

# Kane County Local Rule

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## **ARTICLE 8. PROBATE PROCEEDINGS**

### **8.00 APPLICABILITY OF RULES**

- (a) The rules contained in this Article 8 as well as all other rules applicable to Civil Division cases shall be applicable to proceedings in probate.
- (b) The definitions in the Probate Act of 1975, [755 ILCS 5/1-1 et. seq.](#) as amended shall apply to these rules.

### **8.01 SUPPLEMENTAL PROCEEDINGS IN PROBATE**

An action to contest admission or denial of a will to probate, 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 as a probate proceeding and 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 Civil Division, the action shall be heard by the judge to whom the estate has been assigned.

### **8.02 CHANGES IN DISTRIBUTIVE RIGHTS**

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.

### **8.03 PROOF AND DECLARATION OF HEIRSHIP**

- (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) 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/her attorney;
  - (2) The name and place of residence of the decedent at the time of 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.

## Kane County Local Rule

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- (c) If no heir is named in a petition for admission of a will to probate or for Letters of Administration, or in an amended petition therefor, notice of the hearing on heirship shall be given to the State's Attorney.
- (d) If the order declaring heirship is incomplete or erroneous, an amended proof of heirship shall be made as provided in this Rule.

### **8.04 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/her attorney that to the best of his/her 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 Circuit Court Clerk. No testimony need be given when a will is admitted by attestation clause or affidavit in accordance with [755 ILCS 5/6-4](#).

### **8.05 DEPOSITION OF WITNESS TO A WILL**

- (a) A person seeking admission of a will to probate and desiring to take the deposition of a witness to a will as provided by Section 6-5 shall file a petition for issuance of a commission, stating:
  - (1) The name and address of the witness;
  - (2) If the witness resides in this county, the reason the witness is unable to appear in court;
  - (3) The name and address of the officer to whom the commission is directed.
- (b) A copy of the proposed written interrogatories shall be attached to the petition unless notice is waived. Notice of the petition shall be given not less than fourteen (14) days before the hearing on the petition for admission of the will to probate to each heir or legatee whose name and post office address is stated in the petition. Before the

## Kane County Local Rule

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expiration of fourteen (14) days any interested person may propose written cross interrogatories.

### **8.06 BONDS**

- (a) When a representative takes possession of real estate of a decedent or ward, the bond shall be for an amount not less than 1 ½ times the estimated gross annual income of the real estate if a surety company acts as surety and not less than double the estimated gross annual income of the real estate if individuals act as sureties, in addition to the amount of the bond required by Section 12-5 or Section 12-6, as the case may be, for the personal estate of the decedent or ward.
- (b) The name of each principal and individual surety must be written in full in the body of the bond of a representative and in the signatures of the bond. When the signature is by mark, it must be witnessed by a person not a party to the bond. The bond shall be acknowledged in accordance with the Illinois Uniform Recognition of Acknowledgements Act [765 ILCS 30/1](#).
- (c) An individual bond or surety is required even though the will waives bond or security.
- (d) When a representative offers a new bond under Section 12-11, the Court may require that the representative must establish the assets previously stated to be on hand are still on hand before the surety on the old bond is discharged.

### **8.07 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 against the estate and taxes, whether the adult heirs or legatees approve the bond, with their approvals attached;
  - (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. The personal representative or his/her attorney within seven (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.

### **8.08 EXCUSE OF SURETY ON GUARDIAN'S BOND IN CASH DEPOSITS**

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 of insurance settlement which is to be deposited pursuant to [755 ILCS 5/24-21](#) for benefit of the ward subject to order of the Court.

## Kane County Local Rule

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- (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 Circuit Court Clerk as required by the court.

### **8.09 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 Circuit Court Clerk and verified power of attorney or certificated of authority for all persons authorized to execute bonds for the surety is attached to the bond.
- (b) The Circuit Court Clerk shall maintain a current list of approved surety companies and shall publish the list at least semi-annually.

### **8.10 INVENTORIES**

- (a) The representative of an estate under supervised administration or the guardian of the estate of a minor or disabled adult shall be required to file an inventory within sixty (60) days after the issuance of Letters Testamentary, Letters of Administration or Letters of Guardianship, [755 ILCS 5/14-1](#).
- (b) A supplemental inventory shall be required to be filed within sixty (60) days after additional real or personal property comes to the attention of the representative.
- (c) 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.
- (d) Consecutive item numbers, commencing with roman numeral "I" 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.

## Kane County Local Rule

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- (e) Description 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/she is not in possession [755 ILCS 5/20-2](#).
- (f) 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.
- (g) Descriptions of partnership interest shall include the partnership name and address and the approximate interest of the estate, if known.
- (h) 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.
- (i) An amended or supplemental inventory shall be filed and in addition shall be approved by the judge presiding. If such inventory necessitates an increase in the bond, the same shall be posted by the personal representative.

### **8.11 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](#). Further accountings, filed at least annually, shall be required until the estate is declared 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\(a\)](#). Further accounting, filed at least annually, shall be required provided that the final accounting shall be presented within thirty (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.

## Kane County Local Rule

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- (d) No final account of any estate shall be approved unless as 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) The receipts of claimants showing paid claims which were allowed and not paid of record, unless there is a finding of insolvency; and
  - (4) The 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 Circuit Court 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/she 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/she should not do so, he/she may be found in contempt and his/her 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 Circuit Court 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.

### **8.12 NOTICE OF HEARING ON ACCOUNTS**

- (a) Notice of the hearing on a final account of an executor or administrator in supervised administration, or of a guardian of the estate of a minor or disabled person, 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 seven (7) days prior to the hearing by one of the methods as provided by [Supreme Court Rules 11 and 12](#) except when notice is by publication as herein provided. If the person resides outside of the United States, the notice shall be by one of the methods for service as provided in [Supreme Court Rules 11 and 12](#) at least twenty-one (21) days prior to the date of hearing;

## Kane County Local Rule

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- (4) Whenever the name or place of residence of any such person is unknown and upon due diligence cannot be ascertained, an affidavit to that effect shall be filed with the Circuit Court Clerk by said executor or administrator. 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 twenty-one (21) days prior to the date of hearing;
  - (5) Proof of such notice shall be filed with the Circuit Court Clerk on or before the date of hearing; and
  - (6) No notice need be given to any person from whom a receipt in full is exhibited to the court or who entered his/her 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 of Veterans Affairs, as provided in Section (a) of this Local Rule.
- (c) At the time of presenting his/her account, the guardian shall show to the satisfaction of the Court all monies and securities of his/her ward shown in the amount to be on hand, unless excused by the Court upon satisfactory evidence of their existence and whereabouts.
- (d) An account of a guardian or temporary guardian of the person of a disabled person shall state the physical location and the physical and mental condition of the ward.
- (e) 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.
- (f) 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.

### **8.13 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 GAL 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:



## Kane County Local Rule

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- (1) The Court may appoint counsel for Respondent if the Court finds that it is in the best interest of Respondent;
  - (2) 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.
- (c) The Court may choose a GAL or an attorney to serve as court-appointed counsel for Respondent from the approved list hereinafter provided.
- (d) **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.
- (e) **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](#).
- (f) **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 Sections 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:
- (1) Whether Respondent wishes to exercise or waive any of his/her rights as listed in the summons and [755 ILCS 5/11a-10](#).
  - (2) The adjudication of disability;
  - (3) The proposed guardian;
  - (4) A proposed change in residential placement;
  - (5) Changes in care that might result from the guardianship;
  - (6) Other areas of inquiry deemed appropriate by the Court



## Kane County Local Rule

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The GAL shall also determine whether Respondent or the GAL wishes to present a motion pursuant to [Section 11\(a\)-11\(c\)](#) to request the appointment of one or more independent experts to examine the Respondent.

- (g) **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 issues discovered by the GAL. The filed original GAL report shall be impounded by the Circuit Court 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 GAL report.
- (h) **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 GAL or of an appointed counsel for Respondent, and the duties and obligations of each such office, and compensation thereof, shall be consistent with the provisions of [Sections 11\(a\)-20](#) and [Sections 11\(a\)-21](#) of the Probate Act.
- (i) **Appointment Eligibility List:** The Sixteenth Judicial Circuit Court shall maintain a list of individuals or entities qualified to be appointed to probate guardianship matters that 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 sequence, if the Court determines that the issues presented by a particular case and/or the necessary experience and training of the GAL 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.
- (j) **Qualifications for GAL Appointment:** In order to serve as a GAL, the applicant shall meet the following minimum requirements:
  - (1) 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 three (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 three (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

## Kane County Local Rule

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by the Presiding Judge of the Civil Division or judge(s) assigned to hear probate cases.

- (2) If a non-attorney applicant: The applicant shall demonstrate qualifications, by training or experience for a minimum of three (3) years, of working with or advocating for developmentally disabled, mentally ill, physically disabled, the elderly, or persons disabled because of mental deterioration.

**(k) Application for Placement on the Eligibility List:**

(1) **Attorneys:** An attorney licensed in the State of Illinois who has completed 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 resume 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.

(2) **Non-Attorneys:** A non-attorney claiming completion of the minimum requirements noted above shall complete an [application form](#) which shall be available from the probate administration office, and may submit a resume 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.

(l) **Compensation of GAL and/or appointed counsel:** The Probate Act provides that the Court may allow the GAL 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 efficiency with which the case was handled.

(m) **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.

(n) **Non-Attorney GAL compensation:** Non-attorneys serving as GAL will be entitled to reasonable compensation based on similar factors and applicable case law, as well as

## Kane County Local Rule

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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 GAL's also acknowledge that due to the circumstances and finances of particular cases, compensation may be reduced or unavailable.

- (o) **Pro Bono Limits:** With respect to both attorneys and non-attorneys, inclusion on the Court's list requires the acceptance of at least one (1) *pro bono* case per year. *Pro bono* requirements also apply to court appointed attorneys for respondents.
- (p) **Guidelines and Caps for GAL Time:** It is expected that the guardian *ad litem* report, including appearance and presentation of the report on an initial [Section 11a-11](#) hearing, will involve between four (4) and eight (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/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/she may request in writing, upon notice, that increased rate(s) or additional time be allowed.
- (q) **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.
- (r) **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.

### 8.14 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/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.

## Kane County Local Rule

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- (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 final account and distribution shall be provided to the State's Attorney.

### **8.15 ALTERNATIVE DISTRIBUTION TO RESIDENT OF FOREIGN COUNTRY**

In any fund, the distributive share of a citizen and resident of a foreign country 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 Jurisdiction in which the foreign distributee resides, unless the Court is satisfied with the other evidence of the 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.

### **8.16 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 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, and acknowledged in accordance with the Illinois Uniform Recognition of Acknowledgment Act. [765 ILCS 30/1, et. seq.](#)

## Kane County Local Rule

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- (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.

### **8.17 RELATING TO TESTAMENTARY TRUSTS**

- (a) In any estate in which 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 disabled person, then the notice shall be served on beneficiary's guardian or on the GAL, 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.

### **8.18 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/her 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 pending cause of action for personal injuries, a petition may be filed requesting distribution of the balance of the funds without further administration.
- (c) Pursuant to [755 ILCS 5/25-2](#), when a guardian is acting and the estate under administration is \$10,000 or less, 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. 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.

### **8.19 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

## Kane County Local Rule

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in which the guardian has an interest or of which he is an officer or director, the petition shall so state.

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

### **8.20 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 claim against the estate, he/she 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/her attorney waives the mailing or delivery of a copy of the claim, the time for filing pleadings is thirty (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 counter-defendant and his/her attorney.

### **8.21 RESIGNATION OR REMOVAL OF REPRESENTATIVE**

- (a) Unless notice has been excused by the Court, no less than five (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 interest person's petition for removal of a representative.
- (b) Unless notice is waived by the Court, ten (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.

### **8.22 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, 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;

## Kane County Local Rule

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- (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, the necessity of such work, and whether based on hourly rate or on other factors, or on a combination thereof. Factual evidence substantiating the particular basis 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.

### **8.23 WITHDRAWAL OF DEPOSIT WITH COUNTY TREASURER**

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

### **8.24 JURY DEMANDS**

A petitioner or claimant who is interested in a jury trial, where permitted, must file a jury demand with the Circuit Court Clerk and pay the fee at the time he/she files his/her petition or claim. If a representative or other party in interest opposing the petition or claim is interested in a jury trial, he/she must file a jury demand and pay the fee at the time he/she files his/her 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.

### **8.25 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 civil action at law, application shall be made to the judge assigned to hear civil action for the appointment of a special administrator to prosecute said cause of action. No probate estate shall be opened.



## Kane County Local Rule

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- (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 separate civil action. In such civil action, if the court 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 civil action 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 Rule shall apply.
  - (2) No civil action has been filed, 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/her 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.

### **8.26 ESTATE FILINGS BY MAIL**

The Sixteenth Judicial Circuit may provide for a probate administrative assistant to assist attorneys and self-represented litigants to process routine estate filings by mail, through cooperation with the office of the Circuit Court Clerk. Procedures for such filings will be approved and promulgated by the Chief Judge or Presiding Judge of the Civil Division.

### **8.27 TRANSFER TO FAMILY DIVISION IF CHILD CUSTODY, CHILD SUPPORT OR CHILD VISITATION DISPUTE**

If it comes to the attention of a judge assigned to a probate matter that the parties or some of them are involved with a case pending in the family division involving child custody, child support, or child visitation then such probate judge may, upon his/her own motion, transfer to the Presiding Judge of the Civil Division. The Presiding Judge of the Civil Division may transfer to the Presiding Judge of the Family Division who will in turn assign the case to a judge of that division for resolution of the child custody, child support, or child visitation dispute. Upon resolution of such dispute the probate/guardianship file shall be transferred back to the Civil Division for all further proceedings.