

## LOCAL RULE 66.1

## GUARDIANSHIPS

### (A) Guardianships.

#### (1) Bond.

Bond shall be posted in an amount of double the probable value of the property not in a custodial account or otherwise impounded according to law. However, all guardianships of the estate shall post a minimum bond as determined by the Court.

#### (2) Release of Funds and Assets.

Funds and assets held in the ward's name shall not be released to a guardian except upon Order of the Court. All Motions for release shall specify the exact amount to be released, the name and address of the financial institution holding the funds, and the person in whose name the funds are held. The Order releasing funds shall order the financial institution to hold all funds in excess of the amount to be released until further Order of the Court.

#### (3) Custodial Deposits.

Where found necessary, deposit of all, or a portion of, cash assets in a custodial account in a financial institution located in Summit County may be ordered by the Court. The deposit shall be made in the name of the fiduciary, and the personal property deposited shall not be withdrawn from the custody of the bank, association, or trust company, except upon the special Order of the Court.

(a) The custodial account shall be established by the filing of a Motion and Order to Create Accounts. A certified copy of this Motion and Order must be presented to the custodial depository.

(b) Pursuant to Sup. R. 67(C), the attorney representing the applicants in the matter shall acknowledge responsibility for depositing the funds and providing the financial institution with a copy of the entry. If there is no attorney representing the applicants, the attorney for the payor shall acknowledge delivery of the funds to complete the delivery of consideration to effectuate the release. The attorney shall obtain a Verification of Receipt and Deposit (Form GM.5) from the financial institution and file the form with the Court within seven (7) days of the issuance of the entry.

(c) The Motion and Order to Create Accounts shall be filed prior to the filing of the Inventory. No Inventory will be accepted without the creation of the account.

#### (4) Background Investigation.

Any applicant for guardianship who is not an attorney at law licensed by the Supreme Court of Ohio and in good standing, or a state agency, must complete a criminal record check which is suitable to the court.

#### (5) School Guardianship.

The Court will not accept for filing any guardianship for a minor where the sole purpose of the guardianship is to establish a residency for school purposes.

(6) Voting.

No adult person adjudicated incompetent shall lose the right to vote, except upon motion, notice, and record hearing before the Court.

(7) Training Sessions.

All guardians of the person and estate, and all guardians of the estate only, shall, within six (6) months of the date of their appointment, attend one (1) guardianship training session, as conducted and scheduled by this Court. This session need not be repeated upon subsequent appointments. Failure to attend a training session will subject the guardian to the Court's citation procedure.

(8) Guardian's Handbook.

Each guardian appointed by this Court after May 1, 1995, shall receive a guardian's handbook issued by the Court for the purpose of providing information as to a guardian's duties and responsibilities. At the time of appointment, the cost of the handbook shall be assessed to the guardian or the estate of the ward.

(9) Change of Residence of Ward (Out of County)

Before transferring a ward out of Summit County or out of the State, a motion shall be filed, setting forth the transfer site, the reasons for the move, and alternatives available. The Ward may be moved only upon approval of the court.

(10) Personal Property.

Personal property of the ward, valued at Five Hundred Dollars (\$500.00) or less, may be sold without prior approval of the Court if the buyer is not a relative.

(11) Death of Ward.

A guardian shall notify the Court of the death of a ward by written notice no later than ninety (90) days after the date of death.

Failure to notify the Court within the prescribed time limits will be considered malfeasance, and will disqualify the guardian from collection of guardian's fees from the ward's estate, including any fees owing to the guardian but not collected or paid. If the guardian is also the attorney for the guardianship, the foregoing rule shall also apply to attorney's fees.

Upon hearing, and for good cause shown, the Court may award guardian's or attorney's fees otherwise denied by this Rule.

(12) Guardian's Reports.

(a) Guardian Reports on all guardianships except Guardianship of a Minor's Estate only shall be filed annually on the anniversary of the appointment date

(b) Where a physician or clinical psychologist states on a Statement of Expert Evaluation that to a reasonable degree of medical certainty it is unlikely the ward's mental competence will improve, the Court may dispense with the filing of subsequent Statements of Expert Evaluations when filing further annual Guardian's Reports.

(13) Notice for Guardianship of Adult.

In addition to those entitled to notice of the hearing on the application for appointment of a guardian of an adult under Ohio R.C. 2111.04, the applicant shall submit to the Court the names and addresses of all adult children of the proposed ward. The Court shall serve the adult children with notice of the time and date of the hearing, unless the notice is waived.

(14) Deposit of Wills.

The guardian must deposit with the Court all Wills of the ward for safekeeping.

(15) Application for Authority to Expend Funds of a Minor.

- (a) A Household Resource Worksheet (Form GA-M. 13) shall be filed with the Application.
- (b) The guardian shall demonstrate the need for the expenditure, and that the minor ward's parent(s) are unable to fulfill their responsibility to financially support the minor ward.
- (c) If possible, the expenditure shall be paid by check, payable to the payee named on the Application.

(16) Estates of Minors.

- (a) Pursuant to O.R.C. 2111.05, funds of a minor shall be deposited in the sole name of the minor, with principal and interest compounded, until the minor attains the age of majority.
- (b) When the funds due to the minor originate from a bequest under a will, an inheritance, or a description from a trust, the funds may be transferred into an Ohio transfers to Minor Act (OTMA) account.
- (c) The court may consider investments consistent with Ohio R.C. 2109.37 and R.C. 2109.371, and bond may be required.

(B) Emergency Guardianships.

(1) An Application for Appointment of an Emergency Guardian (Form 17) shall be accompanied by the Statement of Expert Evaluation (Form 17.1) and the Supplement for Emergency Guardian of Person (Form 17.1a) signed by a Licensed Physician describing the circumstances which make it reasonably certain that immediate action is required to prevent significant injury to the person and/or estate of the prospective ward. The Application shall include:

- (a) the Addendum to Application for Appointment of Guardian (Form GA.6)
- (b) the Fiduciary's Acceptance Guardian (Form 15.2)
- (c) the Guardian's Credibility Application (Form GA-M.12); and

- (d) the Next of Kin of Proposed Ward (Form 15.0).
- (2) Upon proof that an emergency exists and that immediate action is required to prevent significant injury to the prospective ward's person and/or estate, the court, ex-parte, may appoint an emergency guardian for a maximum period of seventy-two (72) hours.
- (3) The emergency guardianship may be extended for thirty (30) days if requested in the initial emergency guardianship application.
- (4) A written copy of the ex-parte order will be served upon the ward by the Court Investigator assigned to the case as soon as possible after its issuance. If a thirty day extension of the emergency guardianship is being sought, in addition to serving the ward with a copy of the ex-parte order, the Court Investigator will also serve notice of the hearing on the request for the extension of the emergency guardianship. The Court will serve known next of kin with a copy of the ex-parte order granting the emergency guardianship as well as notice of hearing on a request for extension of the emergency guardianship.
- (5) If the guardian believes a full guardianship is necessary, the Court will schedule a hearing on the appointment of a guardian of the person and/or estate prior to the expiration of the thirty (30) day extension.
- (6) Prior to appointment of a full guardian of the person and/or estate, the applicant must comply with all rules for a non-emergency guardianship.

COMMENT:

Before filing an Application for Appointment of an Emergency Guardian, the situation must be discussed with a Court Investigator. If a full guardianship will also be necessary, the Statement of Expert Evaluation must indicate that it is necessary.

- (C) Guardian Comments and Complaints.
  - (1) A Complaint filed regarding a Guardian must be written and signed by the complainant. The Complaint will be docketed. **There is a \$15.00 filing fee for complaints. At the discretion of the judge or magistrate, the fee may be refunded at the conclusion of the complaint process.**
  - (2) The Court will perform an initial review of the complaint and:
    - (a) Send a copy of the complaint to the guardian and/or guardian's attorney.
    - (b) Refer the matter to the Court Investigator assigned to the guardianship for an investigation and report.
  - (3) The Court Investigator will submit the case file and investigative report to the Judicial Officer assigned to the guardianship who will do one or more of the following:
    - (a) Find the complaint is resolved or unsubstantiated and advise the complainant, guardian and/or counsel accordingly;
    - (b) Refer the matter to mediation under the Court's Mediation Rule (Loc.R. 16.1);
    - (c) Set a status conference or a show cause hearing with notice to the complainant, the ward, the guardian and/or guardian's counsel, and other interested parties; or

- (d) Take any other action deemed necessary.
- (4) The Court shall maintain a record regarding the nature and disposition of any complaints filed under this rule. Well-founded complaints and any action taken will become part of the public guardianship file.

COMMENT:

The Court adopts the following process for submitting comments or complaints regarding the performance of guardians appointed by the Court pursuant to Sup. R. 66.03(B). This rule applies to all guardians of adults.

Anonymous complaints will be discarded.

(D) Relationship of Guardian to Ward

The judgment entry appointing a guardian shall indicate if the provisions of Sup.R. 66.01- 66.09 apply to the guardian and if the guardian is related to the ward by consanguinity or affinity.

The entry shall also indicate if the guardian is being paid to provide services to the ward. If so, the court shall make a determination as to whether or not the services are in the best interests of the ward and state in its entry the decision to allow or disallow the payments.

COMMENT:

Sup.R. 66.03(D) and 66.09(G) prohibit the appointment of a guardian who is a service provider unless otherwise authorized. This rule permits the court to allow a dual role when it is found to be in the best interests of the ward.

(E) Attorney/Guardians

If an attorney serves as both a guardian and attorney for a guardianship, the Court must approve the dual roles and any fee bill submitted for court approval must contain separate itemization of time spent as guardian and attorney.

COMMENT:

Sup.R. 66 currently prohibits an attorney from serving as both fiduciary and attorney perceiving an inherent conflict of interest. However, the Court, on a case-by-case basis, may approve the dual role. In order to avoid questions as to overlap or conflict, the Court will not approve guardian's fees or attorney's fees unless both are itemized.

(F) Guardians Having Ten or More Wards

A roster of guardians for adults having ten (10) or more wards will be maintained by this Court. That roster will be updated on or after January 1st of each year. Each guardian on the roster shall file their fee schedule annually by the 15th day of April which differentiates fees for guardianship work and legal work.

COMMENT:

The standard fee schedule should include the title and hourly billing rate for each individual expected to provide billable services to the guardianship.

(G) Exemptions From The Educational Requirement

The court shall consider an exemption from the educational requirements imposed by Sup.R. 66.1 *et seq.* on a case-by-case basis. However, if the Court finds that the training offered to the guardian OR the performance of the guardian meets or exceeds the expectations of the Court, the guardian may be exempt. In addition, these categories of guardians shall be exempt:

1. Volunteer/Paid guardians who participate in the required training through Jewish Family Services.
2. Guardians through APSI.
3. Guardians who have held that position for more than five years and have had no citations in the last five years.
4. Guardians related by blood or affinity whom the Court indicates should be exempt.

(H) All Motions to resign as guardian shall be filed with a Personal Information Form No. GA 17.

Nothing in this rule prohibits the Court from mandating education for any guardian at any time if the Court finds that the education is necessary and in the best interest of the ward.

*[Local Rule 66.1 amended effective May 9, 2017, February 1, 2019.]*

**Sup. R. 66 Guardianships.**

(A) All applications for the appointment of a guardian on the grounds of mental incompetency shall be accompanied by either a statement of a physician or clinical psychologist or a statement that the prospective ward has refused to submit to an examination.

(B) An Application for Authority to Expend Funds (Standard Probate Form 15.7) shall not be approved until an Inventory (Standard Probate Form 15.5) has been filed.

(C) An application for allowance of care and support of a minor shall allege, if such is the fact, that the parents are financially unable to provide the items for which the amount is sought.

*[Rule Sup.66(C) amended effective March 15, 2016.]*

**Sup. R. 66.01. Definitions.**

As used in Sup. R. 66.01 through 66.09:

**(A) Best interest**

“Best interest” means the course of action that maximizes what is best for a ward, including consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the ward.

**(B) Direct services**

“Direct services” means services typically provided by home and community-based care and institutionally-based care providers, including medical and nursing care, care or case management services, care coordination, speech therapy, occupational therapy, physical therapy, psychological services, counseling, residential, legal representation, job training, and any other similar services. The term “direct services” does not include services of a guardian.

**(C) Guardian**

“Guardian” has the same meaning as in R.C. 2111.01(A).

**(D) Ward**

“Ward” means any adult person found by the probate division of a court of common pleas to be incompetent and for whom a guardianship is established.

**(E) Guardianship services**

“Guardianship services” means the duties assigned to a guardian in an adult guardianship case pursuant to R.C. Chapters 2109 and 2111.

**Sup. R. 66.02. Application of Rules.**

**(A) General**

Sup.R. 66.01 through 66.09 shall apply in an adult guardianship case where the probate division of a court of common pleas appoints a guardian to protect and control a ward pursuant to R.C. 2111.02, provided the appointing court for good cause may, by order of the court, exempt a guardian who is related to the ward by consanguinity or affinity.

**(B) Corporation as guardian**

Sup.R. 66.01 through 66.09 shall apply to the employees of a corporation who provide guardianship services in an adult guardianship case where the probate division of a court of common pleas appoints the corporation as guardian.

**Sup. R. 66.03. Local Guardianship Rule.**

The probate division of a court of common pleas that establishes guardianships shall adopt local rules governing the establishment of guardianships that do all of the following:

- (A) Establish a process for emergency guardianships;
- (B) Establish a process for submitting in electronic format or hard copy comments and complaints regarding the performance of guardians appointed by the court and for considering such comments and complaints. The process shall include each of the following:
  - (1) The designation of a person for accepting and considering comments and complaints;
  - (2) A requirement that a copy of the submitted comment or complaint be provided to the guardian who is the subject of the comment or complaint;
  - (3) A requirement that the court give prompt consideration to the comment or complaint and take appropriate action;
  - (4) A requirement that the court maintain a record regarding the nature and disposition of the comment or complaint;

- (5) A requirement that the court notify the person making the comment or complaint and the guardian of the disposition of the comment or complaint.
- (C) Addresses other provisions as the court considers necessary and appropriate, including but not limited to indicating where filed comments and complaints will be kept.

**Sup. R. 66.04. Establishment of Guardianship.**

**(A) Scope of guardianship**

When establishing a guardianship, the probate division of a court of common pleas shall consider a limited guardianship before establishing a plenary guardianship.

**(B) County of residence**

The last county of residence in Ohio in which a ward resided prior to losing the cognitive ability to choose shall be the ward's county of residence for purposes of establishing a guardianship, unless determined otherwise by the probate division of the court of common pleas establishing the guardianship.

**(C) Guardianship of estate**

The probate division of a court of common pleas may waive establishing or continuing the guardianship of the estate of a ward if the assets and principal income of the ward do not support a guardianship of the estate.

**(D) Restrictions on direct service providers**

The probate division of a court of common pleas shall not issue letters of guardianship to any direct service provider to serve as a guardian for a ward for whom the provider provides direct services, unless otherwise authorized by law.

**Sup. R. 66.05. Responsibilities of Court Establishing Guardianships.**

**(A) General responsibilities**

The probate division of a court of common pleas that establishes a guardianship shall do both of the following:

- (1) Conduct, or cause to be conducted, a criminal background check. If the applicant to serve as a guardian is an attorney, the court may accept a certificate of good standing with disciplinary information issued by the Supreme Court in place of a criminal background check.
- (2) Require each guardian appointed by the court to submit to the court information documenting compliance with the guardian qualifications pursuant to Sup.R. 66.06 or 66.07, as applicable.

**(B) Responsibilities regarding guardians with ten or more wards**

The probate division of a court of common pleas shall do all of the following with respect to guardians with ten or more wards under the guardian's care:

- (1) Maintain a roster, including the name, address, telephone number, and electronic mail address, of the guardians. The court shall require the guardians to notify the court of any changes to this information.
- (2) Require the guardians to include in the guardian's report a certification stating that the guardian is unaware of any circumstances that may disqualify the guardian from serving as a guardian;
- (3) Require the guardians to submit to the court an annual fee schedule that differentiates guardianship services fees, as established pursuant to local rule, from legal or other direct services;
- (4) On or before March 1st of each year, review the roster of guardians to determine if the guardians are in compliance with the education requirements of Sup.R. 66.06 or 66.07, as applicable, and that the guardians are otherwise qualified to serve.

**Sup. R. 66.06. Guardian Pre-Appointment Education.**

**(A) Requirement**

Except as provided in division (B) of this rule, the probate division of a court of common pleas shall not appoint an individual as a guardian unless, at the time of appointment or within six months thereafter, the individual has successfully completed, at a minimum, a six-hour guardian fundamentals course provided by the Supreme Court or, with the prior approval of the appointing court, another entity. The fundamentals course shall include, at a minimum, education on the following topics:

- (1) Establishing the guardianship;
- (2) The ongoing duties and responsibilities of a guardian;
- (3) Record keeping and reporting duties of a guardian;
- (4) Any other topic that concerns improving the quality of the life of a ward.

**(B) Exception**

An individual serving as a guardian on June 1, 2015, or who served as a guardian during the five years immediately preceding that date shall have until June 1, 2016, to complete the training required under division (A) of this rule unless the appointing court waives or extends the requirement for good cause.

**Sup. R. 66.07. Guardian Continuing Education.**

**(A) Requirement**

In each succeeding year following completion of the requirement of Sup.R. 66.06, a guardian appointed by the probate division of a court of common pleas shall successfully complete a continuing education course that meets all of the following requirements:

- (1) Is at least three hours in length;
- (2) Is provided by the Supreme Court or, with the prior approval of the appointing court, another entity;
- (3) Is specifically designed for continuing education needs of guardians and consists of advanced education relating to the topics listed in Sup.R. 66.06(A)(1) through (4).

**(B) Annual compliance**

On or before January 1st of each year, a guardian shall report to each probate division of a court of common pleas from which the guardian receives appointments information documenting compliance with the continuing education requirement pursuant to division

(A) of this rule, including the title, date, location, and provider of the education or a certificate of completion.

**(C) Failure to comply**

If a guardian fails to comply with the continuing education requirement of division (A) of this rule, the guardian shall not be eligible for new appointments to serve as a guardian until the requirement is satisfied. If the deficiency in continuing education is more than three calendar years, the guardian shall complete, at a minimum, a six-hour fundamentals course pursuant to Sup.R. 66.06(A) to qualify again to serve as a guardian.

**Sup. R. 66.08. General Responsibilities of Guardian.**

**(A) Orders, rules, and laws**

A guardian shall obey all orders of the probate division of a court of common pleas establishing the guardianship and shall perform duties in accordance with local rules and state and federal law governing guardianships.

**(B) Pre-appointment meeting**

Unless otherwise determined by the probate division of a court of common pleas, an applicant guardian shall meet with a proposed ward at least once prior to appearing before the court for a guardianship appointment.

**(C) Reporting abuse, neglect, or exploitation**

A guardian shall immediately report to the probate division of a court of common pleas and, when applicable, to adult protective services any appropriate allegations of abuse, neglect, or exploitation of a ward.

**(D) Limitation or termination of guardianship**

A guardian shall seek to limit or terminate the guardianship authority and promptly notify the probate division of a court of common pleas if any of the following occurs:

- (1) A ward's ability to make decisions and function independently has improved;
- (2) Less restrictive alternatives are available;
- (3) A plenary guardianship is no longer in the best interest of a ward;
- (4) A ward has died.

**(E) Change of residence**

- (1) A guardian shall notify the probate division of a court of common pleas of a ward's change of residence and the reason for the change. Except if impracticable, the guardian shall notify the court no later than ten days prior to the proposed change.
- (2) A ward's change of residence to a more restrictive setting in or outside of the county of the guardian's appointment shall be subject to the court's approval, unless a delay in authorizing the change of residence would affect the health and safety of the ward.

**(F) Court approval of legal proceedings**

A guardian shall seek approval from the probate division of a court of common pleas before filing a suit for the ward.

**(G) Annual plan**

A guardian of a person shall file annually with the probate division of the court of common pleas a guardianship plan as an addendum to the guardian's report. A guardian of an estate may be required to file an annual guardianship plan with the probate division of the court of common pleas. The guardianship plan shall state the guardian's goals for meeting the ward's personal and financial needs.

**(H) Annual registration**

All guardians appointed by the court who have ten or more wards under their care shall annually register with the probate division of the court of common pleas and provide such information as the court may require, including but not limited to a fee schedule that differentiates guardianship services from legal or other direct services.

**(I) Ward's principal income**

A guardian shall inform the probate division of the court of common pleas and apply to close the guardianship of the estate if the principal income of the ward is from governmental entities, a payee for that income is identified, and no other significant assets or income exist.

**(J) Limits on guardian's compensation**

- (1) A guardian's compensation is subject to Sup.R. 73.
- (2) A guardian who is in receipt of fees other than through the guardianship of the estate shall report to the probate division of the court of common pleas the source and entity which reviewed and authorized payment.
- (3) A guardian shall not receive incentives or compensation from any direct service provider providing services to a ward.

**(K) Conflict of interest**

A guardian shall avoid actual or apparent conflicts of interest regarding a ward's personal or business affairs. A guardian shall report to the probate division of the court of common pleas all actual or apparent conflicts of interest for review and determination as to whether a waiver of the conflict of interest is in the best interest of the ward.

**(L) Filing of ward's legal papers**

In addition to filing an inventory, if applicable, pursuant to R.C. 2111.14(A)(1) and within three months after the guardian's appointment, a guardian shall file with the probate division of the court of common pleas a list of all of the ward's important legal papers, including but not limited to estate planning documents, advance directives, and powers of attorney, and the location of such legal papers, if known at the time of the filing.

**Sup. R. 66.09. Responsibilities of Guardian to Ward.**

**(A) Professionalism, character, and integrity**

A guardian shall act in a manner above reproach, including but not limited to avoiding financial exploitation, sexual exploitation, and any other activity that is not in the best interest of the ward.

**(B) Exercising due diligence**

A guardian shall exercise due diligence in making decisions that are in the best interest of a ward, including but not limited to communicating with the ward and being fully informed about the implications of the decisions.

**(C) Least restrictive alternative**

Unless otherwise approved by the probate division of a court of common pleas, a guardian shall make a choice or decision for a ward that best meets the needs of the ward while imposing the least limitations on the ward's rights, freedom, or ability to control the ward's environment. To determine the least restrictive alternative, a guardian may seek and consider an independent assessment of the ward's functional ability, health status, and care needs.

**(D) Person-centered planning**

A guardian shall advocate for services focused on a ward's wishes and needs to reach the ward's full potential. A guardian shall strive to balance a ward's maximum independence and self-reliance with the ward's best interest.

**(E) Ward's support system**

A guardian shall strive to foster and preserve positive relationships in the ward's life unless such relationships are substantially harmful to the ward. A guardian shall be prepared to explain the reasons a particular relationship is severed and not in the ward's best interest.

**(F) Communication with ward**

- (1) A guardian shall strive to know a ward's preferences and belief system by seeking information from the ward and the ward's family and friends.
- (2) A guardian shall do all of the following:
  - (a) Meet with the ward as needed, but not less than once quarterly or as determined by the probate division of the court of common pleas;
  - (b) Communicate privately with the ward;
  - (c) Assess the ward's physical and mental conditions and limitations;
  - (d) Assess the appropriateness of the ward's current living arrangements;
  - (e) Assess the needs for additional services;
  - (f) Notify the court if the ward's level of care is not being met;
  - (g) Document all complaints made by a ward and assess the need to report the complaints to the court of common pleas.

**(G) Direct services**

Except as provided in Sup.R. 66.04(D), a guardian shall not provide any direct services to a ward, unless otherwise approved by the court.

**(H) Monitor and coordinate services and benefits**

A guardian shall monitor and coordinate all services and benefits provided to a ward, including doing all of the following as necessary to perform those duties:

- (1) Having regular contact with all service providers;
- (2) Assessing services to determine they are appropriate and continue to be in the ward's best interest;
- (3) Maintaining eligibility for all benefits;

- (4) Where the guardian of the person and guardian of the estate are different individuals, consulting regularly with each other.

**(I) Extraordinary medical issues**

- (1) A guardian shall seek ethical, legal, and medical advice, as appropriate, to facilitate decisions involving extraordinary medical issues.
- (2) A guardian shall strive to honor the ward's preferences and belief system concerning extraordinary medical issues.

**(J) End of life decisions**

A guardian shall make every effort to be informed about the ward's preferences and belief system in making end of life decisions on behalf of the ward.

**(K) Caseload**

A guardian shall appropriately manage the guardian's caseload to ensure the guardian is adequately supporting and providing for the best interest of the wards in the guardian's care.

**(L) Duty of confidentiality**

A guardian shall keep the ward's personal and financial information confidential, except when disclosure is in the best interest of the ward or upon order of the probate division of a court of common pleas.