

## **Frequently Asked Questions**

### **Adult Guardianship Cases: Sup.R. 66.01-66.09**

#### **1) What rules were adopted by the Supreme Court of Ohio?**

On March 10, 2015, the Supreme Court of Ohio adopted nine new rules to govern adult guardianships in Ohio. Superintendence Rules 66.01 through 66.09 will complement the current Sup.R. 66, which has been in effect since 1997. Amended Sup.R. 73, governing adult guardians' compensation, was amended on March 10, 2015 to clarify compensation matters relative to adult guardianships.

#### **2) When will the adult guardianship rules go into effect?**

On June 1, 2015, the Rules of Superintendence for the Courts of Ohio 66.01 through 66.09 and amended Sup.R. 73 take effect.

#### **3) What general concepts are addressed in the rules?**

The new rules are based on the National Guardianship Association's "Standards of Practices for Guardianships." The purpose of the rules is to bring uniformity and consistency to Ohio's adult guardianship practices by providing clear guidance for best practices in adult guardianship cases. The rules underscore the importance of educated and knowledgeable guardians and the importance of courts taking an active role to ensure that court-appointed guardians are qualified and skilled to serve Ohio's adult wards.

#### **4) How do the rules impact judicial discretion?**

The rules seek to protect the safety and well-being of adult wards by establishing clear guidelines, while respecting judicial integrity and discretion of probate courts. Sup.R. 66.03 through 66.05 set forth requirements and responsibilities for the courts in adult guardianship cases. Although these rules give courts new responsibilities, e.g., courts are required to maintain and monitor a roster of guardians with ten or more wards under their care, they also strike a delicate balance to allow for judicial discretion at every reasonable point in adult guardianship cases. The rules are intended to support probate courts' efforts in ensuring the best interest of adult wards is consistently observed.

#### **5) Do the education requirements in Sup.R. 66.06 and Sup.R. 66.07 apply to experienced guardians?**

Yes. Sup.R. 66.01 through 66.09 will apply to all guardians of adult wards serving on June 1, 2015. Pursuant to Superintendence Rule 66.06, as of June 1, 2015, individuals interested in serving as guardians will be required to take a one-time, six-hour course on the fundamentals of adult guardianship. The rule distinguishes between new guardianship appointments (made after June 1, 2015) and individuals serving as guardians as of June 1, 2015.

- Guardians appointed after June 1, 2015, with no experience as a guardian within the five previous years, will have six months from the date of the appointment to complete the fundamentals course.
- Guardians serving on June 1, 2015, or any individual who has served as a guardian during the five previous years, will have one year, until June 1, 2016, to complete the fundamentals course.

Experienced guardians may be excused for good cause from taking the fundamentals course as articulated in Sup.R. 66.06(B). Superintendence Rule 66.07 requires that all guardians complete a three-hour continuing education course every calendar year after completing the initial fundamentals course. No similar exception excusing experienced guardians is noted in Sup.R. 66.07 regarding the continuing education requirements. Guardians who fail to meet, in a timely manner, the continuing education requirements will not be eligible for new appointments and may be subject to removal from previously appointed cases.

The Supreme Court of Ohio Judicial College will provide education offerings to meet the requirements of these rules. Additionally, local probate courts are authorized to approve, at their discretion, other education providers.

**6) Do Sup.R. 66.01 through 66.09 apply to guardianship of minors?**

No. Sup.R. 66.01 through 66.09 will apply only to adult guardianship cases. Sup.R. 66.01(D) defines wards for the purpose of the rules and limits the application of the rules to adult person found to be incompetent by the court and for whom a guardianship is ordered. By its own terms, the rules do not apply to guardianships of minor wards. Superintendence Rule 48 governs court-appointed guardians ad litem, who act on behalf of a minor.

**7) What new local rules must my court adopt?**

Sup.R. 66.03 provides two instances directing probate courts to adopt local rules. Under Sup.R. 66.03(A), probate courts will be required to adopt local rules to address emergency guardianship procedures. Sup.R. 66.03(B) directs probate courts to adopt a complaint process regarding the performance of guardians appointed by the court.

The Ohio Association of Probate Judges is currently drafting model local rules to be available to all of Ohio's probate judges.

**8) Aren't emergency guardianships already covered by statute?**

Section 2111.02(B)(3) of the Ohio Revised Code authorizes the establishment of emergency guardianships in Ohio. Sup.R. 66.03 requires local courts to establish a process for this type of guardianships. The rule is broad to allow for judicial discretion, yet it serves the important purpose of directing the court to provide clarity regarding the scope and breadth of emergency adult guardianships in the county.

**9) How does an individual qualify for appointment as an adult guardian?**

To be appointed as an adult guardian, an individual must complete the application process established by the local courts where the guardian intends to serve and undergo a criminal background check, as required by Sup.R. 66.05. However, a certificate of good standing with disciplinary information issued by the Supreme Court may be accepted for attorneys seeking guardianship appointments in place of a criminal background check, per Sup.R. 66.05(A)(1). Additionally, guardians must meet specific educational requirements as described in Sup.R. 66.06 and Sup.R. 66.07. At the discretion of the court, some guardians may be exempted from certain rules.

**10) Are guardians related to wards treated differently than guardians without familial relation to wards?**

Sup.R. 66.01 through 66.09 will apply in all adult guardianship cases where the probate court appoints a guardian pursuant to R.C. 2111.02. Although the rules do not specifically exempt guardians related to the ward by blood or marriage from the obligations therein delineated, Sup.R. 66.02 provides discretion to the court to determine the extent to which Sup.R. 66.01 through 66.09 will apply to family member guardians. Pursuant to the rule, a court may exempt a family member guardian, for good cause. If the court determines that a family member guardian is not subject to the rules, it is a best practice to fully articulate the reasons for and extent of exemption.

**11) Is the guardian required to personally meet with the ward?**

Yes. The rules underscore the importance of guardians knowing their ward, and face-to-face meetings are the most effective way to establish a meaningful relationship. Pursuant to Sup.R. 66.08(B) an individual must attempt to meet with the proposed ward at least once prior to court-appointment. The pre-appointment meeting requirement may only be waived with permission from the court. Once a guardian is appointed by the court, Sup.R. 66.09(F) (2) (a) requires the guardian to meet with the ward at least quarterly. The rule does not suggest that a visit by proxy fulfills this requirement. A guardian may consider sending an employee, assistant, or other staff in place of the guardian to visit the ward throughout the guardianship, but such a visit will not satisfy the requirements of Sup.R.66.09(F) (2) (a).

**12) What additional safeguards for wards are incorporated in the rules?**

Protecting the personal and financial welfare and safety of persons under guardianship is at the heart of the rules. Accordingly, the rules set forth many requirements intended to ensure the best interest of the ward is observed, e.g., a guardian must exercise due diligence, avoid actual or apparent conflicts of interest, maintain integrity, act in a manner above reproach, and avoid any activity that is not in the best interest of the ward. However, three key provisions in Sup.R. 66.08 and 66.09 direct guardians to take these concepts to the next level by ensuring the humanity of the ward is a focal point of the guardianship.

- Sup.R. 66.09(C) emphasizes the importance of making the least restrictive and most normalizing decisions on behalf of the ward. Guardians have a duty to make a choice or decision for the ward that best meets their needs while protecting and preserving their rights to the fullest extent possible.
- Sup.R. 66.09(D) underscores a guardian’s duty to advocate for person-centered planning and highlights the delicate balance between promoting the self-reliance and independence of the ward, and making decisions in the best interest of the ward.
- Sup.R. 66.08 (G) requires the guardian to prepare an annual plan stating goals for the ward’s personal and financial needs. The annual plan is separate from the biannual Guardian’s Report required by R.C. 2111.49 and underscores the importance of guardians knowing their ward and advocating for their best interest.

**13) Do the rules impose additional monitoring of all guardians serving in my court?**

No. The rules impose on the courts specific oversight responsibility of guardians who maintain a caseload of ten or more adult wards. Sup.R. 66.05(B) requires courts to closely monitor guardians with ten or more persons under guardianship. Specifically, courts must maintain a

current roster of these guardians, including their contact information; ensure that each guardian is eligible to serve their wards; require each guardian to file an annual fee schedule for their services; and review the roster annually to determine if the guardians are in compliance with each requirement. Additionally, Sup.R. 66.08(H) directs guardians with ten or more wards under their care to register annually with each court in which they practice and provide additional information as the court requires.

Also relevant in this discussion is Sup.R. 66.07(B) which recognizes the importance of continuing education for guardians and provides for judicial accountability in this area. Guardians must report their compliance with this rule to each court in which they hold an adult guardianship appointment. It is the court's duty to ensure court-appointed guardians are duly prepared to assume the responsibilities entailed in a guardianship case. Failure to comply with continuing education requirements will render a guardian ineligible for new guardianship appointments.

**14) Can an attorney provide legal services and guardianship services to the same ward?**

No, absent expressed approval from the court. Providing legal services and guardianship services to the same ward may raise suspicions and question the integrity of the guardian's decision-making process. The rules [e.g., Sup.R. 66.08(K)] direct guardians to avoid situations of undue influence and conflicts of interest. Additionally, Sup.R. 66.01(B) defines direct services as those services typically provided by home and community-based care and institutionally-based care providers. Direct services includes legal services and legal representation, but excludes the services of a guardian. Sup.R. 66.04(D) precludes direct service providers from providing guardianship services to the same ward for whom direct services are being provided. This rule articulates an absolute prohibition of guardianship services if direct services are already being provided by that person or entity and protects the guardian from allegations of conflicts of interest and the ward from undue influence. However, the rules recognize that from time to time it may be in the best interest of the ward for a guardian to provide legal representation to the ward. In those instances, Sup.R. 66.08(F) [deals with filing legal proceedings on behalf of the ward] and 66.09 (G) [addresses providing legal services to wards] would allow such an arrangement with court approval.

**15) Has the manner of setting compensation for adult guardianship cases changed as a result of the enactment of the rules?**

Although Sup.R. 73 was amended, the manner of setting compensation for guardians was not impacted. This rule still provides discretion to the court to set compensation for guardians per local court rule. Sup.R. 73(B) underscores the importance of itemizing guardianship expenses. This amendment foments transparency and trust in the court's administration of guardianship cases. Sup.R. 66.08(J) requires guardians who collect fees in addition to those collected through the guardianship of the estate to report to the court the source and entity which approved the payment. Additionally, this rule stresses that guardians cannot receive incentives or compensation from direct service providers providing services to a ward.