

FILED

IN THE COURT OF COMMON PLEAS, FAIRFIELD COUNTY, OHIO **MAY 14 2015**
PROBATE & JUVENILE DIVISIONS

TERRE L. VANDERVOORT
PROBATE & JUVENILE JUDGE
FAIRFIELD COUNTY

IN THE MATTER OF THE

Adoption of Local Rule 66

DATE: May 14, 2015

ORDER OF REFERENCE

This Court hereby amends the Rules of Court of the Probate Division by adopting the attached Rule 66 Guardianships.



JUDGE TERRE L. VANDERVOORT DATE

Superintendence Rule 66 Guardianships

Fairfield County Local Rule 66.1 (General)

The requirements in this Rule apply to all guardianships.

A. Residency

A minor or alleged incompetent who is not a citizen of the United States or a resident alien is not considered by this Court to be a resident of this County or to have a legal residence in this County for purposes of R.C. §2111.02(A).

B. Criminal Background Check

All applicants for appointment as a guardian and all current guardians who are serving prior to the implementation of this rule must submit to the Court the results of a criminal background check. The applicant must pay the cost of the criminal background check if any exists. The requirements in this Rule do not apply if the applicant is the natural or adoptive parent of a minor ward, a state agency or an attorney licensed and in good standing to practice law in Ohio.

C. Application

All applicants for appointment as guardian must file a completed in full application packet with the Probate Clerk of Courts before a hearing will be set. This must include an alleged ward's supplemental information form (Fairfield County Form 66.1-A) and an applicant's supplemental information form (Fairfield County Form 66.1-B).

D. Communication with Ward

All guardians or their designated representative must meet with each of their wards no less than once quarterly. A designee of a guardian should be a social worker or an individual with extensive experience in handling matters concerning the elderly and/or incompetent individuals.

E. Incident Reports

Any guardian, attorney or other person in a fiduciary relationship with a ward who has reasonable cause to believe that the ward is being abused, neglected, exploited or otherwise subjected to danger of emotional, physical or financial harm must immediately report it to the Court using the Guardian's Report Form (Fairfield County Form 17.7), describing in sufficient detail the basis for the belief. The Court will determine if the incident report will be made a part of the official record. The Court will promptly investigate all incident reports that it receives and will determine whether there is a reasonable basis for further action.

F. Complaints against Guardians

Any person or entity who has reasonable cause to believe that a guardian has engaged in any act of wrongdoing or neglect affecting the ward may file a request for a review hearing using a Guardian Complaint Form (Fairfield County Form 66.1-C). The Court will promptly consider and investigate all complaints against a guardian that it receives consistent with the Court's Guardian Complaint Policy. If the Court believes there is a reasonable basis for the allegations in the complaint, the Court will set the matter for hearing at the earliest available opportunity. The person or entity who filed the complaint must appear in person at the hearing to testify and prove

the allegations. If they fail to appear, the Court may dismiss the complaint. The guardian must also appear in person at the hearing.

G. Authority to Expend Funds

No guardian of a ward's estate may expend any of the ward's funds without prior Court authorization. The Application for Authority to Expend Funds (Fairfield County Form 15.7) must describe the payee, the amount and the purpose of each proposed expenditure. It must also specify whether the proposed expenditures are recurring expenses or non-recurring expenses. The Court will not approve any expenditures of the ward's funds until the guardian has filed an inventory, unless the guardian shows that delaying the authorization will be detrimental to the ward.

H. Prohibited Transactions

A guardian must not make any payment, expenditure or other form of disbursement by means of a cash transaction, whether in cash, by debit card or electronic means, unless authorized by law or by Court order and supported by a contemporaneously issued receipt showing the date of the transaction, the amount, the recipient of the funds and the service, product or other purpose for which the guardian used the funds. A guardian is permitted to pay routine and recurring expenses by electronic payment only with prior Court approval.

I. Authority to Sell Ward's Assets

No guardian of a ward's estate may sell, exchange, transfer or otherwise dispose of any of the ward's assets until the guardian has filed an inventory, unless the guardian shows to the Court that delaying the transaction will be detrimental to the ward.

J. Veterans' Benefits

All guardianships of the ward's estate that involve veterans' benefits are subject to and must comply with R.C. Chapter 5905 and all rules and regulations of the Department of Veterans' Affairs. All applications for authority to expend funds, including all applications to pay guardian or attorney fees, must also be approved by the Department of Veterans' Affairs. In the alternative, the application may be set for hearing with notice given to the Department of Veterans' Affairs.

K. Ward's Death

If the ward dies, the guardian must notify the Court in writing within 30 calendar days after the death. The guardian must provide a copy of the ward's death certificate at the time of notification to the Court. This notice is the responsibility of the guardian of the person. If there is no guardian of the person, the notice is the responsibility of the guardian of the estate.

L. New Guardian Education

Sup. Rule 66.06(A) governs education requirements of new guardians appointed by this Court. Unless covered by the Sup. Rule 66.06(B) waiver, at the time of a new appointment or within six months thereafter, all new guardians must have successfully completed, at a minimum, a six-hour guardian fundamentals course provided by the Supreme Court or, with the prior approval of this Court, another entity.

M. Guardian Continuing Education

In each succeeding year following the initial new guardian education requirements, a guardian appointed by this Court shall successfully complete a continuing education course that is at least three hours in length, is provided by the Supreme Court or is approved of by this Court, and that is specifically designed for the continuing education needs of a guardian and consists of advanced education relating to the topics listed in Sup. Rule 66.06(A)(1) through (4).

N. Guardian's Report

1. Filing the Guardian's Report

The guardian of a ward must file a yearly Guardian's Report (Fairfield County Form 17.7) under R.C. §2111.49 with the Court within 30 calendar days of the anniversary of the initial filing of the guardianship. The Court may order periodic reports more frequently.

2. Accounting

A financial audit is to accompany each year's Guardian's Report filing.

3. Supplemental Guardian's Report

If the guardian becomes aware of any changes or other material circumstances affecting the ward that would otherwise be required to be disclosed on a guardian's report, the guardian must file a Guardian's Report (Fairfield County Form 17.7) disclosing the change or other material circumstances within 30 calendar days after first becoming aware of the changes or circumstances. Failure to file a supplemental Guardian's Report in a timely manner is grounds for removal of the guardian. Filing a supplemental Guardian's Report does not change the due date of the annual Guardian's Report required under this Rule.

4. Who Must File

The guardian of the person is responsible for filing the Guardian's Report. If there is no guardian of the person, the guardian of the estate is responsible for filing the Guardian's Report. If there is a separate guardian of person and guardian of estate for a ward, the guardian of the person should include the guardian of estate's annual plan in the Guardian's Report.

5. Statement of Expert Evaluation

The guardian of an incompetent person must file an updated Statement of Expert Evaluation with the annual Guardian's Report. If the original or a subsequent Statement of Expert Evaluation indicates to a reasonable degree of medical certainty that it is unlikely that the ward's mental competence will ever improve, the guardian is not required to obtain or submit subsequent Statements of Expert Evaluation (Fairfield County Form 17.1) with the any of the following Guardian's Reports.

6. Annual Plan

All guardians must complete the annual plan section of the Guardian's Report (Fairfield County Form 17.7). The guardianship plan states the guardian's goals for meeting the ward's needs for the next year.

7. Communication with Ward

The details of a guardian's quarterly meetings with their ward must be reported in the Guardian's Report.

O. Annual Registration for Guardians with Ten or More Wards

A guardian appointed by the court who has ten or more wards under the guardian's care shall annually register with this Court 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 (Fairfield County Form 66.1-D).

P. Change of Guardian

A written request and Guardian's Report (Fairfield County Form 17.7) must be completed and filed in order for the Court to consider a change of guardian for a ward.

Fairfield County Local Rule 66.2 (Guardianship of Minors)

This Rule governs guardianships of minors.

A. Coordination with Other Proceedings

The Court will not establish a guardianship of the person of a minor if another court has pending or continuing jurisdiction over the custody of the minor.

B. No Guardianship for School or Custody Purposes

The Court will not accept for filing any application for guardianship of a minor where the sole or primary purpose of the proposed guardianship is to establish residency for the minor to enroll in school or for purposes of transferring physical custody of a minor from a parent to any other person.

C. Birth Certificate

Upon filing an application for appointment as guardian of a minor, the applicant must simultaneously file a true and accurate copy of the minor's birth certificate.

D. Expenditures for Minor's Health, Education, Maintenance or Support

If the guardian of a minor's estate is also the minor's natural or adoptive parent, and the guardian applies to the Court for authority to expend funds of the minor for items that can reasonably be considered relating to the minor's health, education, maintenance or support, a completed Household Resource Worksheet (Fairfield County Form 66.2-A) must accompany the application. The Court will not approve expenditures of the minor's estate in these circumstances if the Court determines that the expenditure is within the parent's legal obligation to support the minor, unless the applicant establishes to the Court's satisfaction that the expenditure is necessary and the parent or parents do not have the financial resources to pay the expense.

E. Notice of Termination

All applications to terminate the guardianship of a minor before the minor reaches the age of 18 years require notice to be served on all persons entitled to notice under R.C. §2111.04(A)(1), to all persons who received actual notice of the original appointment of the guardian, and to such other persons as the Court may order. The applicant is responsible for serving the notice.

F. Grandparent's Power of Attorney

No guardian of a minor is permitted to create a power of attorney under R.C. §3109.52 that transfers any of the guardian's powers or obligations to a grandparent of the child with whom the child is residing without this Court's prior authorization.

Fairfield County Local Rule 66.3 (Guardianship of Mentally Incompetent Adult)

This Rule governs guardianships of mentally incompetent adults.

A. Notice of Hearing

In addition to those entitled to notice of the hearing on the application for appointment of a guardian of an adult under R.C. §2111.04(B), the Court may order that notice also be served on, and in the same manner, other persons as the Court may direct. If not otherwise entitled to notice by statute, the applicant must provide the Court with the names and addresses of all of the proposed ward's adult children who are known to reside in Ohio. The Court will serve notice of the hearing on those children. Any notice required by law or by this Rule may be waived.

B. Burden of Proof

At the hearing on the application for appointment of a guardian of the person or estate of a mentally incompetent adult, the applicant bears the burden of proving, by clear and convincing evidence both of the following: (i) the ward's mental incompetence; and (ii) that no less restrictive alternative exists to the proposed guardianship.

1. Existence of Powers of Attorney

If the proposed ward has executed a valid durable power of attorney or durable power of attorney for health care that remain in effect, the applicant must file true and accurate copies of the powers of attorney with the application for appointment as guardian. At the hearing, the applicant must present satisfactory evidence of why one or both of the powers of attorney are ineffective in meeting the ward's needs.

2. Rebuttable Presumption

The Court establishes a rebuttable presumption that valid durable powers of attorney are less restrictive alternatives to guardianship.

C. Effect on Powers of Attorney

If the Court appoints the guardian, and the guardian is also the designated ward's agent under a valid durable power of attorney or durable power of attorney for health care that remain in effect, the Court may order that one or both powers of attorney are deemed terminated and void, or may order that one or both powers of attorney remain valid and effective for purposes that the Court directs. If the guardian is permitted to use either or both powers of attorney, the guardian is accountable to the Court for all activities undertaken as agent under the powers of attorney. If the Court appoints the guardian, and the guardian is not the designated agent under a valid durable power of attorney or durable power of attorney for health care, the powers of attorney are automatically deemed terminated and void, unless the Court orders otherwise.

D. Deposit of Wills

Within three months after the guardian's appointment, a guardian shall file with this 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. If the guardian discovers these documents after the time of the filing, the guardian must inform the Court of those legal papers within 30 calendar days of discovery. The guardian may also deposit the originals of all wills of the ward with the Court for safekeeping, pursuant to the procedure in R.C. §2107.07.

Fairfield County Local Rule 66.4 Emergency Guardianships

This Rule governs emergency guardianships of a minor or mentally incompetent adult under R.C. §2111.02(B)(3).

A. Overview of Proceeding

An emergency guardianship is an ex parte proceeding that materially affects the legal rights of the proposed ward without prior notice or opportunity to be heard, even though for a limited time and purpose. As such, the Court will strictly scrutinize all evidence presented to determine whether the appointment of an emergency guardian is the only feasible alternative for the necessary protection of the proposed ward. The applicant bears the burden of proof by clear and convincing evidence.

B. Application

A person desiring to be appointed emergency guardian must prepare and file all documents provided on the Court's website for emergency guardianship proceedings. All of the supporting evidence and other supporting documentation proving the need for the appointment must accompany the application.

1. Minimum Evidence

At a minimum, the applicant must file with the application one or more affidavits of persons having direct knowledge of the circumstances showing that the proposed ward faces an imminent risk of serious injury to his or her person or estate, and why immediate Court action is required to prevent that injury.

2. Additional Evidence

The applicant may, and is strongly encouraged, to present additional supporting documentation evidencing the truth of the statements in the application and supporting affidavits.

3. Less Intrusive Means

The affidavits and additional evidence the applicant files must also establish that no less intrusive means exists to prevent injury to the proposed ward's person or estate without immediate Court intervention.

C. Extension

If the emergency guardian desires to extend the emergency guardianship beyond the initial 72 hour appointment period, he or she must apply to the Court for an extension, with a hearing and notice of the hearing as required by law. The maximum extension is 30 Calendar Days. The Court will not grant additional extensions, absent a showing of exceptional circumstances.

D. Notices

The person over whom the emergency guardianship is sought is the only person required to be served with any notices required under R.C. §2111.02(B)(3), unless the Court requires notice to other persons. Due to the short time constraints the law imposes in emergency guardianship proceedings, the Court requires that all notices must be served in person. If necessary, the applicant must file an application for appointment of a special process server, who must file a return of the service before expiration of the initial 72 hour emergency guardianship period or within three Court Days after filing of the entry granting an extension.

Fairfield County Local Rule 66.5 Conservatorships

All requirements in Rules 66.1 and 66.3 also apply to conservatorships, substituting the word conservator for guardian, unless a particular provision is clearly inapplicable to conservatorships by statute.

Best Practices

Local Rule 66.1

Guardianships are serious probate proceedings that are under more intense scrutiny in recent years because of increased instances of neglect, abuse and plain indifference by many guardians. Therefore, these Rules tighten-up on Court oversight of guardianship cases.

Our Court now requires criminal background checks on all persons who apply to be appointed as a guardian, with a few exceptions. You need to start early on this task because it takes some time to obtain the written verification of a clean record, which must accompany the initial application.

This Rule also implements procedures to improve communications between the Court and the guardian. The Rule requires guardians to immediately file a written incident report to inform the Court of any potentially harmful activity involving the ward. Third parties also have a mechanism to file a written complaint with the Court if they have knowledge or suspicion that the guardian is doing something wrong.

The bottom line of this Rule is that the Court will exercise greater oversight on guardians. Therefore, guardians need to act with greater care in carrying out their duties and work with the Court to assure the best interests of the Ward are being met.

Local Rule 66.2

In cases where a parent is the guardian of a minor child's estate, applications for authority to expend the ward's funds can easily become unclear. Parents have a legal obligation to provide support for their children. They cannot expend the minor ward's funds for that purpose. Therefore, it is important for a parent-guardian to clearly show that the request to expend the minor's funds are not being used for something that is the parent's obligation to provide anyway. Alternatively, the parent-guardian must show that they do not have the financial means to provide the necessary support for the minor without expending the minor's funds for a particular purpose.

Local Rule 66.3

Since a lot can happen during the twelve months between reports, this Rule imposes an obligation on guardians of mentally incompetent adults to file interim reports to inform the Court of changes or material circumstances that affect the ward. Failure to do so may subject the guardian to sanctions, including removal.

Local Rule 66.4

It is crucial to understand the true purpose of an "emergency" guardianship. It is an extraordinary remedy because the Court is stripping the ward of many constitutional rights without notice and hearing. Even though it only lasts for 72 hours initially, it is still a very intrusive measure.

Since this is an ex parte proceeding with no hearing, the applicant should submit as much evidence as possible to prove that the proposed ward is, in fact, mentally incompetent and faces an imminent risk of serious injury to person or property without immediate court intervention. There should also be direct evidence (as opposed to a mere assertion) that there is no less intrusive means to address the situation. Besides a very current statement of medical expert evaluation, the evidence should be in the form of affidavits. The more evidence the better.

The statute allows only one 30-day extension after a hearing. Since the initial appointment automatically expires in 72 hours, there is a very tight timeline to get service of notice of the hearing for extension on the proposed ward and other interested parties. It is best to file an application for 30 day extension simultaneously with filing the initial emergency guardianship application. That way, everything regarding the initial emergency appointment and the 30 day extension can be served at once if the Court grants the guardianship. If the Court denies the initial emergency appointment, the application for extension becomes void anyway.

If the Court grants the emergency guardianship, it is important to promptly file all of the necessary documents to establish a full guardianship (if necessary), as well. It takes some time to establish a permanent guardianship, and the statute only permits an emergency guardianship to last for 33 days, at most.