

FRANKLIN CO. COMMON PLEAS COURT LOCAL RULE 66 - RECEIVERSHIPS

(Adopted Sept. 20, 2011)

66.01 APPLICABILITY

Unless otherwise ordered by the court in a specific case, this local rule governs practice and procedure in all receivership matters.

66.02 MOTIONS FOR APPOINTMENT OF A RECEIVER

(A) The court has no closed-panel or “approved” list of receivers. Any party may suggest candidates, but must be prepared to document their experience and expertise relative to the matter at hand, and certify that they are disinterested persons.

(B) Parties seeking appointment must fully advise the court of the **entire** fee arrangement proposed to compensate the receiver, including all expense reimbursements and any commission contemplated for leasing or selling property. In addition, the court must be advised of the approximate value of the business or property likely to be managed in the receivership (if granted), and of the scope of work likely to be required of the receiver.

(C) Absent an emergency in which irreparable harm is likely to occur, the court will not grant a receivership on an *ex parte* basis. The party (or parties) seeking a receivership should ordinarily consult all known secured creditors, the debtor, and other parties expected to have a significant interest in being heard in order to schedule the receivership hearing in a timely manner.

(D) The court will set a bond commensurate with the anticipated size of the estate, having in mind the views of secured creditors and the debtor. Accordingly, counsel must be prepared to present sufficient facts for the court to make an informed judgment on bond.

66.03 HEARINGS AND REQUESTS FOR PROCEDURAL ORDERS

(A) Motions for a receivership, fee applications, hearing requests, or other procedural matters relative to a receivership must be submitted in writing, with an approval entry tendered to chambers.

(B) Unless it is clear that service has already been made by the court using the e-filing system, the party who submitted or approved a proposed order entered by the court is responsible for serving it upon the receiver or receiver's counsel and upon all parties who have appeared, or for whom service of process remains underway. Proof of service must be filed by the party making service.

(C) For good cause, the receiver or any party that has appeared may request an emergency hearing by contacting the court.

D. An evidentiary hearing at which the receiver or other witnesses are called to testify may be required by the court at any time.

66.04 QUALIFICATIONS TO SERVE AS A RECEIVER.

(A) Every receiver appointed must be an individual who is resident of the state of Ohio, unless good cause is shown for an out-of-state receiver and such an appointment is permitted by R.C. 2735.02. An individual appointed as receiver may, with express court approval, work for an out-of-state business.

(B) Every out-of-state business involved in a receivership must be represented by counsel having an office within this County, or having familiarity with receivership practice in this court.

(C) Upon accepting appointment, each receiver must affirmatively acknowledge in writing in the record that they will:

- 1) act in conformity with Ohio law and these local rules;

- 2) deposit all funds coming into their hands into a separate trust account for the estate, with full contemporaneous record-keeping for all funds;
- 3) avoid any conflict of interest;
- 4) not directly or indirectly pay or accept anything of value that has not been fully and timely disclosed and formally approved by the court;
- 5) not directly or indirectly purchase, acquire, or accept any interest in property managed, appraised, or sold through the receivership; and
- 6) otherwise act in the best interests of the estate.

66.05 GENERAL DUTIES OF THE RECEIVER.

Unless the court specifically authorizes a receiver to continue a business, the receiver shall:

- (A) take control of the assets of the defendant debtor that are subject to the receivership;
- (B) give notice to all known creditors of the receiver's appointment;
- (C) afford reasonable opportunity for creditors to present and prove their claims, and, if deemed appropriate by the receiver or the court, publish in a newspaper of general circulation within the County a deadline or bar date for submitting claims;
- (D) cause the assets of the business to be preserved, inventoried and where appropriate appraised;
- (E) determine the validity and priority of creditors' claims;
- (F) take such other appropriate steps as may be timely, reasonable and necessary to reduce the assets of the business to cash on terms that maximize recovery for the benefit of creditors, including selling property free-and-clear of all liens provided the liens attach to the proceeds of sale; and
- (G) make recommendations for appropriate distributions of cash or property between the various classes of creditors according to their priority, after such notice as the court deems appropriate.

66.06 RECEIVERSHIP PLAN AND PROGRESS REPORTS

(A) At the outset of the receivership, or as soon thereafter as information becomes reasonably available, the court shall be provided with a written plan for the receivership. The plan shall, thereafter, be updated as significant developments warrant, or as part of ongoing periodic reporting to the court.

(B) The initial receivership plan shall identify:

1) the nature of the debtor's business, and a concise statement of the circumstances leading to the receivership;

2) whether the present goal is to preserve and operate a business, collect rental on property, liquidate assets, or take other action;

3) the significant assets of the receivership, including real estate, tangible or intangible property, inventory, cash on hand, accounts receivable, and claims against insurers or other third parties;

4) anticipated transactional costs predictably to be incurred, including upcoming financing or mortgage payments, government fees or taxes, receiver fees, accounting, appraisal or auction costs, and legal fees inherent in the plan (as best they can be estimated);

5) the anticipated duration of the receivership;

6) if an active business is to be operated, the minimum number of employees needed to do so, and the estimated aggregate payroll (including benefits) per month;

7) if property is to be liquidated, the estimated date by which appraisal and sale by the receiver can occur, and whether public or private sale is contemplated;

8) if litigation or administrative proceedings are underway or anticipated, the nature and expected cost of each such proceeding.

(C) The first plan (and report of activity to date) must be submitted no later than two months after appointment of the receiver.

(D) Copies of each receiver's plan and report shall be filed with the Clerk, with service upon all parties who have made an appearance or for whom service remains pending. A duplicate copy shall be submitted to chambers, together with a proposed entry approving the plan and report.

(E) Ordinarily, no approval of fees or other proposed action in a receivership will occur unless seven (7) days have elapsed following service of an updated plan or report, in order to allow interested parties to comment or object. However, for good cause the court may alter this notice period.

(F) After consideration, the court shall approve or disapprove the plan and report by court entry.

(G) After filing the first plan and report, the receiver shall file updated plans and reports no less often than semi-annually. Each shall include a summary of action taken to date measured against the previous plan for the receivership; shall set forth proposed future action; and shall update previous estimates of costs, expenses, and the timetable needed to complete the receivership.

66.07 FAILURE TO ACT TIMELY.

Failure to timely prosecute a receivership, including delay in filing any plan or report required under this local rule, may result in:

- (A) Removal of the receiver and/or attorney for the receiver; and/or
- (B) Withholding of fees for the receiver and/or counsel.

66.08 APPLICATIONS TO EMPLOY COUNSEL OR PROFESSIONALS

(A) A receiver (or other party) requesting approval to retain an attorney or other professional (including appraisers, auctioneers, brokers, or real estate agents) whose compensation will be claimed against the estate or from proceeds of sale of estate property shall apply to the court. All such professionals must be disinterested persons with no business relationship with the Receiver, unless otherwise expressly disclosed and approved in advance by the court. Unless the court addresses the application during the initial hearing on whether to grant a receivership, written notice of all such applications shall be given to the debtor, all parties that have appeared and all those for whom service of process remains pending.

(B) The retention agreement between a receiver and every professional shall be in writing. Every professional whose retention is approved by the court is, and shall

remain, subject to the jurisdiction of this court relative to approval of all professional fees and reimbursable expenses.

(C) Applications for authority to retain professionals to assist a receiver shall summarize the experience, current professional licensure, and other qualifications for every person sought to be retained. The application must affirmatively verify that:

- 1) all necessary licenses are in good standing and not under suspension;
- 2) appropriate “conflict” checks have been made by the professional;
- 3) as to lawyers, professional liability insurance in an amount equal to the minimum coverage required by the Rule 1.4 of Ohio Rules of Professional Conduct is in force; and
- 4) the contract retaining the professional will affirmatively state that the professional will avoid any conflict of interest in connection with work on the receivership; that gross proceeds of any sale or other transaction conducted by them will be immediately turned over to the receiver or placed in a separate trust account; and that they will not, under any circumstances, directly or indirectly purchase, acquire, or accept any interest in any property they manage, appraise or sell through the receivership.

(D) Applications to employ professionals shall also set forth:

- 1) the professional’s usual and customary hourly rate or fee;
- 2) their proposed fee, hourly rate, or other alternative method or formula for determining compensation in the receivership;
- 3) whether any fees were paid to the professional during the one (1) year period preceding the filing of the application from, or involving, (a) the debtor in receivership, (b) a person or party closely related to the debtor, or (c) a person or party known to be adverse to the debtor and to have a material claim in the receivership; and
- 4) the amount, date paid, and source of any retainer or other compensation already received by the professional for preparatory work relative to the receivership.

(E) No fee, commission, expense reimbursement, or other direct or indirect compensation of any nature may be accepted by any court-appointed professional that is not fully and timely disclosed to the court for prior approval.

66.09 EXPENDITURE AUTHORITY OF THE RECEIVER.

(A) A receiver appointed to take charge of property may expend funds without prior approval by the court to pay ongoing insurance premiums, fire safety and other security services, and utility bills. The receiver may also make emergency repairs essential to the safety and proper maintenance of the property and to preserve its value.

(B) A receiver taking charge of an operating business shall have authority to pay reasonable wages to employees and all reasonable and customary business related expenses, subject to periodic accounting to the court.

(C) All fees, compensation or expense reimbursements to the receiver, counsel, or professionals require prior approval from the court.

(D) All expenses of the receivership, other than those specifically enumerated above, also require prior approval of the court if, in the aggregate, they exceed \$ 2,500 per month, or such other threshold as set by order in the specific receivership.

66.10 DISPOSITION OF PROPERTY

(A) With court approval after such notice as the court deems appropriate a receiver may use, sell, or lease property other than in the ordinary course of business.

(1) Unless otherwise ordered, a receiver shall serve notice of the receiver's intent to sell or lease receivership property and the terms of such proposed sale or lease for all property. Notice shall be given to all parties in the action and all persons known to have an interest in the property to be sold or leased.

(2) If any party or person having an interest in the property to be sold or leased files an objection within fourteen days of service of the notice, the court may set the receiver's request for hearing or may rule based on the material of record.

(3) The receiver shall have the burden of proving the commercial reasonableness of a proposed disposition of property.

(4) If the court determines that a proposed disposition of property is commercially reasonable, the receiver will be authorized to proceed upon such terms and conditions as set by the court.

(5) The court may order that disposition of receivership property be effected free and clear of all liens and all rights of redemption regardless of whether the expected proceeds will be sufficient to satisfy all claims secured by the property. Upon any such disposition of receivership property free and clear of liens and rights of redemption, all mortgages, security interests, or other liens encumbering the property shall attach to the proceeds of disposition (net of the reasonable expenses incurred in sale of the property) in the same order, priority, and validity as the liens had with respect to that receivership property immediately before sale.

(B) Unless otherwise provided by law, valuation and sale of real property by a receiver need not occur using ordinary foreclosure procedures.

66.11 PAYMENT OF RECEIVER AND PROFESSIONAL FEES.

(A) Fee applications shall be made in writing, with notice to all parties that have appeared. The receiver or counsel for the receiver shall attach to each fee application a brief, updated plan and progress report, consistent with Local Rule 66.06, together with a billing summary concisely reflecting:

- (1) the dates on which work was performed;
- (2) a description of work performed;
- (3) the name of each individual performing the work; and
- (4) the hourly rate(s) sought to be charged, or other method used to calculate

proposed fee(s) and expenses.

(B) Fees allowed for services by a receiver, counsel, and professionals employed by a receiver shall be within the sound discretion of the trial judge, giving due consideration to the complexity of the receiver's or professional's responsibilities, results achieved for creditors, and other relevant facts.

(C) An attorney acting as a receiver must clearly differentiate between fees sought for work performed as a receiver and for work separately performed as an attorney.

66.12 FINAL REPORT TO THE COURT AND CREDITORS.

When the final fee application is submitted, it shall be accompanied by a Receiver's Final Report that includes all of the following information:

- 1) (a) the total amount of money collected during the receivership, (b) the total funds collected since the last interim fee award to the receiver (if any), and (c) the source(s) of funds;
- 2) total funds previously disbursed to creditors;
- 3) the amount of money or any property remaining on hand;
- 4) the status of all known secured and unsecured creditors' claims;
- 5) the approximate number and admitted balances due creditors but remaining unpaid;
- 6) the approximate number and total of creditors' claims that remain open or unresolved;
- 7) proposed final distributions to creditors and the date by which receiver proposes to make them and close out the case;
- 8) the total administrative expense incurred to date, including fees paid to the receiver, attorneys and other professionals;
- 9) the amount of additional administrative expense sought to be paid in the final fee application; and
- 10) any known objections or other positions taken by those having an interest in the receivership with respect to the receiver's final plan to wind up the case.

66.13 TRADE SECRET OR PRIVILEGED INFORMATION

If a receiver's report, motion, fee application, or other filing refers to trade secrets (such as a plan for operating an ongoing business, proposed sale prices, customer information, personnel matters, or other non-public information) or would necessarily reference attorney-client or work-product communications, then redacted documents

may be filed in the public record and served upon all parties that have appeared. When that occurs, a complete un-redacted document shall be submitted to the court for *in camera* review. Upon application by the receiver or any party, the court will re-examine the document and determine whether previously redacted information should be disclosed in the public case file or for attorney-eyes only.

66.14 EFFECTIVE DATE

Local Rule 66 shall take effect on September 20, 2011, and governs further proceedings in receiverships then pending, except to the extent that its application in a particular case would not be feasible or would work injustice.