

IN THE COURT OF COMMON PLEAS, PROBATE DIVISION, GEauga COUNTY, OHIO  
Judge Timothy J. Grendell

Information Sheet  
Service of Notice, Subpoena, or Summons

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**WARNING**

This Information Sheet is intended to provide you with an overview of the subject matter, effective as of the date noted in the upper left-hand corner. This Information Sheet is not intended to provide you with all legal information that may be necessary for you to decide upon a course of action, and the information provided may not be error-free, complete, or accurate. Moreover, this Information Sheet may not accurately describe the cited sections of the Ohio Revised Code or cited case law. Finally, this Information Sheet is not intended as a substitute for legal advice from a competent licensed attorney, who is familiar with all of the relevant facts of your case, and therefore the Help Center recommends that you seek legal advice from a competent licensed attorney that you select before taking any action. While the Help Center can provide you with a limited amount of general legal information, neither the Help Center staff nor any other Court employee can give you any legal advice.

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Background

From time to time an applicant or the Fiduciary<sup>1</sup> of a probate proceeding is required to deliver a written notice to Interested Persons<sup>2</sup> advising them that certain action has been taken or that the Court has scheduled a hearing based upon the filing of an application. Examples are: (1) notice of probate of will, (2) notice of a hearing to appoint an administrator to an estate, (3) notice of application to relieve estate from administration, (4) notice of a hearing to sell probate property, (5) notice of hearing on an inventory or accounting, or (6) a notice of hearing in a name change proceeding. Civ.R. 73(E) and (F) and Geauga Probate Local Rules 78.13 and 78.14 govern how the Fiduciary shall serve a written notice upon Interested Persons and provide the Court with Proof of Service. Note that Civ.R. 73(E) applies to any probate proceeding, including estate administration, adoption, name change, or guardianship. There are a few fundamental rules, which are as follows:

1. Due Diligence. You must exercise reasonable diligence to ascertain the name and usual place of residence of each Interested Person so that such persons who must be notified in fact receive the notice.

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<sup>1</sup> "Fiduciary" means the person appointed by the probate court to handle the probate estate, whether the probate process is a Full Administration (in which case the name of that person is the Executor, Administrator, or Administrator with Will Annexed), the Commissioner of a Release from Administration, or the applicant of a Summary Release from Administration; and includes a person appointed as a Guardian, Trustee, or Conservator.

<sup>2</sup> "Interested Person" is defined in Geauga Probate Local Rule 2.1 and means all persons (and entities), including legal counsel, who are entitled to receive notice by Applicable Law.

2. Form of Notice. Many notices require a specific form that is required by the Supreme Court of Ohio, by statute, or by the Geauga Probate Local Rules. Examples are:
  - a. Notice of Probate of Will (Form 2.2)
  - b. Notice of Hearing on Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (GC PF 42.2)
  - c. Notice of Hearing on Account (Form 13.5)
    - i. See Geauga Probate Local Rule 64.2(I) and R.C. 2109.33
  - d. Notice of Hearing on Inventory (Form 6.3)
    - i. See Geauga Probate Local Rule 78.5(D)(1)(c) and R.C. 2115.16
  - e. Notice of Hearing on Appointment of Special Administrator (GC PF 4.17)
  - f. Notice of Application To Relieve Estate From Administration (Form 5.3)
  - g. Notice of Appointment of Administrator (GC PF 4.4A)
  - h. Notice and Citation of Hearing on Appointment of Fiduciary (Form 4.4)
  - i. Notice of Hearing on Change of Name (GC PF 21.5)

If the notice of hearing to be delivered does not have a specific required form, then use the form titled Notice of Hearing (GC PF 4.18).

3. Notice to Minors or Incompetent Persons. If an Interested Person, entitled to be notified, is under the age of 16 or an incompetent person, then there are special rules regarding how to serve notice upon such persons.<sup>3</sup> See Civ.R. 4.2(B) through (J). Moreover, note that there are special rules if the Interested Person is in a penal institution or is a legal entity.
4. Manner of Service of Notice to a Person whose Usual Place of Residence is Known. Except to the extent that the law requires otherwise, for those persons who must receive a written notice and whose usual place of residence is known, the manner of serving the required notice is set forth in Civ.R. 73(E)(1) through (5).<sup>4</sup> One exception is that when delivering a Notice of Probate of Will, Sup.R. 59(B) requires service under Civ.R. 73(E)(3), or if necessary, under Civ.R. 73(E)(4) and (5).
5. Manner of Service of Notice to Persons whose Usual Place of Residence Address is Unknown (or Persons are unknown). For those persons who must receive a written notice and (i) whose usual place of residence is unknown, (ii) the persons are unknown, or (iii) there is a failure of delivery of a written notice under Civ.R. 73(E)(1) through (5), the manner of serving the required notice by publication is set forth in Geauga Probate Local Rule 78.14.

Moreover, a Fiduciary or other Interested Person may need the Court to order another person to appear and give testimony at a court trial or hearing, or at a deposition, or to produce documents, to permit the examination of documents, or to permit the examination of real property. Examples include a Will Contest or Heir Determination Proceeding. Civ.R. 45 governs the process that requires a person to take such action. The key document that orders a person to comply is known as a "Subpoena," which may be issued by the Court or by an attorney of record in the legal proceeding that necessitates the use of a Subpoena.

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<sup>3</sup> Civ.R. 73(E) states that Civ.R. 4.2 governs.

<sup>4</sup> See also Geauga Probate Local Rule 78.13

## **DETAILS - Service of Notice - Address is KNOWN.**

When the Fiduciary must deliver written notice to an Interested Person,<sup>5</sup> whose usual place of residence is known, then, with one exception noted below, the provisions in Civ.R. 73(E)(1) through (5) govern, which states that the Fiduciary shall deliver the written notice:

1. by delivering a copy to the person to be served; or
2. by leaving a copy at the usual place of residence of the person to be served; or
3. by United States certified or express mail return receipt requested, or by a commercial carrier service utilizing any form of delivery requiring a signed receipt, addressed to the person to be served at the person's usual place of residence with instructions to the delivering postal employee or to the carrier to show to whom delivered, the date of delivery, and the address where delivered; provided that the certified or express mail envelope or return of the commercial carrier is not returned showing failure of delivery;  
or
4. By United States ordinary mail after a returned United States certified or express mail envelope or return of the commercial carrier shows that it was refused; or
5. By United States ordinary mail after a United States certified or express mail envelope is returned with an endorsement stating that it was unclaimed; provided that the United States ordinary mail envelope is not returned by the postal authorities showing failure of delivery.

As noted above, unless the law requires a specific form of notice of hearing, the Fiduciary should use the form titled Notice of Hearing (GC PF 4.18).

One exception is that, regarding the service of a Notice of Hearing on Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (GC PF 42.2), R.C. 2107.27 requires that service be made by certified mail, return receipt requested.

You should retain an attorney and seek legal advice as to the manner of service of a notice. Generally, the Help Center recommends that, in all cases, the Fiduciary first deliver written notice by certified mail, return receipt requested. If the certified mail return envelope indicates that delivery was either "refused" or "unclaimed," then the Help Center recommends that the Fiduciary use ordinary mail to redeliver the notice and obtain from the post office a "Certificate of Mailing." If the ordinary mail envelope is returned showing "failure of delivery," then the Fiduciary should assume that person's usual place of residence is unknown, and the notice to that person should be made by "publication" - see below.

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<sup>5</sup> "Interested Person" is defined in Geauga Probate Local Rule 2.1 and means all persons (and entities), including legal counsel, who are entitled to receive notice by Applicable Law.

## **DETAILS - Proof of Service of Notice.**

Generally, when the Fiduciary delivers written notice to an Interested Person, whose address is known, and as provided in Civ.R. 73(E)(1) through (5), then that the Fiduciary must provide the Court with "Proof of Service" - see Civ.R. 73(F) and Geauga Probate Local Rule 78.13.

Unless the Geauga Probate Local Rules, other Applicable Law, or court order specifically provide otherwise, the Fiduciary shall provide the Court with "Proof of Service" by preparing and filing with the Court the form titled Affidavit Evidencing Service of Notice (GC PF 41.6), in accordance with Civ.R. 73(F) and Geauga Probate Local Rule 78.13. The Fiduciary shall attach to that affidavit (i) a copy of the notice what was delivered and (ii) evidence of delivery (e.g., certified mail return receipt that shows delivery or a Certificate of Mailing for ordinary mail if a certified mail return receipt indicates a failure of delivery).

An example where proof of service of notice is not the filing of Affidavit Evidencing Service of Notice (GC PF 41.6) is when the fiduciary serves the Notice of Probate of Will (form 2.2). In that case, proof of service is made by filing the form titled Certificate of Service of Notice of Probate of Will (Form 2.4).

## **DETAILS - Service of Notice - Address is UNKNOWN.**

1. Publication by Newspaper. Unless the Geauga Probate Local Rules, other Applicable Law, or court order specifically provide otherwise, when the Fiduciary is required by law (including a court order) to deliver written notice to an Interested Person, whose name or usual place of residence is unknown, or service of notice as permitted by Civ.R. 73(E)(1) through (5) has failed (e.g., delivery is refused or unclaimed), then Civ.R. 73(E)(6) governs, which states that the Fiduciary shall deliver the written notice:

by publication once each week for three consecutive weeks in some newspaper of general circulation in the county when the name, usual place of residence, or existence of the person to be served is unknown and cannot with reasonable diligence be ascertained; provided that before publication may be utilized, the person giving notice shall file an affidavit which states that the name, usual place of residence, or existence of the person to be served is unknown and cannot with reasonable diligence be ascertained;

If you decide to provide notice by publication in a newspaper, in accordance with Civ.R. 73(E)(6) and Geauga Probate Local Rule 78.14(A), then the Help Center recommends the following process:

- Prepare the Notice. Prepare the appropriate written notice that you would use to provide notice to Interested Persons whose address is known - see above.
- Affidavit for Service by Publication. As required by Civ.R. 73(E)(6), prepare and file with the Court the form titled Affidavit for Notice by Publication (GC PF 62.0) - with a copy of the applicable notice attached, and instructions, using the form titled Instructions for Service by Publication (GC PF 62.1).<sup>6</sup>

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<sup>6</sup> See Geauga Probate Local Rule 78.14.

- Contact Publisher. After filing and receiving authorization from the probate clerk of courts, the Fiduciary will (i) contact the publisher as instructed by the probate clerk (most likely The News-Herald), (ii) deliver the appropriate notice to the publisher, (iii) request the notice be published once a week for three consecutive weeks,<sup>7</sup> and (iv) arrange for payment of the publication. Currently, for service by newspaper publication, use the News-Herald, which is located at 7085 Mentor Ave., Willoughby, Ohio 44094, telephone (440)-951-0000, and email address - [legals@news-herald.com](mailto:legals@news-herald.com).
  - Completion of Service.<sup>8</sup> Service of notice by publication is deemed completed on the date of the last publication.
2. Publication on Court's Website. If you decide to provide notice by publication on the Court's Website, in accordance with Geauga Probate Local Rule 78.14(B), then the Help Center recommends the following process:
- Prepare the Notice. Prepare the appropriate written notice that you would use to provide notice to Interested Persons whose address is known - see above.
  - Affidavit for Service by Publication. Prepare and file with the Court the form titled "Affidavit for Notice by Publication" (GC PF 62.0) - with a copy of the applicable notice attached, and instructions, using the form titled "Instructions for Service by Publication" (GC PF 62.1).<sup>9</sup> Indicate at the bottom of the form titled "Affidavit for Notice by Publication" (GC PF 62.0) that you request that the clerk of courts cause notice of publication be made on the Court's website. Generally, the posting of the applicable notice upon the Court's website must be not less than three weeks before the hearing date.

## **DETAILS - Service of Subpoena<sup>10</sup>**

If you need to have a person appear to give testimony, or to produce documents, or to allow you to examine real or personal property that is owned or under the control of that person, then you need to prepare two documents and file them with the Clerk. Please read the "Subpoena Instructions" that are posted on the Court's website.

1. Subpoena. You must prepare the form titled Subpoena (GC PF 62.3)
2. Request for Service of Subpoena. You must prepare the form titled Request for Service of Subpoena (GC PF 62.3A).

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<sup>7</sup> Civ.R. 73(E)(6). However, in some cases, the law requires publication for more than three weeks. For example, regarding the service of a summons in a Land Sale proceeding or an Heirship Determination proceeding, the law requires publication for six weeks.

<sup>8</sup> Civ.R. 73(F)

<sup>9</sup> See Geauga Probate Local Rule 78.14.

<sup>10</sup> See Ohio Civil Rules 45 and Geauga Probate Local Rule 78.24.

You must file those two documents with the Clerk, together with a filing fee, which currently is \$25.00. If you are indigent, the Court may waive the filing fee if you prepare and file the form titled “Financial Disclosure form (ODP-206R).”

### **DETAILS - Service of Summons by Publication<sup>11</sup>**

When a complaint is filed, then the clerk must serve a summons upon all persons or entities named as parties in the complaint, together with a copy of the complaint. A complaint is a document that starts a new legal proceeding, such as a complaint for a will contest or a complaint to determine heirship. If the address of a party is unknown, then the filer of the complaint or the filer’s attorney shall prepare and file with the clerk the GC PF Form “GC PF 63.4A – Affidavit for Service of Process by Publication” if publication is to be made a newspaper.

**LEGAL PRACTICE IN THE PROBATE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.**

**IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT’S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GEAUGA COUNTY PROBATE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.**

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<sup>11</sup> See Geauga Probate Local Rule 78.25(C) and Civ.R. 4.4(A)(1).