

**RULES OF THE
PROBATE COURT
OF
SHELBY COUNTY,
TENNESSEE**

EFFECTIVE JANUARY 1, 2011

INDEX

<u>RULE I</u>	
SESSIONS AND COURTROOM PROCEDURE	3
<u>RULE II</u>	
GENERAL INFORMATION FOR ATTORNEYS.....	5
<u>RULE III</u>	
RULES OF CIVIL PROCEDURE AND RULES OF EVIDENCE.....	7
<u>RULE IV</u>	
PLEADINGS.....	7
<u>RULE V</u>	
PETITIONS TO OPEN ESTATES.....	8
<u>RULE VI</u>	
ASSIGNMENT OF CASES	9
<u>RULE VII</u>	
APPOINTMENT OF GUARDIANS AD LITEM.....	9
<u>RULE VIII</u>	
SPECIAL SETTINGS.....	10
<u>RULE IX</u>	
WITNESSES	12
<u>RULE X</u>	
INVENTORY IN DECEDENTS' ESTATES	12
<u>RULE XI</u>	
ACCOUNTINGS	13
<u>RULE XII</u>	
FIDUCIARY ACCOUNTS.....	16
<u>RULE XIII</u>	
FEES.....	16

RULE XIV
**PETITIONS FOR ELECTIVE SHARE,
HOMESTEAD AND YEAR’S SUPPORT 19**

RULE XV
**PERSONAL REPRESENTATIVE’S DUTY TO
TIMELY FILE AFFIDAVITS IN DECEDENTS’ ESTATES 20**

RULE XVI
CLOSING OF DECEDENTS’ ESTATES..... 20

RULE XVII
CLOSING GUARDIANSHIPS OF MINORS 22

RULE XVIII
INVESTING FUNDS PER COURT ORDER..... 22

RULE XIX
PARTICIPANTS WITH DISABILITIES 23

RULE XX
ORDERS LEFT WITH JUDGE’S SECRETARY 23

RULE XXI
MUNIMENT OF TITLE AND SMALL ESTATE AFFIDAVIT 24

NOTE: All references in these Rules to the masculine pronoun shall be deemed to refer to the female pronoun where applicable.

APPENDIX A

**PROBATE COURT CLERK’S WEBSITE FORMS
PROBATE COURT CLERK’S OFFICE FORMS**

**RULES OF THE PROBATE COURT
OF SHELBY COUNTY, TENNESSEE**

The Probate Court of Shelby County, Tennessee, hereby adopts the following as its Local Rules of Court:

RULE I

SESSIONS AND COURTROOM PROCEDURE

1. Both Divisions of the Court will be in *regular session* from 9:00 A.M. until noon Monday through Thursday, and from 9:00 A.M. until noon on Friday. Division One will be in *regular session* from 2:00 P.M. until 3:00 P.M. Monday through Thursday. Division Two will be in *regular session* from 1:00 P.M. until 2:00 P.M. Monday through Thursday. Friday afternoons are reserved for internal administrative matters.

Mental health commitments will be held on Thursday afternoons, with the Judges alternating months to hear these commitments. These hearings will take place in the courtroom at Memphis Mental Health Institute.

During a portion of the summer months, the Court may adopt a flexible afternoon schedule. Attorneys who desire to have matters heard in the afternoon during this period should consult with the Judge's secretary concerning availability.

2. The Judge and any substitute judge shall wear a Judicial robe during all sessions of the Court except when, in the discretion of the Judge, the circumstances are such, or the matter before the Court is of such a nature, as justifies a less formal hearing.

3. When the Judge first enters the Courtroom each day, the Sheriff shall call the Court to order directing all in attendance to stand, and upon being so instructed by the Court, will open Court in the manner following:

"Hear Ye! Hear Ye! This Honorable Probate Court of Shelby County is now open for the transaction of business pursuant to adjournment. The Honorable Judge [Judge's Name] presiding. All persons having business with this Court draw near, give attention, and ye shall be heard. Be seated, please."

4. The use of cellular phones and audible pagers in the Courtroom is prohibited.

5. There will be no eating, drinking, or smoking in the Courtroom, and no food or drink containers shall be brought into the Courtroom.

6. The front row of seats at the counsel table in the Courtroom is reserved for members of the Bar.

7. All attorneys and Court attendants will wear appropriate business attire while in the Courtroom. Litigants and witnesses as well are to be properly attired, consistent with the dignity of the Court.

8. Before presenting a matter, attorneys are encouraged to state their name, the docket number of the case, and the nature of the matter being presented. For example: "Your Honor, for the record my name is [attorney's name], and I have a Petition to open an intestate estate and appoint an administrator. The docket number is [docket number]."

9. When addressing the Court, unless excused by the Judge, counsel should rise and remain standing while making any objection, argument, or statement to the Court, including such time as the Court may address or interrogate counsel. Counsel is not required to stand while interrogating witnesses, but may do so at counsel's option.

10. All items that are presented to the Court such as exhibits and orders shall be handed to the Judge through the Court attendants. Attorneys must seek and obtain permission from the Judge before approaching the Bench or a witness.

11. Upon the Judge instructing the Sheriff to adjourn Court for the day, the Sheriff will direct all persons in the Courtroom to stand and will adjourn Court in the following manner:

"This Court now stands adjourned until tomorrow morning at 9:00 o'clock (or such other day and time as the Court may indicate)."

12. The Deputy Sheriff in attendance upon the Court will be charged with the responsibility of requiring compliance with these standards of Courtroom conduct.

RULE II

GENERAL INFORMATION FOR ATTORNEYS

1. Only attorneys licensed to practice law in Tennessee may represent persons in matters coming before the Court, except that attorneys who are not licensed to practice in Tennessee may appear *pro hac vice* under the terms and conditions set forth in Tennessee Supreme Court Rule 19. This Rule requires Tennessee counsel to sign all pleadings and appear in Court with the non-resident attorney.

2. An attorney who opens any matter becomes the attorney of record and is obligated to comply with all applicable laws, these Local Rules, and all Orders of the Court. It is the responsibility of the attorney of record to see to the full extent of the attorney's professional ability that the matter is properly managed, administered, assets distributed, and the cause closed without undue delay. The attorney of record is not relieved of this responsibility unless and until the attorney of record obtains an Order of Withdrawal or an Order Substituting Counsel, or unless a Notice of Appearance by other counsel is filed in the cause.

3. The Court may enter an Order Substituting Counsel or, in the alternative, a Notice of Appearance may be filed with the Clerk if signed by both the new and withdrawing attorney(s); however, the signature of the withdrawing attorney(s) is not required if the withdrawing attorney(s) is no longer engaged in the practice of law.

4. The attorney of record is expected to personally oversee the proper opening of all fiduciary accounts.

5. It is the responsibility of the attorney of record to advise the Court whenever a bond appears to be either insufficient or excessive, and to enter an order increasing or decreasing the bond as is appropriate. Normally, however, the amount of a bond is not decreased except upon the filing of an accounting or other sworn statement.

6. Orders shall be prepared by counsel for the prevailing party and submitted to adversary counsel for approval. Orders shall be presented to the Court by counsel within one week after the matter is decided, unless additional time is granted by the Court. In the event of a disagreement between counsel regarding the contents of the order, counsel for each party shall prepare such order as is considered appropriate, within one week after the matter is heard, adhering as nearly as practicable to the wording adopted by adversary counsel, and both shall be submitted to the Court. Disagreement as to the wording of an order shall not excuse failure to timely submit same to the Court.

7. Pursuant to Rule 5.05 of the Tennessee Rules of Civil Procedure, the following shall not be filed with the Clerk unless on Order of the Court or for use in the proceeding: depositions upon oral examination, interrogatories, requests for documents, requests for admission, and answers and responses thereto.

8. Briefs, Memoranda of Points and Authorities, or similar matters pertaining to a contested or specially set matter, shall be filed with the Clerk at least three (3) days prior to the hearing date, and a copy shall be left with the Judge's secretary (and opposing counsel where applicable). It is suggested that photocopies of the relevant portions of authorities cited therein be attached only to the Judge's copy of Briefs or Memoranda of Points and Authorities.

9. Counsel appearing in Probate Court shall follow the Guidelines for Professional Courtesy and Conduct adopted by the Memphis Bar Association. Counsel is expected to deal with opposing counsel, the parties, and the Court in a professional, courteous, and ethical manner. Counsel is expected to be open and fair in the handling of probate matters, consistent with adversarial responsibilities.

10. Before presenting a contested matter to the court, counsel shall—to the best of their ability—encourage their clients to settle their differences. The Court encourages the voluntary use of mediators under Tennessee Supreme Court Rule 31 in contested matters. If the parties are unable to agree upon a mediator, the Court will select a mediator using the procedure set forth in Tennessee Supreme Court Rule 31, section 4(b). Mediation will normally be required in will contests.

11. In proceedings to sell real estate, it shall not be necessary for the appraiser to testify in person, provided:

- a) the appraiser is properly licensed,

- b) the written appraisal is filed in the cause, and
- c) the appraised value is not more than 10% higher than the proposed sale price.

The appraiser may nevertheless be called to testify if any interested party, attorney, or Guardian Ad Litem believes the appraiser's testimony would be important to the issues to be decided.

12. A list of website and office forms, currently available from the Probate Court Clerk, is attached as Appendix A to these Rules and may also be found at the Probate Court website.

RULE III

RULES OF CIVIL PROCEDURE AND RULES OF EVIDENCE

The Tennessee Rules of Civil Procedure and Tennessee Rules of Evidence shall apply.

RULE IV

PLEADINGS

1. All Petitions and Complaints filed in Court shall be sworn to and shall be addressed in the following form:

"TO THE HONORABLE JUDGES OF THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE:"

2. All Petitions, Motions, and other pleadings shall be filed with the Clerk prior to presentation to the Court.

3. All pleadings shall set forth the docket number, style of the cause, the nature of same, and the name and signature of counsel. All pleadings filed by an attorney in a matter shall also contain the address, telephone number, and Board of Professional Responsibility number of counsel. The title of an order should contain a brief description of the action taken. All pleadings shall be on 8½ x 11 inch paper.

4. No original pleading or file shall be withdrawn from the Courthouse without a Court order.

RULE V

PETITIONS TO OPEN ESTATES

1. Pursuant to TENN. CODE ANN. § 30-1-117 and these Rules, the following shall be included in Petitions to admit wills to probate and Petitions for the administration of estates:

- a. The identity and address of the Petitioner.
- b. The decedent's name, age (if known), date and place of death, and residence at time of death.
- c. In case of intestacy, the name, age (if known), mailing address, and relationship of each of the heirs at law of the decedent. The Petition shall also state the names of any minors or other persons under disability. Also, and in intestate cases, the Petition must further include a statement that all parties who hold a statutory preference to serve as a Personal Representative have been given reasonable advance notice of when the Petition is to be heard or whether good cause exists as to why the persons with statutory preference were not notified.
- d. A statement that the decedent died intestate or, if a will is presented, the date of execution (if known) of the document or documents offered for probate and the names of all attesting witnesses.
- e. A copy of the document (s) offered for probate must be attached to the Petition.
- f. An estimate of the fair market value of the estate to be administered, unless bond is waived by the document offered for probate or is waived as authorized by statute.
- g. If there is a document, whether the document offered for probate waives the filing of any inventory and accounting or whether such is not otherwise required by law.

- h. If there is a document, a statement that the Petitioner is not aware of any instrument revoking the document being offered for probate, if such be the case, and that the Petitioner believes that the document being offered for probate is the decedent's last will.

2. Pursuant to TENN. CODE ANN. § 71-5-116(d)(1)(C), Petitions to admit wills to probate and Petitions for the administration of estates shall state whether or not the decedent was over or under age 55 and was or was not a TennCare recipient.

RULE VI

ASSIGNMENT OF CASES

1. Except as otherwise provided, the Clerk will assign matters with odd docket numbers to Division One and will assign matters with even docket numbers to Division Two. When filing a matter that is a companion case or that relates to a pending matter, the attorney should call this fact to the attention of the Clerk. Under such circumstances, the Clerk will assign the new case to the Division of Court in which the companion or related case is pending.

2. After a case has been assigned to a particular Division, the Judge of that Division shall have complete control over the matter. In the interest of justice and for good cause, the Judges, by mutual consent, may transfer a case from one Division of Court to the other.

3. When any matter requires attention and the Judge to whom the matter has been assigned is not available or is involved in a protracted hearing, the Judge who is available and consents thereto may hear the matter by interchange.

RULE VII

APPOINTMENT OF GUARDIANS AD LITEM

1. In any case in which a Petition is filed for the sale or improvement of any real property belonging to a minor or other person under disability, the Court shall appoint a Guardian Ad Litem who shall investigate all matters embraced in the Petition, attend the hearing, and file a written report with the Court at least three (3) days prior to the scheduled hearing on the matter. A copy of the report shall also be left with the appropriate Judge's secretary.

2. In all Petitions filed for Court approval of unauthorized encroachment of funds, sales of personalty, and in all other matters relating to persons under disability, the Court may, in its discretion, appoint a Guardian Ad Litem to make an investigation and file a written report with the Court. This report shall be filed by noon on the day prior to a scheduled hearing. A copy shall also be left with the appropriate Judge's secretary.

3. In all actions that involve parties who are disabled, a Guardian Ad Litem shall be appointed to represent the best interest of the party under disability and to make recommendations to the Court as to the appropriateness of the proposed settlement.

4. When a Guardian Ad Litem is appointed, the attorney for the Petitioner shall promptly notify the Guardian Ad Litem of this appointment and furnish to the Guardian Ad Litem an attested copy of the Order appointing the Guardian Ad Litem and copies of all pleadings and appropriate documents.

5. Unless required by statute, appointment of a Guardian Ad Litem may be waived by the Court for good cause.

RULE VIII

SPECIAL SETTINGS

1. The following matters shall be specially set for hearing at a date and time certain after the pleadings are at issue:

- a. Petitions to sell or encumber real property.
- b. Petitions to ratify substantial or unusual unauthorized encroachments.
- c. Exceptions to accountings.
- d. Petitions to admit wills to probate in solemn form.
- e. Petitions for substantial encroachments for support of wards or to pay debts.
- f. Petitions to set a year's support, to set aside exempt property or to determine an elective share.
- g. Petitions to contest a will.
- h. Petitions to establish lost or spoliated wills.
- i. Petitions to construe provisions of wills.
- j. Petitions to appoint Conservators.

- k. Applications for fees that exceed \$15,000.00.
- l. Applications for a fee that is in excess of the guidelines set forth in Rule XIII.
- m. All contested matters.
- n. Other matters such as those involving complex legal or factual issues or those that are expected to take more than thirty (30) minutes to be heard.
- o. Matters involving trusts.

2. When a matter is one that must be specially set for a hearing pursuant to Rule VIII, it is the responsibility of the attorney of record to obtain a special setting from the Judge's secretary. Upon requesting a special setting, if counsel reasonably anticipates that the time required will likely exceed thirty (30) minutes, this fact shall be brought to the attention of the Judge's secretary for scheduling purposes. No matter shall be specially set unless the attorney requesting the setting reasonably expects that all parties will be prepared to have the matter heard at the time set. Attorneys shall notify the Court as soon as it appears that a specially set matter cannot be heard on the date scheduled.

3. When more than one attorney is involved in a matter to be specially set, the setting will be scheduled only when all attorneys are either present in open court in order to obtain a setting, or they sign a Consent Order setting the time and date of the matter to be heard, and one of the attorneys presents it to the Court for approval.

4. It shall be the responsibility of the attorney who requests the special setting to give written notice to all interested parties. Interested parties entitled to notice shall include the creditors of a decedent's estate if the estate is expected to become insolvent and shall also include the State of Tennessee if some or all of the estate may escheat or be payable to the State of Tennessee. Service of process shall also be made if required by law.

5. The Court, in its discretion, may hear the above matters without a special setting upon good cause shown, provided that the Court finds that notice has been given or that notice is not required.

6. In all will contests and contested will construction matters, the attorney for the estate shall file a Motion For Scheduling Order (pursuant to Rule 16 of the Tennessee Rules of Civil Procedure) within 60 days after an Answer to the will contest or Will Construction Petition is filed. A copy of the Motion shall be delivered to the Judge's secretary at the time it is filed. The Court shall set the

Motion for hearing as soon as practicable unless all parties submit a Consent Scheduling Order.

RULE IX

WITNESSES

Witnesses shall be sworn separately and immediately before taking the witness stand, unless otherwise ordered by the Court.

RULE X

INVENTORY IN DECEDENTS' ESTATES

1. As provided by TENN. CODE ANN. § 30-2-301, an inventory must be filed by the Personal Representative within sixty (60) days after commencement of the administration of a testate or intestate estate unless waived as hereafter provided.

2. In intestate estates and in testate estates when the will does not waive inventory, the inventory may be waived if all heirs or beneficiaries consent thereto, provided all named heirs or beneficiaries are *sui juris* and provided the estate is solvent. If any heir is a minor, or of unsound mind, or declines to consent to waiver of the inventory, then an inventory shall be filed. In testate estates without a beneficiary under disability, no inventory is required if the will waives it; however, if an interested party files with the Clerk a written request for an inventory, the inventory shall be filed. The Clerk shall furnish a copy of the request for the inventory to the attorney for the estate.

3. The inventory should list all probate assets but exact dollar values need not be given nor must an appraisal be obtained. The Court does not require item by item listing of furniture and personal effects unless such an itemization is requested by an interested party.

4. The attorney of record is responsible for seeing that a copy of the inventory is provided to all interested parties.

RULE XI

ACCOUNTINGS

1. As provided by TENN. CODE ANN. § 30-2-601, the Personal Representative of a decedent's estate is required to make an accounting with the Clerk of the Court within fifteen months from the date of qualification and annually thereafter until the estate is fully administered. For good cause shown, the Court may extend the time for filing annual or final accountings. Tennessee law provides that accountings may be waived by the Court if the decedent's will waives the requirement or if all residuary beneficiaries are *sui juris* and have, in writing, excused the Personal Representative from filing an accounting; however, this Court's policy is not to waive accountings or extend time for filing accountings unless all interested parties are *sui juris* and agree, in writing, to waive or extend time for filing accountings. It should also be emphasized that, regardless of whether a waiver of accounting is allowed, the Personal Representative and counsel are obligated under these Rules to see that the estate is properly managed, administered, distributed, and closed without undue delay.

2. Pursuant to the requirement of TENN. CODE ANN. § 30-2-603, no account of a Personal Representative in a decedent's estate shall be taken until the Clerk of the Court or the Personal Representative or the Personal Representative's attorney has served all interested parties with notice of taking the account at least five (5) days before the time fixed for taking the same. A certification as to notice must be filed with the accounting and shall be signed by the attorney or Personal Representative to show that such notice was given. This requirement applies to all accountings in decedent's estates.

3. As provided for in TENN. CODE ANN. § 30-2-601(e), the Personal Representative, unless the representative is a bank, shall furnish the original of all canceled checks written on the estate account in support of the financial information entered in the accounting. If the financial institution does not return the original canceled checks, the photocopies of checks prepared by the financial institution or if none, the original printed statement can be substituted for the original canceled checks. This original statement must clearly delineate the date, payee and amount of the check for each disbursement.

4. Attorneys are urged to close estates within fifteen months after opening the estate. The Clerk of the Probate Court is authorized to approve one extension of time for up to sixty additional days *for a decedent's estate only*, provided the estate is less than two years old. An accounting should always be filed within fifteen months of opening an estate if a minor or incompetent person is a residuary beneficiary, or if a residuary beneficiary is a competent adult but declines to waive the accounting.

5. The Personal Representative of an estate should always furnish either an informal or a formal detailed accounting to residuary distributees of an estate. It is only the formal Court-approved accounting that may be waived by the Court. In no event should a Personal Representative or an attorney use pressure or undue influence to make a beneficiary or heir feel that he or she must sign a waiver. It is, therefore, unacceptable to suggest that unless the person waives an accounting, he or she will have to pay greater fees or that there will be a delay in receiving a gift or inheritance.

6. Copies of all accountings are to be furnished to all interested parties by the attorney of record or by the Personal Representative of the estate. Creditors in an insolvent estate shall be furnished copies of all accountings.

7. Pursuant to TENN. CODE ANN. § 34-1-111, Guardians and Conservators of the estates of minors or disabled persons are required to file annual accountings unless the accountings are expressly waived by court order or the court allows biennial or less frequent accountings.

8. When a Trust is a beneficiary of an estate, the Trustee of the Trust may waive an accounting. However, except as hereinafter provided, the receipt and waiver of the Trustee shall describe the asset or assets received from the Personal Representative. The description of assets shall not be required in the following circumstances:

- a. If the Trustee is a national bank or Trust company; or
- b. If all beneficiaries having a present interest are *sui juris* and agree in writing that the description of assets shall not be required.

9. Final accountings of solvent estates may be waived, and the estate may be closed on receipt and waiver in the manner described in Rule XVI.

10. In submitting accountings, the following shall apply:
 - a. Entries on accountings should be specific, giving date, source, and amount. For example, do not just list “Deposit”, but rather show as: “12/21/04 – Regions Bank Checking Account #854321--\$721.71.” Another example might be: “7/15/04 – Proceeds from Sale of 1999 Honda Accord -- \$2,500.00.”
 - b. All assets of the estate should be reflected on the accounting; however, tangible property, such as vehicles, boats, farm equipment, etc., shall be listed separately from the monetary portion of the accounting. Tangible property need not show a dollar value although approximations are permissible. Household furniture need not be itemized unless requested by an interested party.
 - c. All Personal Representatives should sign the accounting; however, in case of a disagreement or if one is unable to obtain a Co-Personal Representative’s signature for any reason, the other(s) should file separately. If all Personal Representatives do not sign the accounting, this fact shall be brought to the Clerk’s attention and referenced by a Clerk’s note on the accounting. An explanation of the facts surrounding a missing signature must accompany the accounting.
 - d. If an accounting on a decedent’s estate is filed more than two (2) years after the decedent’s death, a notation on the accounting shall state why it is necessary to keep the estate open. An example is as follows: “A lawsuit is pending in Chancery Court, Docket No. 85762, in which the personal representative is a plaintiff. The estate can be closed soon after disposition of that case, which we anticipate will be in May, 2015.”
 - e. It is preferred that items not be cumulative; however, no exception will be taken for identical monthly entries, such as: “Twelve (12) monthly encroachments of \$150.00 totaling \$1,800.00.” Interest on bank accounts may also be cumulative.
 - f. In order to expedite the audit and confirmation of accountings, the Court strongly urges attorneys to use the inventory and accounting forms that have been approved by the Court, which from time-to-time may be updated. These forms are posted on the Probate Court Clerk’s website.

RULE XII

FIDUCIARY ACCOUNTS

All fiduciary accounts must be opened and maintained at institutions with offices located within the State of Tennessee unless otherwise provided by Court order.

RULE XIII

FEES

A. Decedents' Estates

1. The Court will set the fees of Personal Representatives and attorneys for a decedent's estate upon Petition filed by the Personal Representative. The Petition may be filed by the attorney requesting the fee if the Personal Representative fails or refuses to file the Petition.

2. If the interested parties are all *sui juris* and agree to the fees, the Court will not require a Petition for fees to be filed in the cause. Any such fee agreement should be reduced to writing and should otherwise comply with the attorney's ethical responsibilities under Rule 1.5 of the Tennessee Rules of Professional Conduct as set forth in Tennessee Supreme Court Rule 8.

3. Fees for Personal Representatives. Non-corporate Personal Representatives shall be allowed all necessary expenses in the care, management, and preservation of the Probate estate. Additionally, non-corporate Personal Representatives may be allowed compensation for services rendered as hereinafter provided. The fee of the non-corporate Personal Representative shall be an amount the Court determines to be fair, reasonable and appropriate under all circumstances, including (but not limited to) the size of the estate being administered, the relationship of the Personal Representative to the decedent, the comparative involvement of the attorney for the estate and the non-corporate Personal Representative, the complexity of the matter, the cooperation or lack thereof by the beneficiary or heirs.

If the value of the decedent's gross estate (including real estate to the extent that services were rendered in connection with the real estate), plus any income earned during the administration of the estate, is under \$50,000.00, a

minimum fee of \$500.00 shall be considered reasonable. For estates totaling over \$50,000.00, the fee may be graduated as determined by the following guidelines:

<u>VALUE OF ESTATE</u>		<u>FEE</u>
First	\$100,000.00	1.00% to 2.00%
Next	\$900,000.00	0.50% to 1.00%
Over	\$1,000,000.00	0.25% to 0.50%

These guidelines reflect what may be considered to be reasonable, but are not binding on the Court, the parties, or the attorneys. If there are two or more Personal Representatives, the Court shall apportion such compensation pursuant to any agreement between them. If there is no such agreement, the Court shall apportion such compensation according to the services actually rendered by each.

4. Fees for Attorneys. In determining the amount of the attorney's compensation, the Court will consider the amount and character of the services rendered, the complexity of the estate, the time and effort involved, the character and importance of the litigation, the amount of money or value of property involved, the professional skill and experience required, and the expertise and standing of the attorney.

In setting fees for either the Personal Representatives or attorneys, the Court may consider any extraordinary services, including but not limited to sales or mortgages of real or personal property, lengthy or contested litigation involving claims against the estate, complex tax returns or audits by any federal or state agencies, the managing or selling of the decedent's business, will contests, or such other litigation or special services that may be necessary.

5. When setting fees for attorneys, the Court may consider the guidelines hereinafter set forth. If the value of the decedent's gross estate (including real estate to the extent that services were rendered in connection with the real estate), plus any income earned during the administration of the estate, is under \$50,000.00, a minimum fee of \$2,500.00 shall be considered reasonable. For estates totaling over \$50,000.00, the fee may be graduated as determined by the following guidelines:

<u>VALUE OF ESTATE</u>		<u>FEE</u>
First	\$100,000.00	5.0% to 6.0%
Next	\$900,000.00	2.5% to 4.0%
Over	\$1,000,000.00	2.0% to 3.5%

These guidelines reflect what may be considered to be reasonable but are not binding on the Court, the parties, or the attorneys. Fees should be reasonable and otherwise in accordance with Rule 1.5 of the Tennessee Rules of Professional Conduct as set forth in Tennessee Supreme Court Rule 8.

6. When the attorney of record also serves as Personal Representative, only one fee shall be allowed, but the Court in setting same shall take into consideration all of the services rendered.

7. A copy of any Petition that requests compensation pursuant to this Rule shall be given to all interested parties. Additionally, the interested parties shall be given not less than ten days written notice of the date and time the Petition is to be heard. This notice shall also be given to creditors of the estate if the estate is insolvent.

8. The Petition requesting fees for attorneys or Personal Representatives shall include the following:

- a. A description of the assets of the estate.
- b. A description of the services rendered.
- c. The value of the gross estate.
- d. The value of the probate estate.
- e. The amount of income earned by the estate.
- f. The amount of compensation requested.
- g. A statement that all interested parties have been properly notified of the proceedings and have been furnished with a copy of the Petition.

9. If the amount of the compensation requested by the attorney or Personal Representative exceeds \$15,000.00 or if the compensation requested is in excess of the percentage guidelines set forth in paragraph five of this Rule, the matter will be heard on a special setting.

10. The attorney or Personal Representative shall provide the Court with copies of the United States Estate Tax Return, when applicable, and the Tennessee Inheritance Tax Return two (2) days prior to the hearing on specially set fee applications, but same shall not be filed of record.

11. Except for good cause shown, Petitions for fees of Personal Representatives of estates and their attorneys will not be heard until the estate is substantially completed and an early closing of the estate is contemplated.

B. Fees in Matters Other Than Decedents' Estates

1. The Court shall set the fees of fiduciaries, attorneys, and court-appointed officials for matters other than decedents' estates. Fee applications should be reasonable and otherwise in accordance with Rule 1.5 of the Tennessee Rules of Professional Conduct as set forth in Tennessee Supreme Court Rule 8.

2. The Court may set fees upon the confirmation of accountings, encroachments against guardianships and conservatorships, and other routine matters without the necessity of a written Petition.

3. The Court shall set fees that it deems reasonable under the totality of the circumstances, including the consideration of the non-monetary value of the services rendered for the benefit of the ward. The Court shall not be bound by any specific criteria or amount in setting fees under this Rule.

4. Attorneys are expected to discuss with the client the amount of the requested fee prior to the submission of the fee request.

RULE XIV

**PETITIONS FOR ELECTIVE SHARE,
HOMESTEAD AND YEAR'S SUPPORT**

1. Petitions for elective share, homestead and year's support shall be specially set for hearing and not less than ten (10) days written notice shall be given to all interested parties, stating the nature of the relief sought. Creditors are to be considered interested parties entitled to notice of the application and hearing if the estate is or could reasonably be expected to be insolvent.

2. In the Court's discretion, a Petition for year's support allowance may be filed and heard even if no estate has been opened, provided that all interested parties are given notice of the proceeding and it can reasonably be expected that the entire personal estate should be set aside as a year's support.

RULE XV

PERSONAL REPRESENTATIVE'S DUTY TO TIMELY FILE AFFIDAVITS IN DECEDENTS' ESTATES

As provided by TENN. CODE ANN. § 30-2-301(b)(3) and § 30-2-301(b)(5), affidavits must be filed by the Personal Representative within sixty (60) days after the issuance of either Letters of Administration or Letters Testamentary. Said affidavits must verify that the Personal Representative has complied with the aforementioned statutes.

RULE XVI

CLOSING OF DECEDENTS' ESTATES

In order to close an estate, whether or not a final accounting is waived, the Personal Representative, after the period for creditors to file claims against the estate has expired, shall file a Petition with the Clerk of the Court stating substantially the following facts, together with a qualification or explanation if any statement is not accurate:

- a. That the Personal Representative has properly administered the estate.
- b. That the Personal Representative has timely filed the affidavits regarding Notice to TennCare and Notice to Beneficiaries, as required under both TENN. CODE ANN. § 30-2-301 and Local Rule XV. If notice was not timely given or if the required affidavits were not timely filed, the Petition to close the estate must specifically reflect that the estate was properly administered except that the Personal Representative failed to give timely notice or failed to file the required affidavits timely, as the case may be. The Court may require the Personal Representative to appear in open court and testify as to the reason for noncompliance.
- c. That the Personal Representative has paid or settled all claims that were lawfully presented and that written satisfaction of all claims is attached or filed in the cause (or if the estate has been declared insolvent, that the estate has been distributed in accordance with the Plan of Distribution).

- d. That the Personal Representative has paid or has set aside funds to pay all expenses of administration, including bond premiums and Court costs.
- e. That, consistent with all of the requirements of TENN. CODE ANN. § 30-2-306, the Personal Representative has mailed or delivered a copy of the published notice of the requirement to file claims to the creditors of the decedent who were known to or reasonably ascertainable by the Personal Representative.
- f. That the Personal Representative has filed in the cause the final receipt and release from the Tennessee Department of Revenue evidencing payment of all Tennessee inheritance and/or estate tax due from the estate, or, in the alternative, a non-taxable certificate. (Note: In lieu of this statement, if the gross estate is less than \$100,000 in value and if decedent made no gifts during decedent's lifetime with a value exceeding the statutory exclusion, the Petition may contain a statement that the court has waived, or is requested to waive, filing of the inheritance tax return under TENN. CODE ANN. § 67-8-409.)
- g. That the Personal Representative has distributed the estate according to the will and has obtained and filed receipts for specific bequests or, if the decedent did not leave a will, has distributed the estate according to the laws of intestate succession.
- h. That the Personal Representative has complied with TENN. CODE ANN. § 30-2-301 requiring a copy of the will or appropriate portion thereof to be furnished to legatees or devisees under the will or, in case of an intestate estate, that a copy of the Letters of Administration has been sent to the distributees.
- i. Whether any residuary beneficiary is under a disability.
- j. That a receipt and waiver from each residuary beneficiary is attached in which each residuary distributee acknowledges that the estate has been properly distributed to him or her and that the statement is filed in lieu of a more detailed accounting.
- k. **TennCare Release.** In addition to the foregoing requirements, the Petition to close a decedent's estate shall have an attached release from the Bureau of TennCare of the Tennessee Department of Finance and Administration or, in the alternative, a statement that the decedent was under age 55 at the time of death. While the Court prefers the obtaining of

the TennCare release, the Court may, upon application, waive the release upon a satisfactory showing that the decedent, at the time of death, was not enrolled in the TennCare program.

RULE XVII

CLOSING GUARDIANSHIPS OF MINORS

Before final distribution of guardianship funds to a ward who has reached age 18, the ward shall testify in open court when the Interim Final Accounting is submitted to the Court for confirmation. If the ward has not graduated from high school, the Judges will look with favor on an application to extend the guardianship or may extend the guardianship *sua sponté*, pending high school graduation or for other reasons in the discretion of the Court.

RULE XVIII

INVESTING FUNDS PER COURT ORDER

1. The Probate Court Clerk will invest litigant's funds paid into the Court only if there is a Court Order directing it to do so. Unless the Order provides otherwise, the Clerk shall determine in which institution the funds are to be invested and the nature of the investment. The Order should state the type of investment desired. At the time of payment or when the order is entered, if later, it will be the duty of the attorney seeking investment of the funds to specifically call to the attention of the Clerk that the funds are to be invested. The Clerk, upon distribution of the funds held by it, shall be paid a commission equal to 10% of the income realized from the account. If funds are to be held for less than thirty days, the Clerk will deposit them in its "funds not invested account."

2. All orders directing the Probate Court Clerk to invest funds must require that there be furnished to the Clerk the applicable social security number or employment identification number of the person or entity responsible for the payment of taxes on the income produced by the investment.

RULE XIX

PARTICIPANTS WITH DISABILITIES

Whenever a participant in the trial process may have a disability requiring special accommodation, the Clerk of the Court should be notified in order to allow the Court to comply with the letter and spirit of the Americans With Disabilities Act.

RULE XX

ORDERS LEFT WITH JUDGE'S SECRETARY

1. Only Orders as indicated below (with copies to be attested included) may be left with a Judge's secretary for submission to the Judge. If the Judge approves the Order by signing it, the Clerk shall attest the copies and hold them for pick-up by the attorney. No attested copies shall be released until all court costs associated with the Order are paid.

2. If the Judge declines to sign the Order, that fact shall be noted on the face of it and the Order shall be held for the attorney to pick up (in lieu of the attested copies). The attorney shall promptly confer with the Judge to address and resolve any deficiencies in the Order.

3. The following Orders may be presented in this manner:

- a. Orders disposing of claims or exceptions to claims.
- b. Orders substituting counsel.
- c. Consent orders of a very routine nature.
- d. Orders appointing a Guardian Ad Litem or attorney ad litem when the Judge has indicated who is to be appointed, and orders re-appointing a Guardian Ad Litem when a subsequent matter necessitates re-appointment.
- e. Orders setting the date for a hearing when the Judge or his secretary has advised the attorney of the setting date.

RULE XXI

MUNIMENT OF TITLE AND SMALL ESTATE AFFIDAVIT

A Petition to Admit Will as Muniment of Title to real estate, pursuant to TENN. CODE ANN. § 32-2-111, and an Affidavit as to Small Estate, pursuant to § 30-4-101, may both be filed in the same decedent's estate whether or not simultaneously.

These Local Rules shall be effective the 1st day of January, 2011.

ROBERT BENHAM,
JUDGE OF DIVISION ONE

KAREN D. WEBSTER,
JUDGE OF DIVISION TWO

PAUL BOYD,
CLERK OF THE PROBATE COURT

APPENDIX A

FORMS

PROBATE COURT CLERK'S WEBSITE FORMS

The following forms are available on the Probate Clerk's website:

Accounting Form
Appointment of Secretary of State as Agent for Service of Process
Certification as to Notice of Accounting
Clerks Report on Accountings
Motion for Additional Time to File an Accounting
Order Confirming Accounting
Order Granting Additional Time to File an Accounting
Property Management Plan
Statement as to the Filing of United States or Tennessee Income Tax Return
Statement From Corporate Surety
Notice of Accounting
Statement of Fiduciary as to Physical or Mental Condition of Disabled Person
Claim Form
Fiduciary Information Sheet
General Notice of Hearing
Information for Requesting a Name Change
Inventory Form
Inventory Form for Guardianship/Conservatorship
Notice of Hearing - Conservatorship
Small Estate Affidavit
Notice of Hearing - Ward
Subpoena
TennCare Release Form
Waiver of Bond for Small Estate Affidavit

PROBATE COURT CLERK'S OFFICE FORMS

The following forms are available in the Probate Clerk's Office:

Notice of hearing on (Petition for Surviving Spouse to take Elective Share, Year's Support, etc.)
Receipt for Documentation
Summons in Civil Action
State of Tennessee Report of Property to Escheat
Executor's Bond
Administrator's Bond
Guardian's Bond
Conservator's Bond
Report of the Clerk (concerning insufficient assets in estate to pay debts)
Notice of Appearance of Counsel
Agreement Between Fiduciary and Financial Institution
Uniform Civil Affidavit of Indigence
Notice of Appeal
Contestant's Bond
Appeal Bond for Costs
Tennessee Department of Revenue Inheritance Tax Return
Application for Non-Resident Tax Waiver
Receipt for Filing Will
Notice to TennCare
Physician's Report of Physical, Psychological or Other Examination