

**LAKE COUNTY PROBATE COURT
JUGE MARK J. BARTOLOTTA
December 4, 2015 Local Rule Changes**

LAKE COUNTY RULE 66. GUARDIANSHIPS

Due to the manner in which the Supreme Court of Ohio has numbered Sup.R. 66.01 through 66.09, by using four digits, the Lake County Probate Court's Local Rules pertaining to Guardianships shall be similarly numbered.

Rule 66.01. Definitions

The terms defined in Sup.R. 66.01 have the same meaning when used in Loc.R. 66.

Rule 66.02. Application of Rules.

The Local Rules pertaining to guardianships apply to all adult guardianships administered through this Court, unless otherwise indicated in the particular Local Rule or unless expressly waived by Court Order.

Rule 66.03(A). Emergency Guardianships

- (1) If a minor or incompetent has not been placed under a guardianship and if an emergency exists and it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of a minor or incompetent, at any time after it receives notice of the emergency, the Court may issue any order that it considers necessary to prevent injury to the person or estate of the minor or incompetent or may appoint an emergency guardian for a maximum period of seventy-two hours.
- (2) Pursuant to Sup.R. 66.03(A) this Court has adopted the following process for emergency guardianships. Except for good cause shown, all applications for the appointment of an *ex parte* emergency guardianship shall be accompanied by:
 - (a) A Statement of Expert Evaluation (SPF 17.1);
 - (b) A Supplement for Emergency Guardian of Person, signed by a doctor or an affidavit, which may be LCPC Form 66.03 A, that describes the imminent risk of significant injury to the person or property of the minor or incompetent, the nature or type of significant injury that might result without court order, a description and location of property that might suffer significant injury, the date the imminent risk was discovered by the applicant, and the reasonable efforts the applicant has taken to otherwise prevent significant injury without court order;
 - (c) An Application for Appointment of Guardian (SPF 16.0 or SPF 17.0), including the next of kin form, waiver of service by next of kin form (if applicable), and consent to webcheck criminal background check.

The Court will not accept a facsimile, except for good cause shown.

- (3) If an applicant is appointed *ex parte*, the applicant shall attend the 72-hour hearing to determine whether to extend the emergency guardianship for up to 30 additional days. The applicant is required to notify any interested parties, including the ward, of the 72 hour hearing.

Rule 66.03(B). Guardian Comments and Complaints

- (1) This Rule is applicable to all guardians appointed by the Court pursuant to R.C. 2111.02. Comments and complaints (hereinafter collectively referred to as “complaints”) received regarding the performance of guardians and the resulting documents and correspondence are considered to be case documents and accessible to the public, unless otherwise excluded pursuant to Civ.R 44(C)(2). The Court will note actions with respect to the complaints on the case docket. The Court will communicate complaints about a guardian’s performance to the guardian and/or the guardian’s counsel expeditiously and pursuant to this Local Rule.
- (2) Complaints shall be made, in writing, to the Lake County Probate Court. The Court will not accept or act upon an oral or telephonic complaint, other than to provide the address to which to hand-deliver or mail the written complaint. The Court will not accept complaints by facsimile or email except for good cause shown. The Court will not accept an anonymous complaint.
- (3) When the Court receives a complaint regarding a guardian’s performance, the following procedure will be followed:
 - (a) The Probate Court Guardianship Clerk(s) first shall file the complaint and then shall deliver the complaint to a Probate Court Magistrate.
 - (b) The Guardianship Clerk shall send the guardian who is the subject of the complaint a copy of the complaint within five court days of the filing of the complaint.
 - (c) Within ten court days of receipt of the complaint, the Probate Magistrate or Probate Judge shall perform an initial review of the complaint and the guardianship case. Once reviewed, the Probate Magistrate or Probate Judge shall take one of the following actions:
 - i. The Judge or Magistrate may determine that, on its face, the complaint does not warrant further action, in which case a written response will be prepared and sent to the complainant and guardian.

- ii. The Judge or Magistrate may have the matter investigated, which may or may not involve the use of a Probate Court Investigator, after which a written response will be prepared and sent to the complainant and guardian.
- iii. The Judge or Magistrate may set the matter for hearing.

(4) When a ward is a veteran and the Court appointed the guardian under R.C. Chapter 5905, notice of the complaint, reports, hearings, and actions shall be provided to the Administrator of Veterans Affairs of the United States pursuant to R.C. 5905.03.

(5) All complaints and actions thereon shall be filed in the guardianship case in which the person, who is the subject of the complaint, is the guardian.

Rule 66.04 [RESERVED]

Rule 66.05 (A) General Responsibilities

- (1) Before a guardian is appointed, an applicant must submit to a criminal background check using the WEBCHECK system. Each applicant shall sign the Consent to WEBCHECK Criminal Background Check (LCPC Form 17.11), which is filed with the Court. If an Applicant has not been a resident of Ohio continuously for the last five years, the Applicant also must obtain an FBI Investigation.
 - a. Applicant shall go to the Lake County Education Service Center, or any other WEBCHECK location in Lake County, within five days of filing the Application for Appointment of Guardian. Each applicant is responsible for making their own appointment. All background checks must be mailed directly to the Probate Court, not to the Applicant.
 - b. An attorney in good standing with the Ohio Supreme Court is not required to obtain a criminal background check.
- (2) Each Guardian shall file the Notification of Compliance with Guardian Education Requirements (LCPC Form 15.11) upon completion of the Guardian Fundamentals Course pursuant to Sup.R. 66.06 or the Continuing Education Course pursuant to Sup.R. 66.07. within 30 days of course completion.

RULE 66.05(B) Guardians with Ten or More Wards

- (1) 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) a guardian with ten or more wards throughout the probate courts of Ohio shall register with the Court, utilizing the local Multi-Guardian Annual Registration Form (LCPC Form 15.10) or a standard form adopted for that purpose by the Ohio Supreme Court. The Multi-Guardian Annual Registration Form shall be filed by April 1st of each year.

- (2) The registration form shall include a listing of the guardian's wards, the case number, and the appointing court. The guardians in said cases shall advise the Court of any changes in the guardian's name, address, telephone number, facsimile number, or electronic mail address within ten days of the change occurring.
- (3) If the guardian will be seeking compensation from the guardianship or the Court, the guardian shall file, with the Multi-Guardian Annual Registration Form, a fee schedule that differentiates guardianship services fees, as established by local rule, from legal fees or other direct services.
- (4) A guardian with ten or more wards shall include with the Annual Guardian's Report a statement indicating whether the guardian is aware of any circumstances that may disqualify the guardian from continuing his or her appointment as guardian.

RULE 66.06 Guardian Fundamentals Training/Pre-appointment Education

- (1) Every guardian of an adult ward must meet the guardianship fundamentals training requirements under Sup.R. 66 by completing a six-hour guardian fundamentals course prescribed by the Ohio Supreme Court. The guardian fundamentals course must be completed prior to appointment or within six months of the date of appointment.
 - (a) Those failing to meet the requirement shall be subject to hearing on said failure; not receiving additional guardianship appointments until the failure has been rectified; or citation for being in contempt of court, subjecting the guardian to sanctions including, but not limited to, imposition of a fine, denial of compensation, and removal.
 - (b) An individual serving as guardian on June 1, 2015 or who has served as a guardian during the five years immediately preceding June 1, 2015, shall have until June 1, 2016 to complete the guardian fundamentals court, unless the Court waives or extends the requirement for good cause.
 - (c) The guardian is responsible for providing the Court, in a timely manner, documentation that establishes compliance with the guardianship fundamentals training requirement.

Rule 66.07. Guardian Continuing Education

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

If a guardian fails to comply with the guardian continuing education requirement, the guardian shall not be eligible for further appointment until the requirement is met. The guardian also may be subject to sanctions and/or removal.

By December 31st of the first calendar year after completing the guardian fundamentals course, or its waiver by Court order, the guardian is responsible for providing to this Court a completed Notification of Compliance with Guardian Education Requirements form (LCPC Form 15.11), demonstrating compliance with this guardian continuing education requirement.

Rule 66.08(A). [RESERVED]

66.08(B) Pre-appointment Meeting

The person seeking to be appointed as the guardian is expected to have met with the proposed ward at least once prior to appearing before the Court for the hearing on the application, unless the Court has waived the pre-appointment meeting for good cause.

Rule 66.08(C). Reporting Abuse, Neglect, or Exploitation

If the guardian becomes aware of allegations of abuse, neglect or exploitation of the ward, the guardian shall immediately report the same to the appropriate law enforcement authorities and the Court.

Rule 66.08(D). Limitation or Termination of Guardianship

A guardian shall seek to limit or terminate the guardianship authority pursuant to Sup.R. 66.08(D).

Rule 66.08(E). Change of Residence

A guardian appointed by this Court shall inform the Court as to any change of address for either the guardian or the ward. This notification must be made within ten days of the address change using the Notice of Change of Address form (LCPC Form 15.12). If the ward's residence is changed, the reason for the change should be indicated. Failure to notify the Court under this rule may result in removal of the guardian and/or a reduction in or denial of the guardian's compensation.

The guardian shall not move the ward from Lake County, Ohio or into a more restrictive setting without prior Court approval, unless a delay in obtaining authorization for the change of residence or setting would affect the health and safety of the ward.

Rule 66.08(F). Court Approval of Legal Proceedings

The guardian shall seek prior approval of this Court before initiating litigation on behalf of the ward. The guardian shall file an Application to Commence Legal Proceedings for Ward (LCPC Form 15.13.) before filing suit for the ward.

Rule 66.08(G). Guardian's Report and Annual Plan

The guardian of the person of an adult incompetent shall file an annual Guardian's Report (SPF 17.7) on or before January 2nd of each year. Unless otherwise ordered by the Court, each Guardian's Report for an incompetent adult shall be accompanied by a Statement of Expert Evaluation (SPF 17.1).

The guardian of the person of an adult shall include with the annual Guardian's Report an addendum stating the guardian's goals and plans for meeting the personal needs of the ward. The Court may request that the guardian of the estate of an adult incompetent submit a report identifying the guardian's goals and plans for financially meeting the ward's needs.

Rule 66.08(H). Annual Registration

A guardian appointed by the Court who has ten or more wards under the guardian's care shall register annually with the Court pursuant to Local Rule 66.05(B).

Rule 66.08(I) [RESERVED]

Rule 66.08(J) [RESERVED]

Rule 66.08(K). Conflict of Interest

The guardian shall avoid conflicts of interest with the ward and endeavor to avoid the appearance of impropriety (perceived self-serving, self-dealing or perceived actions adverse to best interest decisions) when dealing with the ward's assets and needs. A potential conflict for the guardian may arise if the guardian's immediate family (parent, spouse, or child) is being employed or contracted by the guardian. The guardian shall disclose all conflicts to the Court in a clear and unequivocal manner. Such disclosure facilitates a determination whether the conflict can be mitigated or eliminated through the use of a guardian ad litem, a limitation of the powers of the guardian, or other appropriate actions.

Rule 66.08(L). Filing of Ward's Legal Papers and Notice of Ward's Death

Within three months of appointment the guardian shall file a list of all of the ward's known important legal papers, including but not limited to estate planning documents, advance directives, and the location of such papers. The guardian shall file, along with said list, copies of any advance directives and power of attorney agreements executed by the ward. If it becomes known to the guardian that changes have been made to the ward's

legal documents or said documents' location, or the existence of other important legal papers becomes known, the guardian shall report that new information to the Court in writing within thirty days of discovery.

The guardian shall deposit for safekeeping with the Court any instrument known to the guardian and executed by the ward that would constitute a "Will" under R.C. 2107.01, if the Will is in the possession of the guardian. If the ward's Will is not in the possession of the guardian, upon being advised of the location, the Court shall order the holder to deposit the Will with the Court.

The guardian shall notify the Court within forty-five days of the death of the ward. Failure to comply may result in the removal of the guardian and attorney, and/or a disallowance of guardian and/or attorney fees.

Rule 66.09. General Responsibilities of the Guardian to the Ward

The guardian shall treat the ward with respect and dignity.

The guardian (or if an attorney is appointed as guardian, a representative of the attorney's office) shall visit the ward at least once every three months. Failure to comply may result in the removal of the guardian. If a Volunteer Visitor visits the ward, the Volunteer Visitor shall file a Visitor's Report with the Court.

Unless a guardian is related to the ward by consanguinity (a blood relationship) or affinity (kinship by marriage), the guardian shall not deliver direct services to the ward, as defined in Sup.R. 66.01(B), without approval of this Court.

Rule 66.10. Guardianships of Minors

When proceedings for the appointment of a guardian of a minor are presented to this Court, the following shall apply:

- (A) A certified copy of the minor's birth certificate must be displayed to the Court with the guardianship application. A copy will be made by the Court and the original will be returned to the submitter.
- (B) The Court will not establish a guardianship solely for the purpose of school enrollment.
- (C) The Court will not establish any guardianship over the person of a minor where another Court has jurisdiction over custody of the minor.
- (D) If a minor is in the care or custody of any person other than the parties entitled to notice by law, reasonable notice of the Application for Appointment of Guardian of Minor must be given to such person.
- (E) Minors must appear personally in court unless their presence is waived for good cause shown.
- (F) 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.

Rule 66.11. Next of Kin for Guardianship of Incompetent Adults

For purposes of completing the Next of Kin of Proposed Ward form (SPF 15.0) and pursuant to R.C. 2111.01(E), the applicant for appointment as guardian shall identify any person, whether or not an Ohio resident, who at that time would be entitled to inherit from the proposed ward under the Ohio laws of intestacy, and all known children of the proposed ward, if applicable.

Rule 66.12. Guardian's Inventory, Release of Ward's Funds, and Expenditures of Guardianship Funds

Within three months of appointment, a guardian of the estate shall file an Inventory of the ward's assets and income. If the assets include real estate, a legal description of the ward's real estate interest shall accompany the Inventory. Funds in the name of the ward shall not be released to the guardian without the approval of an Application to Release Funds to Guardian (SPF 15.6), or other specific court order. The expenditure of funds by a guardian shall not be approved until a Guardian's Inventory (SPF 15.5) and an Application for Authority to Expend Funds (SPF 15.7) have been filed.

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

Rule 66.13. Powers of Attorney by Guardian Prohibited

The Court, through this Local Rule, exercises its discretion under R.C.2111.50(A)(2)(c) and hereby prohibits a guardian appointed by the Court from executing a power of attorney or any other document which purports to appoint an agent to execute any of the duties or responsibilities imposed upon the guardian by law, rule, or order of the Court, unless otherwise approved by a specific order of the Court.

Rule 66.14. Terminations

Except for the termination of a guardianship of a minor attaining the age of majority or upon death of the ward, a termination of guardianship shall require notice to all persons designated in R.C. 2111.04, and to any other individual who received actual notice of the original appointment of the guardian. It is the responsibility of the applicant for termination to perfect service pursuant to Civ.R. 73 when termination is requested. A Certificate of Service with supporting documentation satisfactory to the Court must be filed prior to the consideration of the application.

Rule 66.15. Indigent Ward

The applicant or the guardian must file with the Court an Affidavit of Indigency (LCPC Form 15.14) if the waiver of court costs is being requested, or payment of

compensation from the Indigent Guardianship Fund is being requested. False affidavits are punishable by findings of contempt, prosecution, or other sanctions.

Rule 66.16. Veterans' Guardianships

Veterans' Guardianships are governed by R.C. Chapt. 5905, and to the extent that there are special rules established therein for veterans' guardianships, those rules shall apply. In every other respect, the general guardianship laws and rules shall apply.

Rule 66.17. Right to Vote

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

Rule 66.18. Additional Cost Deposit

Pursuant to R.C. 2111.031 and in addition to the basic cost deposit, the Court may require an applicant for appointment as guardian to make an advance cost deposit in an amount the Court determines necessary (a) to defray the anticipated costs of examinations of an alleged incompetent and (b) to cover the fees and costs to be incurred to assist the Court in deciding whether a guardianship is necessary.

Rule 73.1 Ordinary and Extraordinary Services

Guardians, unless otherwise provided by law, are allowed an amount for ordinary services not to exceed the following:

- (A) 4% on all amounts received and 4% on all amounts paid out during accounting periods on sums not exceeding \$100,000;
- (B) 3% on all amounts received and 3% on all amounts paid out during accounting periods on sums in excess of \$100,000;
- (C) No percentage will be allowed on balances carried forward from one accounting period to another;
- (D) An investment of funds is not to be considered an expenditure;
- (E) A final distribution of unexpended balances to a ward at the closing of a guardianship shall be considered an expenditure.

Guardian fees may be deferred one accounting period only.

Guardian's compensation for ordinary services shall be computed annually upon application, and shall be supported by calculations and documentation. A Calculation of Guardian Compensation form (LCPC Form 15.15) shall be filed in support of the application.

Additional compensation for extraordinary services, reimbursement of expenses incurred, and compensation of a guardian of a person only may be allowed upon

application setting forth an itemized statement of the services rendered and expenses incurred, and the amount for which compensation is applied. The Court may set said application for hearing with notice given to interested persons in accordance with Civ.R. 73(E).

Rule 73.2 Payment from Indigent Guardianship Fund

Applications for payment from the Indigent Guardianship Fund must be accompanied by an itemization of services. An Affidavit of Indigency (LCPC Form 15.14) shall be filed in the guardianship before payments will be approved from the Indigent Guardianship Fund, as directed in Local Rule 66.15.

Application for payment may be made no earlier than 12 months after date of appointment as guardian. Attorney and guardian fees paid from the Indigent Guardianship Fund shall be no more than \$50 per hour for a maximum fee of \$800 per guardianship case for a period of one year. Payment from the Indigent Guardianship Fund shall not be deferred from year to year. All requests for fees in addition to this amount shall be made by filing an Application for Extraordinary Fees, which may be set for hearing at the discretion of the Court.