

## 8.1 Court Appointments

Persons appointed by the Court to serve as appraisers, fiduciaries, attorneys, magistrates in involuntary psychiatric commitment proceedings, investigators, guardians ad litem, and trustees for suit shall be selected from lists maintained by the Court.

Appointments will be made from such lists taking into consideration the qualifications, skill, expertise, and caseload of the appointee in addition to the type, complexity and requirements of the case.

Court appointees will be paid a reasonable fee with consideration given to the factors contained in DR 2-106 of the Code of Professional Responsibility, the Ohio Revised Code, and the Local Rules of Court relating to fees.

The Court shall review the court appointment lists at least twice annually to ensure the equitable distribution of appointments.

### Comment to Court Appointments

Rule 8 of the Rules of Superintendence for the Courts of Ohio and Local Rule 8.1 govern court appointments in the Probate Court. The following is a summary of practices of Lorain County Probate Court with respect to the appointment of attorneys, appraisers, fiduciaries, investigators, guardians ad litem, and commissioners.

Attorneys: Court appointment of attorneys in probate cases occur on an infrequent basis. When the occasion does arise, the matter at hand typically involves novel or complicated issues, collateral litigation, an impasse or resistance by parties to resolve issues, or other instances where a degree of professional experience and expertise in probate law is necessary to perform the required services.

An attorney appointed by the Probate Court reflects the court's own commitment and ability to conclude a matter competently, expeditiously, and fairly.

Appraisers: The Court does not maintain a list of acceptable appraisers. Appraisers nominated by the fiduciary are appointed absent a showing of good cause why that appraiser should not be appointed. Also see Rule 61.1.

Fiduciaries: The Court does not maintain a list of suitable fiduciaries. In decedent's estates and trusts, fiduciaries are chosen on the basis of the will, or in the event of no will, then by the preference order set by statute. If a suitable fiduciary cannot be appointed in

either of these situations, then an attorney may be appointed on the basis of preference as expressed by the parties in interest.

With respect to guardianships, appointments are made pursuant to statute. Where there is no suitable person, the court may appoint an attorney or some other suitable person. The Court may appoint attorneys who apply as a result of a referral from a volunteer guardianship organization or from an Adult Protective Services agency.

Investigators: The Probate Court employs a full-time deputy clerk of court who also performs the duties as an investigator in guardianship cases. In other types of investigations, the Court utilizes employees of Lorain County Children Services whenever practical.

Guardians ad litem: The appointment of a guardian ad litem most frequently arises in land sale proceedings. By practice, plaintiffs nominate an attorney for appointment as guardian ad litem and, barring any disqualification, the Court appoints the nominated attorney.

Commissioners: Commissioners must be attorneys at law who are appointed to perform certain investigations on behalf of the Court. Typically, the need for a commissioner arises in a decedent's estate involving an incompetent surviving spouse. The commissioner must be well versed in probate law to assess both the law and facts regarding alternative property rights of the incompetent spouse and how the election of those rights impact Medicaid and other benefits.