

RULE 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.

Commentary (October 1, 1997)

This rule is analogous to former C.P. Sup. R. 34, and the title has been amended to be more inclusive in that the rule does not only apply to the guardian but also to all issues affecting the guardianship.

Division (A) has been deleted in that it described the parameters of the probate forms created under Sup. R. 51(D) and is therefore superfluous.

Former C.P. Sup. R. 34(B) has been relettered as division (A). The rule required the submission of a statement of a physician upon the filing of an application for guardianship or an application for dismissal of a guardianship or a declaration of competency. The rule has been amended to permit a clinical psychologist to complete the expert evaluation. This amendment recognizes that a psychologist's report is often more thorough than that of the physician and recognizes that the psychologist may complete the expert evaluation for the biennial report. The rule has not been expanded to permit the initial evaluation to be completed by a licensed clinical social worker.

The requirement for an expert evaluation for the dismissal or termination of a guardianship has been deleted due to statutory changes under R.C. 2111.49(C).

Former C.P. Sup. R. 34(C) has been deleted and incorporated in part in amended division (B), which continues the requirement to file an inventory prior to the authorization of any expenditure required in former C.P. Sup. R. 34(C).

Former C.P. Sup. R. 34(D) has been relettered as division (C). Division (C) has been amended to delete the term "parent-guardian" from the rule and to allow the application to be filed by the appointed guardian, who is not in all cases also the parent of the minor ward. With an application to expend funds for support of a minor ward, the rule formerly required a parent-guardian to state whether the parents had the ability to provide the support. The amendment expands the rule to require any guardian to state whether the parents can provide the support when requesting expenditure of the ward's funds for support.

RULE 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.

RULE 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.

RULE 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.

RULE 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.

RULE 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.

RULE 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.

RULE 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.

RULE 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.

RULE 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.