

Rule 66 Guardianships

[Supplementing Sup R 66]

(A) Guardianships of Adults

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) Guardianships of Adults and Minors

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) Guardianships of Minors

(1) A separate guardianship must be filed and a corresponding case file established for each proposed ward.

(2) A certified copy of the minor child's birth certificate shall be filed with every SPF 16.0 – Application For Appointment of a Guardian of A Minor, unless waived by the Court.

(3) The Court will not consider an application unless accompanied by a properly completed custody affidavit in conformity with R.C. 3127.23. An affidavit in conformity with 3109.04(M) shall be completed by the applicant as to the applicant and other members of the applicant's household. The affidavit(s) shall be filed on forms approved by the Court.

(4) No guardian of the person of a minor may create a power of attorney pursuant to R.C. 3109.52 transferring the guardian's rights and responsibilities without specific authority of the Court.

(5) An application for allowance of care and support of a minor shall allege, if such is the fact, that the father and mother are financially unable to provide the items for which the amount is sought, and shall be accompanied by an affidavit from the parent confirming such inability.

(6) The process for the emergency guardianship of a minor shall be governed by Local Rule 66.03 (A).

(7) The process for submitting comments or complaints regarding the performance of a guardian of a minor shall be governed by Local Rule 66.03 (B).

(8) The processes and policies for an Indigent Guardianship found at Local Rule 66.12 apply when the ward is a minor.

(9) Change of Residence:

(a) A guardian shall notify this Court in writing of a ward's change of residence and the reason for the change. Except as impractical, the guardian shall notify the court no later than ten days prior to the proposed change. The guardian shall utilize any applicable Standard Probate Form or in lieu thereof, the applicable local form.

(b) A guardian shall not move the ward from Allen County, Ohio, or to a more restrictive setting in or outside of the county of the ward's appointment without prior approval of the Court, unless a delay in authorizing the change of residence would affect the health and safety of the ward. The guardian shall utilize any applicable Standard Probate Form or in lieu thereof, the applicable local form.

Rule 66.01 Definitions

[Supplementing Sup R 66.01]

The terms defined in Sup R 66.01 have the same meaning when used in Local Rules 66.02 thru 66.09.

Rule 66.02 Application of Rules

[Supplementing Sup R 66.02]

Local Rule 66 (C) applies to guardianships of a minor only. In addition, Local Rules 66 (B), 66.03, 66.05(A) and 66.12 apply to guardianships of minors.

Sup R 66(A) and (B); and 66.01 through 66.12 shall apply in all adult guardianship cases where the probate court appoints a guardian pursuant to R.C. 2111.02. The court, for good cause shown, may exempt a guardian who is related to the ward by consanguinity (blood) or affinity (marriage) from the requirements of Ohio Rules of Superintendence 66.01 through 66.09 and related Local Rules of Court 66.01 through 66.09. Any request to be exempted shall be submitted in writing utilizing any applicable Standard Probate Form or in lieu thereof, the applicable local form.

Rule 66.03 Local Guardianship Rules

[Supplementing Sup R 66.03]

(A) Emergency Guardianships

(1) In light of the significance of the personal rights at issue and the complexity of the issues involved it is strongly recommended that applicants seeking to establish an emergency guardianship be represented by counsel. Any Applicant who is an attorney admitted to practice and in good standing with the Ohio Supreme Court may act as his or her own counsel in the proceeding unless ethically precluded from doing so by the Ohio Rules of Professional Conduct.

(2) Any Application for the appointment of an emergency guardian for an alleged incompetent must be accompanied by a fully completed Next of Kin of Proposed Ward (SPF 15.0), a Statement of Expert Evaluation (SPF 17.1), and a Supplement (SPF 17.1(A)). Applications should also contain any attachments or exhibits that may assist the Probate Court in determining whether to grant an emergency guardianship.

No Application for the appointment of an emergency guardian for an alleged incompetent will be considered by the Court until the fully completed supporting documentation set forth herein have been filed.

(3) Any Application for the appointment of an emergency guardian for a minor must be accompanied by a fully completed Next of Kin of Proposed Ward (SPF 15.0) and the affidavit required by R.C. 3127.23. Unless excused by the Court for good cause shown, if the minor is over the age of 14 years, there shall also be filed with the Application a completed and executed Selection of Guardian by Minor Over Fourteen Years of Age (SPF 16.2).

(4) Prior to filing an Application for appointment of emergency guardian, the Applicant shall secure and file with the Court a background check report from both the Ohio Bureau of Criminal Investigation and the Federal Bureau of Investigation. If the Applicant seeks appointment as emergency guardian prior to the filing of the background reports required by this rule, the Applicant shall submit with the emergency Application proof that the reports have been requested from the designated agencies and an Affidavit signed by the Applicant setting forth any criminal offenses of any nature of which the Applicant has been charged or convicted. The Applicant shall then file the background check reports with the Court immediately upon receipt.

(5) Potential Applicants for appointment of an emergency guardian for a minor are cautioned that the probate court is generally not the proper forum for the litigation of custody disputes and that such actions should be brought in the Domestic Relations or Juvenile Division of the Common Pleas Court as appropriate.

(6) Unless otherwise ordered by the Court, an Application for the appointment of an emergency guardian for an will be considered and decided without hearing based upon the Application, Statement of Expert Evaluation, the Supplement and any attachments or exhibits submitted under section (2) above. In lieu of the ex parte appointment of an emergency guardian, the Court will consider any other less restrictive order necessary and sufficient to prevent injury to the person or estate of the minor or alleged incompetent.

(7) In the event that the Court either grants the Application to establish the emergency guardianship or issues other orders necessary to prevent injury to the person or estate, a written copy of the orders shall be served upon the proposed ward as soon as possible after being issued. Unless otherwise ordered, any emergency order shall continue in force and effect for a period of 72 hours. Unless for good cause shown, no extension of any emergency

order beyond 72 hours shall be granted without a hearing held after notice to the minor or incompetent. Any such extension will be granted for a specified period not to exceed 30 days.

(8) Within 72 hours after the issuance of any emergency order under section 6 above, the Court will hold a hearing to consider whether the emergency order should continue in force and effect for a specified period not to exceed an additional 30 days. The proposed ward and other interested parties shall be given notice of the hearing scheduled pursuant to this section as soon as practicable after the hearing has been scheduled. For good cause shown, the time for holding this 72 hour hearing may be extended by the Court. "Good cause" for an extension of the time for holding a hearing under this section shall include the unavailability of the proposed ward to receive service of notice of the hearing because he or she cannot be located or are otherwise not being made available to receive notice. In such case, the Court may extend the emergency order pending service and hearing.

(9) If it is expected that the need for the guardianship will continue after the emergency period granted by the Court, an Applicant is expected to file an Application for Appointment of Guardian (SPF 16.0 or 17.0) within seven (7) days after the completion of the hearing extending the emergency guardianship beyond the initial 72 hour period.

(10) If no Application to establish a full guardianship is filed following the establishment of an emergency guardianship, the appointment and authority of the emergency guardian shall terminate when the order of appointment expires. In such case, an emergency guardian of the estate or of the person and estate shall file an Inventory and First and Final account with the Court within 30 days after the expiration of the emergency guardianship (R.C. 2109.302(A)).

(B) Comments or Complaint Regarding the Performance of Guardians

The parties and counsel participating in a case where a guardian has been appointed, including an emergency guardian, may present comments or complaints regarding the performance of a guardian as follows:

(1) Any comments or complaints regarding the performance of a guardian shall be in writing signed by the party submitting the comment or complaint and submitted to the attention of the Judge of the Probate Court.

Anonymous complaints or comments will not be considered and addressed by the Court under this Rule.

- (2) Within five (5) days of receipt, the Court will provide a copy of the comments or complaints and a Court notice of the response date to the guardian who is the subject of the comments or complaints.
- (3) Within ten (10) days after being notified of the comment(s) or complaint(s) the guardian may respond in writing to the comment(s) or complaint(s). A copy of any response will be provided to the commenting or complaining party by the Court.
- (4) Within thirty (30) days of the filing of any comments or complaints, and after receipt of all appropriate information, including any supplements or amendments requested by the Court, the Court shall either issue a disposition in writing or shall set the matter for a formal hearing. Any written disposition shall be mailed and/or FAXED to the person who submitted the comments or complaints, and to the guardian. If a formal hearing is scheduled the person who submitted the comments or complaints and the guardian shall be served with notice of the hearing in a manner consistent with CIV R 73. In such case, the disposition shall be by order of the Court.
- (5) The Court reserves the right as the superior guardian to take any actions and issue any orders it deems necessary to protect the person and property of a ward pending disposition following the receipt of comments or complaints concerning the performance of a guardian appointed by the Court.
- (6) The comments or complaints and the disposition thereof shall be maintained in and made a part of the guardianship case file.

Local Rule 66.04 Reserved

Local Rule 66.05 Responsibilities of Court Establishing Guardianships
[Supplementing Sup R 66.05]

(A) Guardian Background Check

An applicant for appointment as a guardian, including an emergency guardian and/or the guardian of a minor, shall file with the Court a criminal

background check report from both the Ohio Bureau of Criminal Investigation and the Federal Bureau of Investigation with the court. Instead of the criminal background check report, an Ohio attorney currently in good standing with the Ohio Supreme Court may obtain and submit to the Court a Certificate in Good Standing with disciplinary information issued by the Supreme Court. The reports required under this Rule shall be filed with the Court prior to the hearing on the Application for Appointment.

(B) Guardian With Ten or More Wards

To assist the Court in meeting its supervisory responsibilities under Sup.R. 66.05(B) and in satisfaction of the responsibilities arising under Sup.R. 66.08(H) by January 31 of each year, a guardian with ten or more wards appointed through the probate courts of Ohio shall register with this Court in writing utilizing any applicable Standard Probate Form or in lieu thereof, the applicable local form. The guardian shall notify the court in writing within ten days of any change to the guardian's name, address, telephone number, and electronic mail address.

A guardian of ten or more wards shall 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.

A guardian with ten or more wards shall include with the Guardian's Report form, a statement indicating whether the guardian is aware of any circumstances that may disqualify the guardian from continuing to serve as guardian.

(C) The Court shall maintain a file or other record on each guardian of an adult evidencing proof of the guardian's having completed a qualifying fundamentals course pursuant to Sup R 66.06, unless waived; the guardian's annual compliance with Sup R 66.07, "Guardian Continuing Education"; and compliance with Local Rule 66.05 (B).

Local Rule 66.06 Guardian Fundamentals Training Requirement [Supplementing Sup R 66.06]

A guardian holds a unique role with respect to the ward and the Guardian has an obligation to obtain an understanding of the fundamentals of that relationship. Formalized training is one means to gain that competency.

Every guardian for an adult must meet the guardianship fundamentals training requirements under Sup.R. 66.06 by successfully completing, prior to appointment or within six months thereafter, a six-hour guardian fundamentals course provided by the Ohio Supreme Court, or with prior approval of this Court, another entity. Those failing to meet the training requirement shall be subject to citation for being in contempt of court and subject to sanctions, including, but not limited to imposition of a fine, denial of compensation, and removal. 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, unless the Court waives or extends the requirement for good cause. Any request for a waiver or extension of time shall be submitted in writing utilizing any applicable Standard Probate Form or in lieu thereof, the applicable local form.

The guardian is responsible for providing to the Court in a timely manner documentation that establishes compliance with the guardian fundamentals training requirement utilizing any applicable Standard Probate Form or in lieu thereof, the applicable local form.

66.07 Guardian Continuing Education

[Supplementing Sup R 66.07]

After successfully completing the guardian fundamentals course a guardian of an adult annually shall successfully complete a three-hour guardian continuing education course provided by the Ohio Supreme Court, or with the prior approval of this Court, another entity.

By December 31 of each year, a guardian is responsible for providing to this Court documentation demonstrating compliance with the guardian continuing education requirement utilizing any applicable Standard Probate Form or in lieu thereof, the applicable local form.

If a guardian fails to comply with the guardian continuing education requirement, the guardian shall not be eligible for new appointments to serve as guardian until the requirement is satisfied. Those failing to meet the training requirement shall be subject to citation for being in contempt of court and subject to sanctions, including, but not limited to imposition of a fine, denial of compensation, and removal.

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 guardian

66.08 General Responsibilities of Guardian

[Supplementing Sup R 66.08]

(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. A guardian who fails to obey the orders of the Court or comply with the requirements of the Ohio Rules of Superintendence and/or the Local Rules of Court shall be subject to citation for being in contempt of court and subject to sanctions, including, but not limited to imposition of a fine, denial of compensation, and removal.

(B) Pre-Appointment Meeting

Unless otherwise determined by this Court on a case-by-case basis, an applicant-guardian shall meet with a proposed ward at least once prior to appearing before the Court for a guardianship appointment.

(C) and (D) are Reserved

(E) Change of Residence

- (1) A guardian shall notify this Court of a ward's change of residence and the reason for the change. Except as impractical, the guardian shall notify the court no later than ten days prior to the proposed change. The guardian shall utilize any applicable Standard Probate Form or in lieu thereof, the applicable local form.
- (2) A guardian shall not move the ward from Allen County, Ohio, or to a more restrictive setting in or outside of the county of the ward's appointment without prior approval of the Court, unless a delay in authorizing the change of residence would affect the health and safety of the ward. The guardian shall utilize any applicable Standard Probate Form or in lieu thereof, the applicable local form.

(F) Court Approval of Legal Proceedings

While a guardian is generally required to seek prior approval of this Court before filing a suit for the ward, prior approval is not required when the suit is being filed in this Court. The guardian shall utilize any applicable Standard Probate Form or in lieu thereof, the applicable local form.

(G) Annual Plan

A guardian of the person, estate, or person and estate, shall annually file with this Court an Annual Guardianship Plan as an addendum to the Guardian's Report. The guardianship plan shall state the guardian's goals for meeting the ward's personal and financial needs for the next year. The guardian shall utilize any applicable Standard Probate Form or in lieu thereof, the applicable local form.

(H) thru (K) Reserved

(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 Court 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. The guardian shall utilize any applicable Standard Probate Form or in lieu thereof, the applicable local form.

Rule 66.09 Reserved

Rule 66.10 Guardian's Report

[Supplementing Sup R 66]

(A) All guardians of an incompetent are required to file their Guardian's Report (SPF 17.7) as detailed in Section 2111.49 of the Revised Code on the first anniversary after the date of the issuance of the Letters of Guardianship and annually thereafter.

(B) The Guardian's Report shall be filed by the guardian of the person of the ward, except that if no guardian of the person was appointed the Report shall be filed by the guardian of the estate of the ward.

(C) The Guardian's Report shall include a Statement of Expert Evaluation unless this requirement has been dispensed with by the Court pursuant to the Court's Local Rule 66.11.

(D) The Guardian's Report shall include, as an Addendum, the Annual Plan required by Sup R 66.08(G).

Rule 66.11 Statement of Expert Evaluation

[Supplementing Sup R 66]

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 evaluations. An order to dispense with the filing of subsequent evaluations is not automatically granted and any request to dispense with the filing of subsequent evaluations shall be in writing and filed with the Court. The Court may set the matter for hearing or may issue an appropriate order without hearing.

Rule 66.12 Indigent Guardianships

[Supplementing Sup R 66]

(A) Persons requesting that cost deposits and/or costs be waived and/or that attorney fees and expenses shall be paid from the Indigent Guardianship Fund shall file any form required by the Court and shall notify the Court of any material change in the income or assets of the ward or possible ward.

(B) Expenditures shall be made from the county Indigent Guardianship Fund established pursuant to R.C. section 2111.51 only for payment of a cost, fee, charge or expense associated with the establishment, opening, maintenance or termination of a guardianship for an adult indigent ward.

For purposes of this Rule, "cost, fee, charge or expense" shall include attorney fees only for: 1) representation of the applicant for appointment as guardian of an indigent ward; 2) representation of the ward; or 3) as

guardian ad litem appointed for the ward. Any other expenditures from the county Indigent Guardianship Fund shall be approved only upon specific motion of the party seeking payment of the cost, fee, charge or expense, and when determined by the Court to be of benefit to the ward or estate.

Unless otherwise ordered, the Court will determine qualifications for payment of costs, fees, charges or expenses from the county Indigent Guardian Fund based on the assets and income of an adult ward using 100% of the U.S. Department of Health and Human Services poverty guidelines.