge(s) assigned to Probate Court may, by standing order or guidelines or correspondence distributed to persons on the guardian *ad litem* and/or attorney lists, set forth suggested hourly rates for court-appointed attorneys for respondents, and for attorney and non-attorney guardians *ad litem*. The Court may set a cap on time spent or on an applicable hourly rate for any attorney GAL, appointed counsel for Respondent, or non-attorney GAL, in the order of appointment or in any subsequent order, as the Court deems fit under the circumstances of a particular case. In the event an attorney believes he or she will be required to or should be allowed to exceed the range of hours or the rates set by the Court in any particular case, he or she may request in writing, upon notice, that increased rate(s) or additional time be allowed.

(p) Source of Compensation. In appropriate cases, the Court may determine that compensation shall be payable from a petitioner's own funds, rather than the respondent's funds or estate. Any request for a retainer fee to be paid out of

Respondent's or Petitioner's funds to an attorney GAL or to a court-appointed counsel for Respondent shall also be made by written motion, upon notice.

(q) Petition for Compensation; necessity or waiver of same. Guardian *ad litem* fees or fees for Respondent's counsel shall be requested by petition supported by verification, certification or affidavit, including itemized time charges, upon notice to interested parties, although petition, itemized time, and notice may be waived by the Court in its discretion, if appropriate under the circumstances.

Created by Gen. Order 12-11, eff. April 11th, 2012

18.10 RESERVED

18.11 DISTRIBUTION

(a) In the event an heir-at-law in an intestate estate or a legatee of a testate estate is a minor, or has been adjudicated as a disabled person, or in the event a beneficiary of an estate dies prior to distribution of his or her share thereof, such fact shall be stated in any petition requesting authority to make distribution. Further, in such cases, distribution shall be permitted to be made only to the proper legal representative, unless the distribution qualifies under Article XXV of the Probate Act, or under 20 ILCS 1705/22 or is otherwise authorized by the Probate Act.

(b) Final distribution and closing of the estate will not be authorized unless the legal representative shall report as part of the final account, or by separate document, a summary showing that all procedural and administrative duties have been completed.

(c) In the event no heir or legatee qualifies for distribution from a decedent's estate, then notice of any hearing on a petition seeking approval of a final account and distribution shall be provided to the State's Attorney.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.12 ALTERNATIVE DISTRIBUTION TO RESIDENT OF FOREIGN COUNTRY

(a) The distributive share of a citizen and resident of a foreign country, in any fund, may be paid to the official representative of such foreign country (hereinafter referred to as "representative") or the attorney-in-fact for such distributee, who is entitled thereto pursuant to treaty or convention between that country and the United States, in the following manner:

(1) Such representative or attorney-in-fact shall present satisfactory evidence to the Court that his principal is, in fact, the person entitled to receive such distributive share and that such representative or attorney-in-fact has been duly authorized by treaty of convention or power of attorney to receive said distributive share.

(2) Each power of attorney shall be signed by the distributee and properly authenticated and acknowledged before the American Consul of the jurisdiction in which the foreign distributee resides, unless the Court is satisfied with the other evidence of the genuineness or validity of the power of attorney.

(3) The representative or attorney-in-fact shall acknowledge receipt of the distributive share received from the representative of the estate. The representative of the estate shall file the receipt with his voucher.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.13 ASSIGNMENT OF INTEREST - POWER OF ATTORNEY

(a) No distribution from an estate shall be permitted pursuant to an assignment executed by the beneficiary or a power of attorney executed by a beneficiary unless the instrument of assignment or the power of attorney has been approved by the Court.

(b) The petition for approval shall be verified and shall state:

(1) The consideration paid or to be paid, if any, by the assignee or the agent under the power of attorney and the fees and expenses, if any, charged or to be charged to the assignor or the principal under the power of attorney.

(2) The name and respective addresses of the assignor or the principal under the power of attorney and the assignee or the agent under the power of attorney, and

(3) A declaration that the assignment or the power of attorney has not been revoked.

(c) The power of attorney or the instrument of assignment shall be executed by the principal or the assignor, as the case may be, and acknowledged in accordance with the Illinois Uniform Recognition of Acknowledgment Act. (765 ILCS 30/1, et seq.)

(d) In the event the Court does not approve a distribution pursuant to the assignment or the power of attorney, then the representative shall make the distribution directly to the beneficiary.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.14 RELATING TO TESTAMENTARY TRUSTS

(a) In any estate in which a testamentary trust has been created, prior to or at the time of the closing of the estate the trustee of the trust shall file proof that each beneficiary of the trust has been given notice of the right to petition the Court for the purpose of construing the trust or to take over supervision of the trust for failure of the trustee to abide by the terms of the trust or for failure to make annual accountings.

(b) In the event a beneficiary of the trust is a minor or is a disabled person, then the notice shall be served on beneficiary's guardian or on the Guardian ad Litem, if any.

(c) Each notice sent pursuant to this Rule shall include a provision for certification of proof of service of the notice on the intended recipient or shall be in duplicate with a provision on the extra copy that includes acknowledgment of receipt by the intended recipient.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.15 WITHDRAWAL OF FUNDS AND TERMINATION OF SMALL ESTATES OF WARDS

(a) A petition to withdraw funds deposited or invested as provided in 755 ILCS 5/24-21 shall be presented in person by the parent, spouse, person standing in loco parentis or person having the responsibility or custody of the ward, unless personal presentation is excused by the Court. The petitioner may be required to furnish evidence that the sums to be withdrawn or proceeds of sale or redemption are necessary for the ward's support, comfort, education or other benefits to the ward or his dependents.

(b) If money has been deposited as provided in 755 ILCS 5/24-21 and the balance drops below \$10,000, pursuant to 755 ILCS 5/25-2, and no part of the estate consists of real estate or a pending cause of action for personal injuries, a petition may be filed requesting distribution of the balance of the funds without further administration.

(c) When a guardian is acting and the estate under administration is \$10,000 or less, pursuant to 755 ILCS 5/25-2, and no part of the estate consists of real estate or a pending cause of action for personal injuries, a petition may be filed requesting distribution of the estate without further administration and if it appears that there is no unpaid creditor and it is for the best interest of the estate and the ward, the Court may order the guardian to file his final account and make distribution as the Court directs.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.16 INVESTMENT BY GUARDIAN

(a) A petition of a guardian to invest the ward's property in any investment not otherwise authorized by law shall identify the category of investment under 755 ILCS 5/21-2 in which the proposed investment falls and shall state that the proposed investment complies with the limitations applicable to that category. If the proposed investment is to be purchased directly or indirectly from the guardian or from any other firm or corporation in which the guardian has an interest or of which he is an officer or director, the petition shall so state.

(b) Before making any material change in the terms of any life, endowment policy or annuity contract, pursuant to 755 ILCS 5/21-2, the guardian shall petition the Court for approval.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.17 CLAIMS

(a) A claim based upon a written instrument shall be accompanied by a copy of the instrument.

(b) If the representative or his attorney files a claim against the estate, he shall apply to the Court at the time the claim is filed for the appointment or waiver of a special administrator to appear and defend for the estate.

(c) If the representative or his attorney waives the mailing or delivery of a copy of the claim, the time for filing pleadings is 30 days after the waiver or the filing of the claim, whichever is later.

(d) If a counterclaim is filed, a copy shall be delivered or mailed to the counterdefendant and his attorney.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.18 RESIGNATION OR REMOVAL OF REPRESENTATIVE

(a) Unless notice has been excused by the Court, no less than 5 days' notice shall be made to all interested parties (including, without limitation, any co-representative, surety, unpaid claimant, beneficiary who has not received full distribution, and ward) of a representative's petition to resign or of an interested person's petition for removal of a representative.

(b) Unless notice is waived by the Court, 10 days' notice of the filing of a final account of a representative who has resigned or whose letters have been revoked shall be given to his successor and to any other person entitled to receive notice.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.19 ALLOWANCE OF FEES

(a) To be entitled to have fees fixed on petition or to have credit for fees on any estate account, whether paid or to be paid, a personal representative must show disclosure of record of the fee dollar amount by signed consent from or notice to all interested persons as defined in 755 ILCS 5/1-2.11. If by notice, it shall state the time certain for hearing.

(b) If the fees are to be fixed on petition, or on the Court's own motion or on the filing of objections to fees by any interested person, the person requesting fees shall file a verified document which includes:

- (1) the gross value of the estate;
- (2) the details of work done or to be done;
- (3) the purpose of each expense to be reimbursed;
- (4) if appropriate, the hours spent or to be spent; and
- (5) with respect to attorney's fees any other pertinent factor described in the Rules of Professional Conduct, Rule 1.5

(c) In a ward's estate, fees will be considered only when a petition for fees is presented for the Court's approval.

(d) This rule applies to all requests for fees and includes attorney, accountant, investigator, property manager, executor, administrator and trustee fees.

(e) All fee petitions in excess of \$500.00 shall be made by itemized petition which includes the items in Paragraph (b) above and in addition, shall include the time spent (at least by category of work performed), the necessity of such work, and the basis of the charge being made, i.e., whether based on an hourly rate or on other factors, or whether based on a combination thereof. Factual evidence substantiating the particular basis (or bases) is required, either by affidavit setting forth specific facts or by testimony in open court. In addition to the criteria in Rule 1.5 of the Rules of Professional Conduct, the Court will also consider to the extent available the intent of the testator or trust settlor, and any written fee agreement or specific written consent as described in Paragraph (a) above. Customarily, no one factor alone will be used by the court to establish a reasonable fee.

(f) In the case of a corporate fiduciary, one of the facts which may be considered is the published fee schedule of the fiduciary.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.20 WITHDRAWAL OF DEPOSIT WITH COUNTY TREASURER

(a) Before an order is entered directing the County Treasurer to pay money deposited by order of Court, notice shall be given to the State's Attorney and to such other persons as the Court directs.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.21 JURY DEMANDS

(a) A petitioner or claimant who is interested in a jury trial, where permitted, must file a jury demand with the clerk and pay the fee at the time he files his petition or claim. If a

representative or other party in interest opposing the petition or claim is interested in a jury trial, he must file a jury demand and pay the fee at the time he files his answer or other responsive pleading. If the petitioner or claimant files a jury demand and thereafter waives a jury, the opposing party will be granted a jury trial upon demand promptly made after being advised of the waiver and upon payment of the fee. Otherwise the parties waive a jury.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.22 APPLICATION OF CIVIL LAW RULES

(a) Article 10 of the Local Rules of the 16th Judicial Circuit is incorporated in this Division's rules by reference.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.23 WRONGFUL DEATH ACTIONS [740 ILCS 180/0.01 et seq.]

(a) When a sole asset of a decedent's estate is a cause of action for wrongful death to be prosecuted in the Law Division, application shall be made to the Law Division Judge assigned to hear the Law Division case for the appointment of a special administrator to prosecute said cause of action. No probate estate shall be opened.

(b) When the assets of a decedent's estate include a cause of action for wrongful death as well as other assets a probate estate shall be opened and the executor or administrator appointed shall prosecute the Law Division case. When the Law Division either enters judgment or approves settlement of the wrongful death cause of action, it shall be the responsibility of counsel for the estate to provide the Court with a copy of the order approving the settlement entered by the Law Division and to thereafter promptly close the probate estate.

(c) Pursuant to 740 ILCS 180/2.1, proceeds of a wrongful death action are not an asset of a decedent's estate subject to the claims of creditors. Said distribution is made on the basis of dependency without regard to testacy or intestacy and the Probate Division shall not be involved in settlement approval unless:

(1) a minor or disabled person is to receive all or a portion of the settlement proceeds in which case the procedures of Article 10 of the Local Rules shall apply.

(2) no Law Division case exists, in which case the procedures of Article 10 of the Local Rules shall apply to proceedings seeking approval of the settlement; and since there has been no dependency determination under the Wrongful Death Act or Dram Shop Act (740 ILCS 180/0.01 et seq ; 235 ILCS 5/6-21), then notice of the filing of a petition for determination of dependency thereunder and of the hearing thereon, shall be served by a legal representative or his attorney, upon the

person or persons named in sub-paragraphs (a), (b) and (c) of 740 ILCS 180/2, including persons furnishing hospital, medical or funeral services for the deceased person, unless payment for such services is shown and said petition shall be heard and determined by the Probate Division.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.24 ESTATE FILINGS BY MAIL

(a) The Probate Division shall process routine estate filings by mail.

Amend. Gen. Order 08-04, eff. May 5th, 2008

18.25 TRANSFER TO FAMILY DIVISION IF CHILD CUSTODY, CHILD SUPPORT OR CHILD VISITATION DISPUTE

(a) Any Judge of the probate division of the Circuit Court of Kane County is hereby authorized on his or her own motion to transfer to the Presiding Judge of the Family Division of the Circuit Court of Kane County for assignment to a Judge of that division any guardian/probate file wherein there exists a child custody/child support, or child visitation dispute. Upon resolution of such dispute the file shall be transferred back to the Probate Division for all further proceedings.

Amend. by Gen. Order 02-11(a), eff. Sept. 1, 2002; Gen. Order 08-04, eff. May 5th, 2008