

**PROPOSED AMENDMENTS TO THE RULES OF SUPERINTENDENCE
FOR THE COURTS OF OHIO**

Comments Requested: The Supreme Court of Ohio will accept public comments until June 25, 2014, on the following proposed amendments to the Rules of Superintendence for the Courts of Ohio.

Comments on the proposed amendments should be submitted in writing to: Diana Ramos-Reardon, Domestic Violence Counsel, Supreme Court of Ohio, 65 South Front Street, 6th Floor, Columbus, Ohio 43215-3431, or diana.ramos-reardon@sc.ohio.gov not later than June 25, 2014. Please include your full name and mailing address in any comments submitted by e-mail.

Key to Proposed Amendment:

1. Existing language appears in regular type. Example: text
2. Existing language to be deleted appears in strikethrough. Example: ~~text~~
3. New language to be added appears in underline. Example: text

1 **RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO**
2

3 **RULE 66.01. Definitions.**
4

5 As used in Sup.R. 66.01 through 66.09:
6

7 **(A) Best interest**
8

9 “Best interest” means decisions made for the benefit of or to improve the quality
10 of life of the ward.
11

12 **(B) Direct services**
13

14 “Direct services” means services typically provided by home and community-
15 based care and institutionally-based care providers, including medical and nursing
16 care, care or case management services, care coordination, speech therapy,
17 occupational therapy, physical therapy, psychological services, counseling,
18 residential, legal representation, job training, and any other similar services. The
19 term “direct services” does not include services of a guardian.
20

21 **(C) Guardian**
22

23 “Guardian” has the same meaning as in R.C. 2111.01(A), except it does not
24 include a person who is related by consanguinity or affinity to the ward.
25

26 **(D) Ward**
27

28 “Ward” means any adult found by a court of common pleas or division of the
29 court to be incompetent and for whom a guardianship is established.
30

31
32 **RULE 66.02. Application of Rules.**
33

34 **(A) General**
35

36 Except as provided in division (C) of this rule, Sup.R. 66.01 through 66.09 shall apply in
37 an adult guardianship case in a court of common pleas or division of the court where the
38 court or division appoints a guardian to protect and control an adult ward pursuant to
39 R.C. 2111.02.
40

41 **(B) Corporation as guardian**
42

43 Sup.R. 66.01 through 66.09 shall apply to the employees of a corporation who provide
44 guardianship services in an adult guardianship case in a court of common pleas or
45 division of the court where the court or division appoints the corporation as guardian.
46

47 **(C) Family member guardians**

48
49 Sup.R. 66.01 through 66.09 shall not apply in an adult guardianship case in a court of
50 common pleas or division of the court where the guardian appointed to protect and
51 control the ward is related by consanguinity or affinity to the ward but shall not preclude
52 the court or division from imposing any orders or conditions upon such guardian as the
53 court or division deems appropriate.

54
55
56 **RULE 66.03. Local Guardianship Rule.**

57
58 A court of common pleas or division of the court that establishes guardianships shall adopt a
59 local rule governing the establishment of guardianships that does all of the following:

60
61 (A) Allows for the establishment of an emergency guardianship;

62
63 (B) Establishes a process for emergency placement of a ward;

64
65 (C) Establishes a process for submitting and considering written comments and
66 complaints regarding the performance of guardians appointed by the court or division.
67 The process shall include each of the following:

68
69 (1) The designation of a person for accepting and considering comments and
70 complaints;

71
72 (2) A requirement that a copy of the submitted comment or complaint be
73 provided to the guardian who is the subject of the comment or complaint and the
74 administrative judge of the court or division for prompt consideration and
75 appropriate action by the judge;

76
77 (3) A requirement that the court or division maintain a written record in the
78 guardian's file regarding the nature and disposition of the comment or complaint;

79
80 (4) A requirement that the court or division notify the person making the
81 comment or complaint and the guardian of the disposition of the comment or
82 complaint.

83
84 (D) Addresses other provisions as the court or division considers necessary and
85 appropriate.

86
87
88 **RULE 66.04. Establishment of Guardianship.**

89
90 **(A) Types of guardianship**

91
92 (1) A court of common pleas or division of the court may establish either of the
93 following types of guardianships:

94 (a) A plenary guardianship, which shall be the most restrictive form of
95 guardianship. The guardian in a plenary guardianship shall make all decisions on
96 behalf of the ward.

97
98 (b) A limited guardianship, which shall be the least restrictive form of
99 guardianship. The guardian in a limited guardianship shall be authorized to make
100 decisions over a prescribed number of issues.

101
102 (2) When establishing the guardianship, the court of common pleas or division of the
103 court shall initially consider a limited guardianship.

104
105 **(B) County of residence**

106
107 The last county of residence in which a ward resided prior to losing the cognitive ability
108 to choose shall be the ward's county of residence for purposes of establishing a
109 guardianship, unless determined otherwise by the court of common pleas or division of
110 the court establishing the guardianship.

111
112 **(C) Guardianship of estate**

113
114 A court of common pleas or division of the court may waive establishing or continuing
115 the guardianship of the estate of a ward if the assets and principal income of the ward do
116 not support a guardianship of the estate.

117
118 **(D) Residential facilities and waiver programs**

119
120 A court of common pleas or division of the court shall not issue letters of guardianship to
121 any residential facility, waiver program, or employees of such care providers to serve as a
122 guardian for a resident or recipient of such direct services.

123
124
125 **RULE 66.05. Responsibilities of Court Establishing Guardianships.**

126
127 A court of common pleas or division of the court that establishes a guardianship shall do all of
128 the following:

129
130 (A) Conduct, or cause to be conducted, a criminal and civil background check and
131 investigation of information relevant to the applicant's fitness to serve as a guardian;

132
133 (B) Maintain a roster of all guardians appointed by the court or division, including the
134 name; address; telephone number; and, if available, electronic mail address of each
135 guardian. The court or division shall require each guardian to notify the court or division
136 of any changes to this information. The name of a guardian shall be the only information
137 on the roster available for public access pursuant to Sup.R. 44 through 47.

138

139 (C) Require each guardian appointed by the court or division to submit to the court or
140 division information documenting compliance with the guardian qualifications of Sup.R.
141 66.06;

142
143 (D) Require each guardian appointed by the court or division to submit to the court or
144 division on or before January 1st of each year certification to the court or division the
145 guardian is unaware of any circumstances that would disqualify the guardian from
146 servng as a guardian;

147
148 (E) On or before February 1st of each year review the roster of all guardians
149 appointed by the court or division to determine that each guardian is in compliance with
150 the education requirements of Sup.R. 66.06 or 66.07, as applicable, that the guardian has
151 performed satisfactorily on all appointments during the preceding calendar year, and that
152 the guardian is otherwise qualified to serve.

153
154
155 **RULE 66.06. Guardian Pre-Appointment Education.**

156
157 **(A) Requirement**

158
159 Except as provided in division (B) of this rule, a court of common pleas or division of the
160 court shall not appoint an individual as a guardian unless the individual has successfully
161 completed a six-hour guardian fundamentals course provided by the Judicial College of
162 the Supreme Court or, at any time prior to the effective date of this rule, completed an
163 “Ohio Guardian Training Program” approved by the Judicial College. The fundamentals
164 course shall include at a minimum education on the following topics:

- 165
166 (1) Establishing the guardianship;
167
168 (2) The ongoing duties and responsibilities of a guardian;
169
170 (3) Record keeping and reporting duties of a guardian;
171
172 (4) Any other topic that concerns improving the quality of the life of a ward.

173
174 **(B) Exception**

175
176 An individual serving as a guardian on [the effective date of this rule] or who served as a
177 guardian during the five years immediately preceding that date shall have one year from
178 that date to complete the training required under division (A) of this rule unless the
179 appointing court or division waives the requirement for good cause.

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181
182
183
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185

186 **RULE 66.07.** **Guardian Continuing Education.**

187
188 **(A) Requirement**
189

190 A guardian appointed by a court of common pleas or division of the court shall annually
191 complete a continuing education course that meets the following requirements:

- 192
193 (1) Is at least three hours in length;
194
195 (2) Is provided by the Judicial College of the Supreme Court or, with the prior
196 approval of the appointing court or division, another entity;
197
198 (3) Is specifically designed for continuing education needs of guardians and
199 consists of advanced education relating to the topics listed in Sup.R. 66.06(A)(1)
200 through (4).

201
202 **(B) Annual compliance**
203

204 On or before January 1st of each year, a guardian shall report to each court of common
205 pleas or division of the court from which the guardian receives appointments information,
206 including the title, date, and location of the education, documenting compliance with the
207 continuing education requirement pursuant to division (A) of this rule.

208
209 **(C) Failure to comply**
210

211 If a guardian fails to comply with the continuing education requirement of division (A) of
212 this rule, the guardian shall not be eligible to serve as a guardian until the requirement is
213 satisfied. If the guardian's deficiency in continuing education is three calendar years or
214 less, the guardian shall qualify to serve after completing a three hour continuing
215 education course offered under this rule. If the deficiency in continuing education is more
216 than three calendar years, the guardian shall complete a six hour fundamentals course to
217 qualify to serve.

218
219
220 **RULE 66.08.** **General Responsibilities of Guardian.**

221
222 **(A) Orders, rules, and laws**
223

224 A guardian shall obey all orders of the court of common pleas or division of the court
225 establishing the guardianship and shall perform duties in accordance with local rules and
226 state and federal law governing guardianships.

227
228 **(B) Pre-appointment meeting**
229

230 Unless otherwise determined by the court of common pleas or division of the court, an
231 applicant guardian shall meet privately with a proposed ward at least once prior to
232 appearing before the court or division for a guardianship appointment.

233 **(C) Reporting abuse, neglect, or exploitation**

234
235 A guardian shall immediately report to the court of common pleas or division of the court
236 and adult protective services any allegations of abuse, neglect, or exploitation of a ward.
237

238 **(D) Providing court with relevant information and informed recommendation**

239
240 A guardian shall provide the court of common pleas or division of the court with relevant
241 information and an informed recommendation regarding a ward's best interest.
242

243 **(E) Limitation or termination of guardianship**

244
245 A guardian shall seek to limit or terminate the guardianship authority and promptly notify
246 the court of common pleas or division of the court if any of the following occurs:
247

248 (1) A ward's ability to make decisions and function independently has
249 improved;

250
251 (2) Less restrictive alternatives are available;

252
253 (3) A plenary guardianship is no longer in the best interest of a ward;

254
255 (4) A ward is non-compliant or out of the guardian's control;

256
257 (5) A ward has died.
258

259 **(F) Change of residence**

260
261 (1) Except if impracticable, a guardian shall notify the court of common pleas or
262 division of the court of a ward's change of residence and reason for the change no later
263 than ten days prior to the proposed change.
264

265 (2) A ward's change of residence to a more restrictive setting in or outside of the
266 county of the guardian's appointment shall be subject to the court's approval, unless a
267 delay in authorizing the change of residence would affect the health and safety of the
268 ward.
269

270 **(G) Court approval of legal proceedings**

271
272 A guardian shall seek prior approval from the court of common pleas or division of the
273 court when filing for a civil commitment, marriage termination, or any other legal
274 proceedings concerning a ward.
275
276
277
278

279 **(H) Annual plan**

280
281 A guardian shall file annually with the court of common pleas or division of the court a
282 guardianship plan as an addendum to the annual report. The guardianship plan shall state
283 the guardian's goals for meeting the ward's personal and financial needs.
284

285 **(I) Annual registration**

286
287 A guardian shall annually register with the court of common pleas or division of the court
288 and provide such information as the court or division may require, including but not
289 limited to a fee schedule that differentiates guardianship services from legal or other
290 direct services.
291

292 **(J) Ward's principal income**

293
294 A guardian shall inform the court of common pleas or division of the court and apply to
295 close the estate if the principal income of the ward is from governmental entities, a payee
296 for that income is identified, and no other significant assets or income exist.
297

298 **(K) Guardian's compensation**

299
300 A guardian shall itemize all expenses relative to the guardianship of the ward and shall
301 not charge fees or costs in excess of those approved by the court of common pleas or
302 division of the court. Except as otherwise authorized by the court of common pleas or
303 division of the court, a guardian shall not receive incentives or compensation from any
304 direct service provider providing services to a ward.
305

306 **(L) Conflict of interest**

307
308 A guardian shall avoid actual or apparent conflicts of interest regarding a ward's personal
309 or business affairs. A guardian shall report to the court of common pleas or division of
310 the court all actual or apparent conflicts of interest for review and determination of
311 whether a waiver of the conflict of interest is in the best interest of the ward.
312

313 **(N) Filing of ward's legal papers**

314
315 A guardian shall file with the court of common pleas or division of the court an inventory
316 of all of the ward's important legal papers, including, but not limited to, estate planning
317 documents, advance directives, and powers of attorney.
318
319

320 **RULE 66.09. Responsibilities of Guardian to Ward.**

321
322 **(A) Professionalism, character, and integrity**

323
324 A guardian shall act in a manner above reproach, including but not limited to avoiding
325 financial exploitation, sexual exploitation, and any other activity that is not in the best
326 interest of the ward. A guardian shall not engage in sexual relations with a ward unless

327 otherwise authorized by the court of common pleas or division of the court establishing
328 the guardianship.

329
330 **(B) Exercising due diligence**

331
332 A guardian shall exercise due diligence in making decisions that are in the best interest of
333 a ward, including but not limited to communicating with the ward and being fully
334 informed about the implications of the decisions.

335
336 **(C) Least restrictive alternative**

337
338 Unless otherwise approved by the court of common pleas or division of the court, a
339 guardian shall make a choice or decision for a ward that best meets the needs of the ward
340 while imposing the least limitations on the ward's rights, freedom, or ability to control
341 the ward's environment. To determine the least restrictive alternative, a guardian may
342 seek and consider an independent assessment of the ward's functional ability, health
343 status, and care needs.

344
345 **(D) Person-centered planning**

346
347 A guardian shall advocate for services focused on a ward's wishes and needs to reach the
348 ward's full potential. A guardian shall strive to balance a ward's maximum independence
349 and self-reliance with the duty to keep the ward safe and protected.

350
351 **(E) Ward's support system**

352
353 A guardian shall strive to foster and preserve positive relationships in the ward's life
354 unless such relationships are substantially harmful to the ward. A guardian shall
355 document the reasons a particular relationship is severed.

356
357 **(F) Communication with ward**

358
359 (1) A guardian shall strive to know a ward's preferences and belief system by seeking
360 information from the ward and the ward's family and friends.

361
362 (2) Unless impracticable or inadvisable to do so, a guardian shall do each of the
363 following:

364
365 (a) Meet with the ward as needed, but not less than twice annually or more
366 often as determined by the court or division;

367
368 (b) Communicate privately with the ward;

369
370 (c) Assess the ward's physical and mental condition and limitations;

371
372 (d) Assess the appropriateness of the ward's current living arrangements;

373
374 (e) Assess the needs for additional services;

375 (f) Notify the court or division if the ward's level of care is not being met;

376

377 (g) Document all complaints made by a ward and assess the need to report the
378 complaints to the court of common pleas or division of court.

379

380 **(G) Direct services**

381

382 Except as provided in Sup.R. 66.04(D), a guardian shall not provide any direct services to
383 a ward, unless otherwise approved by the court.

384

385 **(H) Monitor and coordinate services and benefits**

386

387 A guardian shall monitor and coordinate all services and benefits provided to a ward,
388 including doing all of the following:

389

390 (1) Having regular contact with all service providers;

391

392 (2) Assessing services to determine they are appropriate and continue to be in
393 the ward's best interest;

394

395 (3) Maintaining eligibility for all benefits;

396

397 (4) Where the guardian of the person and guardian of the estate are different
398 individuals, consulting regularly with each other.

399

400 **(I) Extraordinary medical issues**

401

402 (1) A guardian shall seek ethical, legal, and medical advice, as appropriate, to
403 facilitate decisions involving extraordinary medical issues.

404

405 (2) A guardian shall strive to honor the ward's preferences and belief system
406 concerning extraordinary medical issues.

407

408 **(J) End of life decisions**

409

410 A guardian shall be informed about the ward's preferences and belief system in making
411 end of life decisions on behalf of the ward.

412

413 **(K) Caseload**

414

415 A guardian shall appropriately manage the guardian's caseload to ensure the guardian is
416 adequately supporting and providing for the best interest of the wards in the guardian's
417 care.

418

419 **(L) Duty of confidentiality**

420

421 A guardian shall keep the ward's personal and financial information confidential, except
422 when disclosure is in the best interest of the ward.