

St. Joseph County, Indiana
Probate Rules
(Proposed Draft-9/19/13)

Rule LR71-PROO-6.01. Notice.

601.1. Attorney Responsibilities. Whenever notice is required, either in writing or by publication, the attorney shall prepare the notice and take such actions consistent with local practice, to ensure that the notice is published and/or served. In all respects, the notice shall comply with all statutory requirements. The attorney shall be responsible to establish proper service of notice prior to bringing the subject matter of the notice before the Court.

601.2. Motions and Petitions to Accompany Notice. Where notice is required because a motion or petition has been filed with the Court, a copy of the motion or petition shall be served along with the written notice. If the notice is given by publication, the notice shall adequately describe the subject matter of the motion or petition and explain how to obtain a copy of the motion or petition, without charge.

601.3. Service of Notice of Hearing on Verified Account or on Final Settlement. Unless waived by a person entitled to notice, a copy of the verified account must be served with written notice of the hearing on final settlement of an estate or guardianship. If notice is given by publication, the notice shall explain how to obtain a copy of the accounting without charge.

601.4. Notice of Opening of Estate. Notice of the opening of an estate shall be sent by First Class United States Mail to all distributees of the estate and also to all reasonably ascertainable creditors. However, the use of "certified mail, return receipt requested," to serve such notice on creditors is recommended.

601.5. Notice of Insolvent Estate. When a Petition is filed to determine that an estate is insolvent, notice of the hearing on the Petition, along with copy of the Petition, shall be served on all interested parties.

601.6. Electronic Filing. Any reference within the Local Probate Rules for St. Joseph County to “written notice,” “notice in writing,” or the like shall include notice delivered electronically. Notice requirements in the Probate Court must also comply with the Local Rules for Electronic Filing.

Rule LR71-PROO-602. Filing of Pleadings

602.1. Compliance. All filings in the Probate Court must comply with the Local Rules for Electronic Filing.

602.2. Paper Filings. Some documents such as inheritance tax returns are required to be filed in a paper format. Where necessary such documents may be filed with the Clerk for transmittal to the Court.

602.3. Preparation of Orders. Unless directed otherwise by the Court, all attorneys are required to prepare a form of Order for use by the Court in all proceedings.

602.4. Signature and Verification. All estate and guardianship pleadings and other applications to the Court shall be signed and verified by the petitioner.

602.5. Attorney Information. Unless the Court approves in advance, no personal representative of an estate or guardian may proceed without counsel. Prior to filing any pleadings in a matter before the Court, all attorneys shall enter an appearance in the given action and shall include in their appearance form the attorney’s name, address, telephone number and registration number to be retained within the electronic case management system.

602.6. Quest Information Form. The Quest Information Form provided by the Clerk of the Probate Court is to be completed and filed with the Clerk, accompanied with requested documents and fees per the form, before a cause number for the new action will be assigned.

602.7. Initial Petition. In addition to other relevant information, the initial petition to open an estate shall include the name, address, birth date and telephone number for the personal representative. The initial petition to open a guardianship shall

include all of the same information of the proposed guardian. If the fiduciary is an entity as opposed to an individual, birth date is not required.

602.8. Nonresident Fiduciary. Nonresident personal representatives and guardians shall either appear before the court on initial petition or else submit an affidavit describing their education, employment and lack of felony convictions.

602.9. Affidavit of Compliance. An affidavit of compliance with the notice requirements to creditors of an estate may be timely filed with the Clerk of the Court.

Rule LR71-PROO-603. Bond.

603.1. General Statement. With respect to an estate, a guardianship or any other proceeding which involves the appointment of a fiduciary, the Court may in its discretion set such bond as is deemed adequate to protect the interests of the interested parties.

603.2. Bond Waived by Will. Although the terms of a will may express the testator's intention that no bond be required, the Court may set a bond adequate to protect creditors, tax authorities, and devisees.

603.3. Heir or Legatee Fiduciary. Where the fiduciary is an heir or legatee of the estate, the bond may be reduced by such fiduciary's share of the estate, or the value of real estate, or other assets that cannot be transferred or accessed without court approval or order. The Court shall have the right to review the amount of bond if the Court should grant access to such property or asset.

603.4. Unsupervised Estate. In an unsupervised estate, bond will be required unless the personal representative is the sole beneficiary. The Court may set bond in an amount as determined in the discretion of the Court.

603.5. Request for Service Without Bond. Where the heirs or legatees have filed a written request that the fiduciary serve without bond, the Court may set bond in an amount adequate to protect the rights of the creditors only.

603.6. Corporate Fiduciary. No bond shall be required in any estate or guardianship in which a corporate fiduciary that is qualified by law to serve in such capacity is appointed to be either the sole fiduciary or one of several co-fiduciaries.

603.7. Nonresident Fiduciary. A nonresident fiduciary shall post bond prior to qualification as required by statute.

603.8. Bond Requirements. All bonds filed with the Court shall comply with the provisions of IC 29-1-11-1 *et seq.* The name and address of the insurance underwriter as well as the name and address of the insurance agency providing the corporate surety, shall be typed or printed prominently on all corporate bonds.

Rule LR71-PROO-604. Estate Inventory.

604.1. Time Period for Preparation and Filing. An inventory shall be prepared by the fiduciary in an estate within 2 months following the date of appointment of the fiduciary. In a supervised administration, the inventory shall be provided to interested parties upon request or may be filed with the Court. In an unsupervised estate, the inventory shall be provided to distributees upon request or may be filed with the Court.

604.2. Partial Inventory. If a partial inventory is prepared, all subsequent inventories must contain a recapitulation of prior inventories.

604.3. Sealed Inventory. If a personal representative wishes to file an inventory under seal, the Court may in its sole discretion seal such inventory. If the inventory is sealed, it shall be held and protected according to Court policy and procedures.

Rule LR71-PROO-605. Real Estate.

605.1. Deed Requirements. Every deed submitted to the Court for approval in either estate or guardianship proceedings shall be signed by the fiduciary and the signature notarized prior to its submission unless the Court permits otherwise.

605.2. Unsupervised Estates. No Personal Representative's Deed shall be approved in unsupervised estates.

Rule LR71-PROO-606. Sale of Assets

606.1. Supervised Estate and Guardianships. To the extent that the sale of assets is not authorized by the decedent's will, no Petition to Sell Personal Property in a supervised estate or guardianship shall be granted unless a written appraisal, prepared by a person competent to appraise such property and setting forth its fair market value, is filed with the Petition or was previously filed with the inventory. This rule shall not apply to the personal property which is sold at public auction.

606.2. Date of Appraisal. All appraisals required by 606.1. above shall be made within one year of the date of the Petition to Sell.

606.3. Exempt Assets. No written appraisal shall be required for the sale of assets which are securities traded on a recognized stock exchange. Such assets include, but are not limited to, stocks, bonds, and mutual funds.

Rule LR71-PROO-607. Accounting.

607.1. Failure to Close Within One Year. Whenever an estate cannot be closed within one (1) year, the personal representative shall file a statement with the Court stating the reasons why the estate has not been closed if requested by the Court. In addition, the Court reserves the power to require the personal representative to file an intermediate accounting with the Court.

607.2. Statutory Format. All accounts shall follow the prescribed statutory format. Informal, handwritten, or transactional accounts will not be accepted.

607.3. Payment of Court Costs. All court costs shall be paid and all claims satisfied and released before the Court will hear a Motion on Final Account.

607.4. Death Taxes. Before the Court will hear a motion to approve a final account, all federal and state death taxes must be paid and the estate must have received a closing letter from each appropriate taxing authority acknowledging such payment and releasing the estate from further liability. The attorney for the estate or the pro se fiduciary is responsible for maintaining paper or electronic copy of such closing letter(s) and shall provide any copies to the Court upon request.

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Rule LR71-PROO-608. Fees of Attorneys and Fiduciaries.

608.1. Approval. Fees paid to fiduciaries and to attorneys in the administration of a supervised estate or guardianship shall be reported to the court with Motion on Final Account and such fees shall be subject to approval by the court at that time. No attorney or fiduciary fees will be determined or authorized for payment by the Court in any unsupervised administration of a decedent's estate.

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Rule LR71-PROO-609. Unsupervised Administration.

609.1. Administrative Records. The attorney for the estate in an unsupervised administration shall maintain and preserve, in paper or electronic format, records of notices delivered to distributees at the opening of the estate, the estate inventory, correspondence with each distributee during the administration of the estate and a full record of the final accounting including supporting statements, invoices, appraisals, and distribution reports. Such records will be supplied to the Court upon request.

609.2. Closing Statement. Every Closing Statement shall comply with LR71-PROO-607 above.

609.3. Order on Closing. The Court may enter an Order approving the Closing Statement although an Order is not needed since such estate is closed by operation of law.

Rule LR71-PROO-611. Guardianships.

610.1. Appearance of the Incapacitated Person. In all guardianship matters seeking to declare an adult incapacitated for any reason, the incapacitated person shall be present at the hearing or sufficient evidence shall be presented showing that the incapacitated person is unable to appear. The Court may at any time appoint a guardian ad litem to investigate and protect the best interest of the incapacitated person.

610.2. Physician's Report. In all guardianship matters seeking to declare an adult incapacitated for any reason, a Physician's Report by the doctor treating the alleged incapacitated person or such additional evidence as the Court shall require shall be presented to the Court at the time the petition is filed or on the hearing date. No determination will be made without a supporting medical report or testimony.

610.3. Appointment Without Notice. Pursuant to IC 29-3-3-4(a), no guardian of an adult shall be appointed or protective order entered without notice except upon verified allegations that delay may result in immediate and irreparable injury to the person or loss or damage to the property.

610.4. Appointment For A Minor. In every petition for the appointment of a guardian of the person of a minor child, the following information shall be given:

- a. The child's present address
- b. The places where the child has lived within the past two years and the names and present addresses of the persons with whom the child has lived during that period.

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- c. General information concerning school, health, etc.
- d. Whether, to the petitioner's knowledge, any other litigation is pending concerning the custody of the child in this or in any other state.
- e. Whether, to the petitioner's knowledge, any person not a party to the guardianship proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child.

610.5. Statutory Sealed Affidavit. In every petition for the appointment or modification of a guardianship for a minor, the attorney representing the petitioner shall question the parties as to the circumstances that must be reported to the Court under IC 29-3-2-7, IC 31-14-13-12, IC 31-14-14-6, IC 31-17-2-26, IC 31-17-4-11 and IC 31-17-5. Where appropriate a sealed affidavit is to be filed with the Court in substantially the form as provided by the Court.

610.6. Petition to Open Guardianship Estate. All petitions to open a guardianship shall provide an approximate value and description of the property of the incapacitated person or minor.

610.7. Inventory. An inventory shall be prepared by the fiduciary in a guardianship within 90 days following the date of appointment or within 30 days in the case of a temporary guardianship. The inventory prepared for the guardianship shall be filed with the Court on or before the last day identified above for preparation of the inventory.

610.8. Guardian's Report. The Guardian's Report filed by the guardian of the person, as opposed to the estate, shall provide the present residence of the protected person and a description of his or her general condition. If the protected person is an adult, a report of an attending physician shall be filed with the Guardian's Report attesting to the fact that the incapacity of the person continues and that the living arrangements for the protected person are appropriate.

610.9. Accountings and Verification Required. When an individual or corporate fiduciary has been appointed to handle the financial affairs of a protected person, an accounting shall be filed within thirty (30) days after the first anniversary of the date the guardianship letters were issued. Thereafter, unless a contrary order is

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issued by the Court, all accountings shall be filed biennially. All guardianship accountings shall contain a certification of an officer of any financial institution in which guardianship assets are held, verifying the account balance. All accounts shall follow the prescribed statutory format. Informal, handwritten, or transactional accounts will not be accepted.

610.10. Social Security/Medicare Benefits. All social security or Medicare benefits received on behalf of an incapacitated person shall be included and accounted for in the guardianship accounting unless court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility, or because of the amount of such funds, the Court finds that such funds can only be used by the guardian or designated person for the benefit of use of such incapacitated person.

610.11. Compliance with Other Rules. Nothing herein shall be deemed as amending, superseding, or altering the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States of America, and every fiduciary and attorney shall comply with same, if applicable.

610.12. Financial Matters. Other than for routine matters, the guardian shall obtain court approval prior to taking any action on any financial matter pertaining to carrying out the guardian's duties and responsibilities for the protected person.

Rule LR71-PROO-611. Miscellaneous.

611.1. Implementation of Rules. The Court may adopt procedures to effectuate implementation of these rules and the Court may, in its discretion, deviate from these rules when justice requires.