



THE SUPREME COURT *of* OHIO

---

# PROBATE BENCH CARDS

---





# THE SUPREME COURT *of* OHIO

## PROBATE BENCH CARDS



**MAUREEN O'CONNOR**

CHIEF JUSTICE

**SHARON L. KENNEDY**

**PATRICK F. FISCHER**

**R. PATRICK DEWINE**

**MICHAEL P. DONNELLY**

**MELODY J. STEWART**

**JENNIFER BRUNNER**

JUSTICES

**JEFFREY C. HAGLER**

ADMINISTRATIVE DIRECTOR

**STEPHANIE E. HESS**

DEPUTY ADMINISTRATIVE DIRECTOR

# **OFFICE OF COURT SERVICES**

**STEPHANIE GRAUBNER NELSON**

DIRECTOR OF COURT SERVICES

**DAVID EDELBLUTE**

MANAGER, CHILDREN & FAMILIES SECTION

**KYANA PIERSON**

POLICY COUNSEL

**ANNE MURRAY**

POLICY COUNSEL

**DEBRA COPELAND**

COURT IMPROVEMENT PROGRAM ANALYST

**RENEE BELLAMY**

PROGRAM ASSISTANT

# INTRODUCTION

## PROBATE BENCH CARDS

Ohio's probate bench cards were developed to support judicial officers in their duty to provide comprehensive and timely judicial action in probate cases.

The Honorable Kathleen L. Giesler, president of the Ohio Association of Probate Judges, initiated this project on behalf of the judges in Ohio, and in particular those judges with both probate and juvenile jurisdictions. The probate bench cards were a collaborative between the Ohio Association of Probate Judges and the Supreme Court of Ohio.

The court wishes to extend special recognition and tremendous gratitude to: David M. Farmer, chief magistrate, Montgomery County Probate Court; Bill Fisher, chief deputy clerk (retired), Licking County Probate Court; Honorable Kathleen L. Giesler, Ottawa County Probate and Juvenile Court; John R. Homolak, court administrator/magistrate, Cuyahoga County Probate Court; Samuel A. Peppers III, partner, Dinsmore & Shohl LLP; Paul D. Rattermann, chief magistrate/administrator, Hamilton County Probate Court; Tricia Rosengarten, chief deputy clerk, Shelby County Probate Court; and Roseanne Hilow, magistrate, Cuyahoga County Probate Court; Patricia Hider, magistrate, Butler County Probate Court; and Hon. Jan Long, Pickaway County Juvenile & Probate Court.

Any comments or questions about the probate bench cards should be directed to:

The Supreme Court of Ohio  
Families & the Courts Section  
65 South Front Street  
Columbus, Ohio 43215-3431  
614.387.9385



# TABLE OF CONTENTS

## DECEDENT'S ESTATE

Probate of Will

Appointment of Fiduciary

Rights of Surviving Spouse

Inventory and Appraisal

Ancillary Administration

Claims Against Estate

Insolvent Estates

Land Sales – Decedent Estate and Guardianship

Accounts

Wrongful Death Claims

Summary Release from Administration

Release from Administration

## ADOPTION

Adoption

## GUARDIANSHIP

Guardianship

Emergency Guardianship

## CIVIL COMMITMENT

Civil Commitment in Criminal Cases

Civil Commitment of the Mentally Ill

Voluntary Admission

## MISCELLANEOUS

Adult Protective Services

Concealment of Assets

Minor Settlements

Name Change





# DECEDENT'S ESTATE

Probate of Will

Appointment of Fiduciary

Rights of Surviving Spouse

Inventory and Appraisal

Ancillary Administration

Claims Against Estate

Insolvent Estates

Land Sales – Decedent Estate and Guardianship

Accounts

Wrongful Death Claims

Summary Release from Administration

Release from Administration



## FILINGS

1. Original Will
2. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
3. SPF 2.0: Application to Probate Will
4. SPF 2.1: Waiver of Notice of Probate of Will
5. SPF 2.2: Notice of Probate of Will
6. SPF 2.3: Entry Admitting Will to Probate
7. SPF 2.4: Certificate of Service of Notice of Probate of Will

## VENUE [R.C. 2107.11]

1. Testator domiciled in Ohio at time of death
2. Testator not domiciled in Ohio at the time of death, but filed in Ohio county where real or personal property of testator is located, provided the will has not been admitted to probate in Ohio or another state.

## ADMISSION

1. If it appears from the face of the will or there is testimony that will was executed in compliance with Ohio law. [R.C. 2107.18]
2. Will declared valid during testator's lifetime. [R.C. 2107.084]
3. Will admitted by prior judgment. [R.C. 2107.18]
4. Interlocutory Order denying admission [R.C. 2107.181]

## NOTICE/SERVICE [R.C. 2107.19]

1. Notice of admission of will to be given within 2 weeks of admission of will by: [R.C. 2107.19(A)(4)]
  - a. Applicant for admission of will
  - b. Fiduciary for estate
  - c. Applicant for release from administration
  - d. An interested person
  - e. Attorney for any of the above
2. Notice of admission of will to be served upon all next of kin, legatees and devisees. Civ.R. 73(E) (SPF 2.2)

3. Notice may be waived. [R.C. 2107.19(A)(2)] (SPF 2.0 and 2.1)
4. Notice not required as to persons whose names or places of residence are unknown and cannot with reasonable diligence be ascertained. [R.C. 2107.19(B)]
5. Certificate of giving notice filed 2 months after appointment of fiduciary or if no fiduciary has been appointed 2 months after admission of will to probate unless the court grants an extension of time. [R.C. 2107.19(A)(4)] [Sup.R. 59]

## LOST, SPOILIATED, OR DESTROYED WILL

1. Standard of Proof: Clear and convincing evidence [R.C. 2107.26(A)]
2. Findings:
  - a. The will was executed as required by the jurisdiction in which it was executed. [R.C. 2107.26(A)(1)]
  - b. The contents of the will. [R.C. 2107.26(A)(2)]
  - c. No person opposing admission establishes by a preponderance of the evidence that will was revoked. [R.C. 2107.26(B)]
3. Notice (by certified mail) upon:
  - a. Surviving spouse
  - b. All next of kin
  - c. All legatees and devisees
  - d. All legatees and devisees in most recent will prior to lost, spoliated, or destroyed will.

## OTHER CONSIDERATIONS

1. Treatment of Will Not Properly Executed [R.C. 2107.24]
2. Oral Wills [R.C. 2107.60]
3. Probate of Later Wills [R.C. 2107.22]
4. Recording of Wills [(R.C. 2107.21)]
5. Search Wills on Deposit [Sup.R. 59]



## FILINGS

1. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
2. SPF 4.0: Application For Authority
3. SPF 4.1: Supplemental Application for Ancillary Administration
4. SPF 4.2: Fiduciary Bond
5. SPF 4.3: Waiver of Right to Administer
6. SPF 4.4: Notice and Citation of Hearing
7. SPF 4.5: Entry Appointing Fiduciary
8. SPF 4.8: Fiduciary Acceptance [R.C. 2109.02]

## TYPES OF FIDUCIARIES

1. Intestate:
  - a. Administrator [R.C. 2113.06]
  - b. Special Administrator [R.C. 2113.15 - 17]
  - c. Administrator De Bonis Non [R.C. 2109.26]
  - d. Ancillary Administrator. [Chapter 2129]
2. Testate:
  - a. Executor [R.C. 2113.05]
  - b. Ancillary Executor [Chapter 2129]
  - c. Administrator With Will Annexed. [R.C. 2113.12]

## VENUE

1. County of residence if death intestate [R.C. 2113.01]
2. County of domicile if testate [R.C. 2107.11]

## NOTICE [R.C. 2113.07]

1. Notice and citation of hearing to be served upon all persons who have priority to administer the estate. [Civ.R. 73], Form 4.4
2. Minors who would have been entitled to administer estate, but for their minority must be served with notice unless notice is waived. [Civ.R. 4.2]

3. If a minor was nominated as executor another fiduciary may administer the estate until the minor reaches the age of majority at which time the former minor may be appointed. [R.C. 2113.13]

## PRIORITY OF APPOINTMENT

1. Intestate [R.C. 2113.06]
  - a. Surviving spouse who resides in Ohio.
  - b. Next of kin who resides in Ohio.
  - c. Other suitable person who resides in Ohio.
  - d. Priority may be waived.
  - e. See SPF 4.3 - Priority may be lost by neglect in filing. [R.C. 2113.06]
2. Testate [R.C. 2113.05]
  - a. Person nominated in will.
  - b. If no nominated executor is able or willing to serve to a legatee or devisee named in the will who would have been entitled to administer estate if the decedent had died intestate.
  - c. If none of above, to some other suitable person.

## RESIDENCY REQUIREMENT

1. Intestate – resident of Ohio. [R.C. 2109.21(A)]
2. Testate – resident of Ohio, or non resident if related to decedent by affinity or consanguinity, or a person who resides in a state that authorizes the appointment of a nonresident. [R.C. 2109.21(B)(1)]

## FIDUCIARY BOND

1. Required under R.C. 2109.04 unless:
  - a. Surviving spouse who is entitled to entire net proceeds. [R.C. 2109.07]
  - b. Administrator is sole next of kin and entitled to net estate. [R.C. 2109.07]

- c. Bond waived by will. [R.C. 2109.04]
  - d. Bond not waived in will, but executor is the next-of-kin entitled to entire net proceeds. [R.C. 2109.09]
  - e. Fiduciary is sole residuary legatee or distributee. [R.C. 2109.04]
  - f. Bond may be set by court if R.C. 2109.07 and 2109.09 do not apply.
- 2. Amount of bond shall be no less than double the probable value of personal property and annual real estate rental income [R.C. 2109.04]
  - 3. Deposit in lieu of bond. [R.C. 2109.13]

### **ENTRY** (SPF 4.5)

The applicant must be found to:

- 1. Meet residence, priority, and bonding requirements.
- 2. Be suitable, competent, and accepts appointment. [R.C. 2113.05 and R.C. 2113.06]

- 3. An administrator shall give written notice of appointment to all next-of-kin who were not served with notice of appointment or waived notice. [Sup.R. 60(B)]

### **SPECIAL ADMINISTRATOR** [R.C. 2113.15]

- 1. Ex parte appointment if there is a delay in granting letters of authority.
- 2. Special administrator to collect and preserve assets of the decedent's estate until executor or administrator appointed.
- 3. Creditor claims may be presented to the special administrator. [R.C. 2113.17]
- 4. Bond requirements for special administrator [R.C. 2109.08]
- 5. Special administrator must account for assets coming into his or her hands [R.C. 2113.16]

# RIGHTS OF SURVIVING SPOUSE

## FILINGS

1. SPF 7.1: Application for Family Allowance
2. SPF 7.2: Application for Apportionment of Family Allowance
3. SPF 8.0: Citation to Surviving Spouse to Exercise Elective Rights
4. SPF 8.1: Election of Surviving Spouse to Take Under Will
5. SPF 8.2: Election of Surviving Spouse to Take Against Will
6. SPF 8.3: Summary of General Rights of Surviving Spouse
7. SPF 8.4: Certificate of Service and Notice of Citation to Surviving Spouse to Exercise Elective Rights
8. SPF 8.5: Return for Certificate of Service of Citation to Surviving Spouse to Exercise Elective Rights
9. SPF 8.6: Waiver of Service to Surviving Spouse of the Citation to Elect

## SERVICE

1. Citation to surviving spouse served after the appointment of fiduciary, both testate and intestate, by the court. [R.C. 2106.01(A)]; [Civ.R. 73]
2. Service of Citation may be waived. [R.C. 2106.01(A)]

## TIME FRAMES [R.C. 2106.01(E)]

1. The surviving spouse must exercise all rights within five months of the appointment of fiduciary, unless otherwise provided by statute. [R.C. 2106.25]
2. The time period may be extended upon motion and good cause shown.

## ELECTIONS

1. To take under the will (or taking no action). (SPF 8.1)
2. To take against the will. (SPF 8.2) [R.C. 2106.06]



Definition of net estate or acceleration of remainder interest under R.C. 2106.01 (D). Further, if spouse is under a legal disability, [R.C. 2131.02] the court must make an election after appointing some suitable person to ascertain the value of the provision made for the surviving spouse by the testator as against the value of the rights of the surviving spouse in the estate of the testator. [R.C. 2106.08]

## PROCEDURE (to take under R.C. 2105.06) [R.C. 2106.06]

1. Hearing scheduled, upon request.
2. Election must be made in person before a judge or magistrate.
3. Judicial officer shall explain the will, the rights under the will, and the rights of the spouse in the event of refusal to take under the will.

## RIGHTS [under R.C. 2106.06]

1. To receive one-half of the net estate or one-third of net estate, if two or more of the decedent's children or their lineal descendants survive. [R.C. 2106.01(C)]
2. To receive the mansion house or remain rent free for one year. If the property is sold before the year runs, then the spouse shall be paid fair rental value. [R.C. 2106.10 and 2106.15]
  - a. Election must be made at or before the filing of the final account. [R.C. 2106.10(B)]
  - b. The mansion house includes decedent's title to the land and may include household goods and certain farmland. [R.C. 2106.10(F)]
3. To receive an allowance for support of up to \$40,000. [R.C. 2106.13(A)]
  - a. Allowance may be apportioned between surviving spouse and minor children not born of the decedent or between decedents' minor children if no surviving spouse. [R.C. 2106.13(A)] SPF 7.2 is filed within 5 months of appointment. [R.C. 2106.13(D)]

- b. If surviving spouse selects more than one automobile pursuant to R.C. 2106.18, the allowance is reduced by the value of the automobile having the lower value. [R.C. 2106.13 and R.C. 2106.18]
- 4. To purchase property at appraised values [R.C. 2106.16]
  - a. May purchase the decedent's interest in the mansion house and land where house is located, adjacent farmland, and household goods. [R.C. 2106.16(A)]
    - i. A complaint ("petition") must be filed to purchase real property, and a motion ("application") must be filed to purchase personal property. [R.C. 2106.16(B)]
  - b. May purchase the decedent's interest in other probate property that does not exceed one-third of the gross value of the appraised estate. [R.C. 2106.16(B)]
- 5. To receive automobiles, unless specifically bequeathed otherwise in the will [R.C. 2106.18]
  - a. That shall not exceed \$65,000
  - b. "Automobile" includes a motorcycle and a truck, if the truck is used as a method of conveyance by the deceased spouse or family.
- 6. To receive one watercraft and one outboard motor. [R.C. 2106.19]
- 7. To be reimbursed from estate for payment of decedent's funeral and burial expenses, subject to creditor's rights. [R.C. 2106.20]
- 8. To set aside Antenuptial or Separation Agreement [R.C. 2106.22]
  - a. Action to set aside or to declare validity of the agreement must be filed within 4 months of the fiduciary's appointment.



## FILINGS

1. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
2. SPF 3.0: Appointment of Appraiser and Entry
3. SPF 6.0: Inventory and Appraisal
4. SPF 6.1: Schedule of Assets
5. SPF 6.2: Waiver of Notice of Hearing on Inventory
6. SPF 6.3: Notice of Hearing on Inventory

## TIME FRAME

Three months from appointment of fiduciary.  
[R.C. 2115.02]

## PROBATE ASSETS

1. Real property in Ohio requires the full legal description for real property and is valued on the date of death. [R.C. 2115.02]
2. Tangible and intangible personal property that is to be administered that comes into the possession or knowledge of the fiduciary.  
[R.C. 2115.02 and 2115.09]

## APPRAISER

1. Suitable disinterested appraiser may be appointed to assist the fiduciary to value property that does not have a readily ascertainable value. [R.C. 2115.02] (SPF 3.0)  
[Sup. R. 61(B)]
  - a. Exception: County Auditor's value may be used for real property. [R.C. 2115.06]
2. Appraiser may be compensated in an amount that is approved by the fiduciary and the Court. [R.C. 2115.06]; [Sup.R. 61(A)]

## NOTICE

1. Taking of Inventory:
  - a. Not less than 5 days prior notice of the taking of the Inventory must be served on the surviving spouse. [R.C. 2115.04]

- b. Proof of service of notice to be filed with Inventory.
- c. Notice may be waived. (SPF 6.0)

## HEARING

1. Inventory shall be set for hearing for approval. [R.C. 2115.16]
2. Notice of hearing may be served on any person interested in the estate. (SPF 6.3)  
The probate court may order notice of hearing on its own or on the motion of an interested party. Notice may be waived. (SPF 6.2)
3. Exceptions:
  - a. To the approval of the Inventory may be filed within five days of the hearing. Exceptions must be served upon the fiduciary and counsel.
  - b. Will be set for hearing and may be set for a pre-trial hearing under Sup.R. 78(E).

## ENTRY

The probate court shall enter its order to approve the Inventory. [R.C. 2115.16]



The appraisal of real property on an approved Inventory is conclusive for all purposes. The probate court may order real property reappraised. [R.C. 2115.17]

## FIDUCIARY BOND

Court may determine if the fiduciary bond is sufficient upon the filing of an Inventory and may require additional bond. [R.C. 2109.06]

## **FAILURE TO FILE OR APPEAR** [R.C. 2115.03 and 2109.24]

Citation:

1. File or appear
2. If fails to file:
  - a. Removal
  - b. Denial of fiduciary and attorney fees
  - c. Extension to file
  - d. \$100 assessment and \$25.00 court costs
  - e. Contempt of court

## **NEWLY DISCOVERED ASSETS**

A report of assets discovered after the Inventory may be filed. [R.C. 2113.69]

## ANCILLARY ADMINISTRATION FILINGS

1. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
2. SPF 4.0: Application for Authority
3. SPF 4.1: Supplemental Application for Ancillary Administration
4. SPF 4.2: Fiduciary Bond
5. SPF 4.3: Waiver of Right to Administer
6. SPF 4.4: Notice of Citation of Hearing
7. SPF 4.5: Entry Appointing Fiduciary; Letters of Authority
8. Acceptance [R.C. 2109.02]

## VENUE [R.C. 2129.04]

1. Ohio county where nonresident decedent leaves property, or
2. Where a debtor of the decedent lives.

## APPOINTMENT

1. Ancillary executor if named in will [R.C. 2129.08]
2. Ancillary administrator if resident of county [R.C. 2129.08]
3. Residency requirements may apply under R.C. 2109.21.
4. Fiduciary bond requirements may apply under R.C. 2109.04.
5. Upon appointment of ancillary administration, the procedure is the same as the administration of estate of resident decedent, unless noted differently by statute. [R.C. 2129.10]

## FOREIGN RECORDS

1. Authenticated copies of a will and administration admitted of any other county, state or territory, may be admitted in the probate court where property is situated.

2. Probate of foreign will [R.C. 2129.07]
  - a. extracounty or extrastate administration [R.C. 2129.01]
  - b. any state or territory of the United States [R.C. 2129.05]
  - c. country other than the United States or territories of the United States may set forth in R.C. 2129.07 to R.C. 2129.30. [R.C. 2129.06]

## DUTIES OF ANCILLARY FIDUCIARY

1. Address claims [R.C. 2129.02]
2. Sell real and personal property [R.C. 2129.13]
3. Provide to domiciliary administrator, within five months of appointment, a certificate showing assets and liabilities
  - a. If administrator is unknown, then to the next of kin and court having jurisdiction of non-resident estate [R.C. 2129.15]
4. Distribute upon court approval personal property and proceeds of real estate sold by court order:
  - a. domiciliary administrator; or
  - b. persons entitled to receive [R.C. 2129.23]

## OTHER CONSIDERATIONS

1. Request for sale by foreign executor [R.C. 2129.25]
2. Sale by domicile fiduciary [R.C. 2129.14]
3. Trusts created by foreign wills [R.C. 2129.27]
4. Appointment by trustee under foreign will [R.C. 2129.30]
5. Transcript to be filed [R.C. 2129.17]
6. Determination of heirship [R.C. 2129.18]



## FILINGS

1. SPF 7.0: Notice to Administrator of Medicaid Estate Recovery Program
2. SPF 7.0(A): Certificate of Notice to Administrator of Medicaid Estate Recovery Program
3. SPF 24.0: Representation of Insolvency
4. SPF 24.1: Judgment Entry Setting Hearing and Ordering Notice
5. SPF 24.2: Notice of Hearing on Representation of Insolvency and Schedule of Claims
6. SPF 24.3: Verification of Service Notice of Hearing upon Representation of Insolvency and Schedule of Claims
7. SPF 24.4: Insolvency Schedule of Claims
8. SPF 24.6: Judgment Entry of Insolvency

## PRESENTMENT [R.C. 2117.06]

1. To the fiduciary after appointment and before filing of the final account [R.C. 2117.06 (A) (1)]. A copy may be filed with the probate court. [2117.06(A)(1)(b)]
2. Most claims are subject to presentment within six months of decedent's death [R.C. 2117.06 (B)]
3. Medicaid Estate Recovery claims are due to be presented within ninety days of service of SPF 7.0 or one year after decedent's death, whichever is later. SPF 7.0(A) is to be filed with the court to verify service of notice on the administrator of the Medicaid Estate Recovery Program [R.C. 2117.061]
4. The probate court may not close the administration of an estate until claims filed with the court are resolved. [R.C. 2117.06 (I)]

## ALLOWANCE/REJECTION [R.C.2117.06 (D) and 2117.11]

1. Fiduciary may require authentication of claim. [R.C. 2117.08]
2. Fiduciary may reject a claim in whole or in part with notice to creditor pursuant to Civ.R. 73. Notice by mail effective upon delivery of mail.

- a. If a claim has been filed with the court the fiduciary shall file a copy of a rejection of the claim with the court. [Sup.R 62 (A)]
3. An heir may file to request that the fiduciary be required to reject a creditor's claim. A bond may be required. Upon posting of the required bond, the fiduciary shall reject the claim. [R.C. 2117.13]
  4. The creditor has two months from the rejection of a claim to file suit or the claim is barred. [R.C. 2117.12]

## COMPROMISE [R.C. 2117.05]

Court may approve the compromise and settlement of a claim after hearing and notice to persons who would be adversely affected.

## FIDUCIARY [R.C. 2117.01 and 2117.02]

1. Fiduciary must file claim with the court within three months of appointment.
2. Hearing required for claim of \$500.00 or more. Fiduciary is to serve notice of hearing, 20 days prior to hearing, on all heirs and creditors ordered by the court.
3. An appeal may be filed of any final order or judgment. [R.C. 2117.04]

## INSOLVENT ESTATE [R.C. 2117.15, 2117.17, and 2117.25]

1. Fiduciary may file representation of insolvency if it appears the estate is insolvent. [R.C. 2117.15] (SPF 24.0)
2. The court after notice and hearing that the estate is insolvent and approve the actions of the fiduciary to accept and reject and to assign a priority of the payment. [R.C. 2117.17] See SPF 24.0, SPF 24.1, SPF 24.2, SPF 24.3, SPF 24.4, SPF 24.5 and SPF 24.6.
3. Priority for payment of claims is set forth in [R.C. 2117.25].

## OTHER CONSIDERATIONS

1. Contingent Claims [R.C. 2117.37]
2. Claims Against Co-Debtors [R.C. 2117.42]



## FILINGS

1. SPF 24.0: Representation of Insolvency
2. SPF 24.1: Judgment Entry Setting Hearing and Ordering Notice
3. SPF 24.2: Notice of Hearing on Representation of Insolvency and Schedule of Claims (attached to SPF 24.3 Verification of Service)
4. SPF 24.3: Verification of Service of Notice of Hearing on Representation of Insolvency and Schedule of Claims
5. SPF 24.4: Insolvency Schedule of Claims
6. SPF 24.6: Judgment Entry of Insolvency

## JURISDICTION & VENUE

An executor or administrator may report to the court that the estate is insolvent and apply for any order that the executor or administrator considers necessary because of the insolvency. [R.C. 2117.15] The insolvency matter is heard in the decedent's estate.

## TIME FRAME

A Representation of Insolvency can be filed during the administration of the estate only after the Inventory and Schedule of Assets has been approved by the court (SPF 6.0). Additionally, the time for filing claims against the estate also must have passed. [R.C. 2117.06 & .061]

## NOTICE/SERVICE

1. Notice of the hearing should be served upon the surviving spouse, all persons having an interest in the estate as devisees, legatees, heirs, and distributes, all creditors and claimants whose claims have been rejected. [R.C. 2117.17(A)(1) - (2)] Notice must be perfected at least 10 days before the hearing is held. [R.C. 2117.17(A)]

2. SPF Form 24.2 Notice of Hearing on Representation of Insolvency and Schedule of Claims should be used to send notice. The notices should be attached to the Verification of Service (SPF 24.3) with proof of service (e.g., certified mail return receipt cards).
3. Notice may be waived. [R.C. 2117.17(A)]



There is no SPF for waiving notice of an insolvency hearing.

4. Notice must be served personally or by certified mail. [R.C. 2117.17(B)]

## HEARING

1. The Court must determine whether the executor or administrator acted properly in allowing and classifying each claim and make an order confirming or denying those actions. [R.C. 2117.17 (C)]; [SPF 24.6]



The classification of claims is determined by R.C. 2117.25. The classification of a particular claim will determine the priority in which it is to be paid under that statute.

2. The court must consider and rule upon any exceptions filed prior to the hearing by any interested person as to the allowance or classification of any specific claim. [R.C. 2117.17(B)]; [SPF 24.6]
3. The court must determine whether the claims against the estate exceed the amount of assets of the estate in order to determine whether the estate is insolvent. If the estate is determined to be insolvent, the court must order the fiduciary to pay the claims with available assets in the order of classes of claims dictated by R.C. 2117.25.

**NOTE**

All allowed claims in a particular class as set forth in [R.C. 2117.25](#) are to be paid in full before allowed claims in a succeeding class can be paid. When there are insufficient assets to pay all claims in a particular class in full, the claims in that class are to be paid on a prorated basis. The following formula can be used to determine the prorated amount to be paid:

$$\frac{\text{Amount Remaining to Pay Class}}{\text{Total Amount Owed that Class}} = \text{Prorata Rate at which Each Debt in the Class Is Paid}$$

4. The court must determine claims below a designated class will not be paid, as there are no funds available to pay the claims.
5. The court must order either the executor or administrator to file a final account or a certificate of termination (if applicable) after the claims are paid. SPF 24.6 includes language that 30 days should be given to file the account; however, more time could be allowed in the court's discretion.

**NOTE**

Reference Notice of Hearing on Account under [R.C. 2109.33](#).



## **VENUE** [R.C. 2127.09]

1. County in which the executor, administrator, or guardian was appointed.
2. County where real estate located.

## **DECEDENT ESTATE COMPLAINT** [R.C. 2127.10]

1. Basis for Sale: [R.C. 2127.02 to 2127.04]
  - a. To pay debts [R.C. 2127.02]
  - b. To pay legacies [R.C. 2127.03]
  - c. Other circumstances [R.C. 2127.04]
2. Necessary Parties: [R.C. 2127.12]
  - a. Surviving spouse
  - b. All persons entitled to inherit
  - c. Mortgage and lienholders
  - d. All persons holding title
  - e. All other persons who have interest

## **GUARDIANSHIP COMPLAINT** [R.C. 2127.10]

1. Basis for Sale: [R.C. 2127.05]
  - a. Education of the ward
  - b. Support of the ward
  - c. Payment of debts
  - d. Discharge liens
  - e. Avoid waste
  - f. Better investment
  - g. Benefit the ward
  - h. Lay out in town lots [R.C. 2127.21]
2. Necessary Parties: [R.C. 2127.13]
  - a. The ward
  - b. The ward's spouse
  - c. The ward's next of kin residing in Ohio
  - d. All lienholders
  - e. All other persons who have interest

## **BOTH COMPLAINTS** [R.C. 2127.10]

1. Legal description
2. Statement of value



- Request to hire and pay realtor and/or auctioneer. [R.C. 2127.28]
- Serve the county treasurer.

## **REAL PROPERTY SUBJECT TO SALE**

1. Legal or equitable interests in real property including mineral rights. [R.C. 2127.07]
2. Undivided fractional or entire interest may be sold. [R.C. 2127.08]

## **SERVICE** [R.C. 2127.14]

1. Defendants must be served with summons and complaint per Civ.R. 4.
2. Competent persons may waive service and consent to the sale. If all parties consent to the sale, an order of sale may be issued.

## **GUARDIAN AD LITEM**

Upon motion, the court will appoint a Guardian ad litem to represent the interest of the minor or incompetent and to file an answer. [R.C. 2111.23]; [Civ.R. 17(B)]

## EVIDENCE OF TITLE

Evidence of title, to a date subsequent to the filing of the complaint, is required to be filed prior to the issuance of an order of sale, subject to local rules.

[Sup.R. 65(A)]

## ENTRY FINDING SALE NECESSARY

1. Court may grant the relief if all necessary parties are properly before the court. [R.C. 2127.18]
2. Court may determine equities among parties and priorities of liens. [R.C. 2127.18]
3. Order should find and include the following:
  - a. All parties properly before the court.
  - b. Allegation in Complaint is true.
  - c. Proper basis to bring land sale action under Chapter 2127. [R.C. 2127.02 to 2127.05]
  - d. Requirement of title evidence has been met. [Sup.R. 65(A)]
  - e. Appraisement of property or is appraisement dispensed with. [R.C. 2127.22]
  - f. Need for additional bond. [R.C. 2127.27]
  - g. Approval of realty commissions.
  - h. Order of sale to be issued or deferred for appraisement. [R.C. 2127.29]

## APPRAISEMENT [R.C. 2127.22]

1. If real property was appraised in the Inventory of the fiduciary the court may approve the use of the appraised value for the real property set forth in the Inventory.
2. The court may order an appraisement if the real property was not appraised in the Inventory or if the court determines that a new appraisal should be ordered. Oath of Appraiser is required. [R.C. 2127.23] The court shall set the compensation for the appraiser. [R.C. 2127.25]

3. Upon the return and approval of the appraisement the appraised value shall be the appraised value of the real property.

## ADDITIONAL BOND [R.C. 2127.27]

Upon approval of the appraisement the court shall require the executor, administrator, or guardian to post additional bond, unless testator has waived.

## ORDER OF SALE [R.C. 2127.29]

1. The court will issue an order of public or private sale that sets forth terms of sale. [R.C. 2127.34]
2. A private sale order requires the real property to be sold for the appraised value. [R.C. 2127.33] Order of private sale shall be returned and if returned unsold the court may order the real property sold at public sale [R.C. 2127.32] or the court may fix the price for sale or order the real property reappraised. [R.C. 2127.33]
3. The real property may be sold at public sale for not less than two-thirds of the appraised value if improved or for not less than one-half of appraised value if property is not improved. [R.C. 2127.33] Real property sold at public sale must be sold at a fixed place, day, and hour ordered by the court. Notice of the time and place of sale shall be advertised at least three successive weeks in a newspaper of general circulation in the county where the real property is situated. [R.C. 2127.32]
4. Sup.R. 65(B) requires the Plaintiff to give notice of the place and time of sale to all defendants at least three week prior to the sale. The Plaintiff is required to file a certificate of service with the court prior to the sale.

## CONFIRMATION OF SALE [R.C. 2127.35]

1. Upon return of the order of sale, and upon motion, the court may confirm the sale if the court finds that the sale in all respects has been legally made.
2. The order to confirm the sale will authorize the Plaintiff to issue a fiduciary deed, and may order distribution of sale proceeds and release of liens under [R.C. 2127.19](#) and [R.C. 2127.38](#).
3. The entry confirming sale shall include the gross amount of the sale proceeds and include a copy of the proposed closing statement itemizing all proposed disbursements. [\[Sup.R. 65\(C\)\]](#)
4. Property may be sold subject to a mortgage with consent of the mortgagee. [\[R.C. 2127.20\]](#) Sale is free of dower. Payment for dower interest shall be ordered unless waived. [\[R.C. 2127.16\]](#)
5. Costs of certificate of title or policy of title insurance may be allowed by the court. [\[R.C. 2127.28\]](#) Real estate commissions may be allowed after notice to all parties in interest. [\[R.C. 2127.28\]](#) The executor, administrator, or guardian may be allowed fiduciary fees and reasonable attorney fees. [\[R.C. 2127.37 and 2127.38\]](#)

## OTHER CONSIDERATIONS

1. Summary Proceeding - market value of real property is less than \$3,000.00 [\[R.C. 2127.11\]](#)
2. Objection to Sale [\[R.C. 2127.31 and 2127.17\]](#); [\[Sup.R. 65\(D\)\]](#)



**FILINGS**

1. SPF 13.0: Fiduciary's Account
2. SPF 13.1: Receipts and Disbursements
3. SPF 13.2: Assets Remaining in Fiduciary's Hands
4. SPF 13.3: Entry Approving and Settling Account
5. SPF 13.4: Waiver of Partial Account
6. SPF 13.5: Notice of Hearing on Account
7. SPF 13.6: Certificate of Termination
8. SPF 13.7: Waiver of Notice of Hearing on Account
9. SPF 13.8: Application to Extend Administration
10. SPF 13.9: Certificate of Service of Account to Heirs or Beneficiaries
11. SPF 13.10: Notice to Extend Administration
12. Status Report [Sup.R. 78(C)]

**TYPES** [R.C. 2109.30]

1. Partial Accounting
  - a. Each partial accounting may be waived by written consent of all the legatees, devisees, or heirs, as long as none of them are under a disability, and filed in lieu of a partial accounting otherwise required. [R.C. 2109.301(A)]
  - b. Status report filed for estates that remain open after a period of 13 months from appointment of fiduciary and annually thereafter. [Sup.R. 78(C)]
  - c. Supplemental [R.C. 2109.32(B)(4)]
2. Final Accounting
  - a. Final Distributive
  - b. Final Non-Distributive
3. Certificate of Termination – fiduciary is sole legatee, devisee and heir [R.C. 2109.301(B)(2)] (SPF 13.6)

**NOTE**

No partial accountings required.

**TIME FRAMES** [R.C. 2109.301]

1. Final Accounting
  - a. Six (6) months after appointment of fiduciary, [R.C. 2109.301(B)(1)] exceptions:
    - i. An Ohio estate tax return must be filed. [R.C. 2109.301(B)(1)(a)]
    - ii. A proceeding contesting the validity of the decedent's will pursuant to R.C. 2107.71 has been commenced. [R.C. 2109.301(B)(1)(b)]
    - iii. The surviving spouse has filed an election to take against the will. [RC 3109.301(B)(1)(c)]
    - iv. The administrator or executor is a party in a civil action. [R.C. 2109.301(B)(1)(d)]
    - v. The estate is insolvent. [R.C. 2109.301(B)(1)(e)]
    - vi. For other reasons set forth by the administrator or executor, subject to court approval, it would be detrimental to the estate and its beneficiaries or heirs to file a final and distributive account. [R.C. 2109.301(B)(1)(f)]
2. Partial Accounting [R.C. 2109.301(B)(4)]
  - a. After initial account is rendered or waiver of partial account filed, adm./exec. at least once each year shall render further accounts or file waivers of partial account until estate is closed unless certificate of termination is filed.

**SERVICE/HEARING/NOTICE**

1. Service of Account [R.C. 2109.32(B)]
  - a. Copy of account provided by Adm./Exec. to each heir in intestate estate or each beneficiary of testate estate, except:

- i. Heir or beneficiary with unknown residence
    - ii. Beneficiary of specific bequest or devise who has received distribution and receipt has been filed or exhibited with Court.
  - b. Certificate of Service of Account shall be filed with Court prior to or simultaneously with filing of account.
2. Hearing [R.C. 2109.32(A)]
- a. Every account shall be set for hearing
  - b. Hearing not sooner than 30 days after filing of account
3. Service of Notice of Hearing [R.C. 2109.33]
- a. Fiduciary serves notice of hearing on account pursuant to Rules of Civil Procedure upon any person interested in estate, including creditors as court may direct.
    - i. Court, by local rule, may require notice of hearing on a **final** account be given to all heirs in intestate estate and to all residuary beneficiaries in a testate estate.
  - b. Notice of hearing shall be served at least 15 days prior to hearing on account or may be waived by any competent person.
  - c. Written exceptions filed 5 days prior to hearing.

#### **FAILURE TO FILE OR APPEAR** [R.C. 2109.31]

- 1. Failure to file:
  - a. Citation issued
    - i. Court may issue at own instance
    - ii. Court shall issue upon application of interested party

- 2. After citation, possible sanctions for the continued failure to file include:
  - a. Removal
  - b. Denial of all or part of fiduciary fees
  - c. Extension to file
  - d. \$100.00 assessment and \$25.00 court costs
  - e. Contempt of court
  - f. Sanctions may be imposed only upon a fiduciary and not upon surety of any fiduciary

#### **OTHER CONSIDERATIONS**

- 1. Motion to Vacate after Account approved. [R.C. 2109.35]
- 2. Court shall not close the estate until a claim is allowed or rejected. [R.C. 2117.06(l)]
- 3. Court shall not approve final account until:
  - a. 3 months have passed since the death of decedent [R.C. 2109.32(B)(3)(a)]
  - b. Surviving spouse has filed an election or time for making the election has expired. [R.C. 2109.32(B)(3)(b)]
- 4. If land has been sold, a copy of the closing statement has been attached. [Sup.R. 64(B)]
- 5. Final or distributive account shall not be approved until all court costs have been paid. [Sup.R. 64(E)]
- 6. Termination of surety bond for fiduciary upon approval of final and distributive account [R.C. 2109.32(A)]
- 7. If Certificate of Termination is filed, sole legatee/devisee/heir may be liable to creditors for claims presented after filing of Certificate of Termination and within time allowed by R.C. 2117.06 [R.C. 2109.301(B)(3)]

## FILINGS

1. SPF 14.0: Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims. A Statement of Facts and other supporting documents should be attached pursuant to [SupR. 70](#).
2. SPF 14.0 (*Bottom*) or Local Form: Entry Setting Hearing and Ordering Notice
3. SPF 14.1: Waiver and Consent Wrongful Death and Survival Claims
4. SPF 14.2: Entry Approving Settlement and Distribution of Wrongful Death and Survival Claims
5. SPF 14.3: Report of Distribution of Wrongful Death and Survival Claims
6. SPF 14.3 (*Bottom*) or Local Form: Entry Approving Report of Distribution

## JURISDICTION & VENUE

A personal representative appointed by a probate court may settle with a defendant in a wrongful death case with the consent of the court making the appointment. [\[R.C. 2125.02\(C\)\]](#)

### NOTE

The underlying civil action is not filed in the probate court. However, the approval of a settlement of the case is heard in the probate court which appointed the fiduciary.

## TIME FRAME

A civil action for wrongful death shall be commenced within two (2) years after the decedent's death, subject to certain statutory exceptions. [\[R.C. 2125.02\(D\)\]](#) There is no time frame for filing of an application to approve a wrongful death settlement. However, the existence of a wrongful death action is grounds to extend the administration of the decedent's estate beyond 6 months. [\[R.C. 2109.301\(B\)\(1\)\(d\)\]](#); (SPF 13.10)

## NOTICE/SERVICE

1. Notice of the hearing should be served upon those persons rebuttably presumed to have suffered damages as a result of the wrongful death, i.e. the surviving spouse, children and parents of the deceased. [\[R.C. 2125.02\(A\)\(1\)\]](#) Other "relatives" who suffered damages should also be given notice (e.g. siblings or grandparents). [\[R.C. 2125.02\(A\)\(1\)\]](#)

### NOTE

The persons listed as next of kin on SPF 1.0 are not necessarily the only persons to be served notice of an application to approve a wrongful death settlement.

2. Notice should be served pursuant to [Civ.R. 73\(E\)](#).
3. Notice may be waived. (SPF 14.1)

## HEARING

1. The court must consider whether to approve the proffered settlement. [\[R.C. 2125.02\(C\)\]](#); [\[Sup.R. 70\]](#) Compensatory damages on a wrongful death claim include loss of support, loss of services, loss of society, loss of inheritance and mental anguish. [\[R.C. 2125.02\(B\)\]](#)
2. The court must consider whether the claim is entirely for wrongful death (e.g. the decedent died instantly in a car crash) or for a survival claim (e.g. the decedent was injured but died from an unrelated illness) or a hybrid of both (e.g. decedent was injured and died as result of the injuries one month later). Payment on the wrongful death component is not included in the probate estate of the decedent. Payment on the survival claim component is part of the probate estate.



3. The court shall adjust the share of each beneficiary in an equitable manner, taking into consideration the injury and loss each beneficiary suffered due to the death as well as taking the age and condition of each beneficiary into account. [R.C. 2125.03(A)(1)] However, if all beneficiaries are adult, competent, and on the same plane of consanguinity, they may adjust the shares among themselves without court involvement. [R.C. 2125.03(A)(1)]
4. The burden of proof to approve the amount of the settlement is upon the personal representative. Each beneficiary of the wrongful death action has the burden to prove the injury and loss they suffered as a result of the wrongful death.
5. The standard of proof is by preponderance of the evidence.
6. The statute expressly allows for the award of funeral and burial expenses incurred as a result of the wrongful death. [R.C. 2125.02(A)(2)]. Outstanding medical bills and subrogation claims may be ordered paid from the settlement proceeds.

## MINORS

1. If the decedent was a minor, a parent who abandoned the minor can be ordered by the court not to recover any damages from the wrongful death action. The personal representative or other wrongful death beneficiary may file the motion. [R.C. 2125.02(A)(1) and (E)(1)]
2. If a minor is a beneficiary of the wrongful death action as defined in R.C. 2125.02(G)(4), a Guardian ad litem should be appointed to represent the interest of the minor in the proceedings if the personal representative is the minor's surviving parent or who otherwise has a conflict with the minor's interest.
3. The court may create a trust for any beneficiary of the wrongful death action who is under 25 years of age. [R.C. 2125.03(A)(2)] The trustee of such a trust shall be approved by each adult beneficiary and by the guardian of each minor beneficiary before being appointed. [R.C. 2125.03 (A)(2)]

## OTHER CONSIDERATIONS

Removal of Executor or Administrator [R.C. 2113.18(B)]



## FILINGS

1. Receipt, contract, or written declaration to verify payment or obligation to pay funeral and burial expenses.
2. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
3. SPF 5.10: Summary Release From Administration
4. SPF 5.11: Entry Granting Summary Release From Administration
5. SPF 12.0: Application for Certificate of Transfer
6. SPF 12.1: Certificate of Transfer



Death Certificate and/or Obituary

## APPLICANT [R.C. 2113.031]

### Surviving Spouse:

1. The value of the probate assets does not exceed \$40,000.00 for the allowance for support under [R.C. 2106.13\(B\)](#) (SPF 5.10) and an amount not to exceed \$5,000.00 for funeral and burial expenses; and
2. The surviving spouse is entitled to receive the entire allowance for support and has paid or is obligated in writing to pay the decedent's funeral and burial expenses not to exceed \$5,000.00 or the funeral and burial expenses have been prepaid.

### Other Persons:

1. The value of probate assets does not exceed the lesser of \$5,000.00 or the funeral and burial expenses.
2. The applicant paid or is obligated in writing to pay the funeral and burial expenses.

## APPLICATION (SPF 5.10)

1. Must describe all known assets and be signed and acknowledged in the presence of a notary or the deputy clerk of probate court.



Check records of the county recorder's and/or auditor's office.

## ENTRY (SPF 5.11)

1. Probate Court shall order a summary release from administration if:
  - a. The applicant satisfies statutory requirements of [R.C. 2113.031](#)
  - b. There are no pending proceedings to administer the decedent's estate or to relieve the decedent's estate from administration under [R.C. 2113.03](#), and
  - c. The SPF 5.10 filed by the applicant lists all known assets of the decedent.

## CERTIFICATE OF TRANSFER (SPF 12.0 and 12.1)

1. The surviving spouse may elect to receive the mansion house under [R.C. 2106.10](#) in a summary release.
2. The applicant shall file an Application for Certificate of Transfer (SPF 12.0) if an interest in real property is listed on SPF 5.10.
3. The probate court is required to issue a Certificate of Transfer (SPF 12.1) within five days of the filing of the Application for Certificate of Transfer (SPF 12.0) under [R.C. 2113.61\(C\)](#).



## FILINGS

1. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
2. SPF 2.0: Application To Probate Will
3. SPF 2.3: Entry Admitting Will to Probate
4. SPF 3.0: Appointment of Appraiser
5. SPF 5.0: Application to Relieve Estate from Administration
6. SPF 5.1: Assets and Liabilities of Estate to be Relieved from Administration
7. SPF 5.2: Waiver of Notice of Application to Relieve Estate from Administration
8. SPF 5.3: Notice of Application to Relieve Estate from Administration
9. SPF 5.4: Publication of Notice
10. SPF 5.6: Entry Relieving Estate from Administration
11. SPF 7.0: Certificate of Notice to Administrator of Medicaid Estate Recovery Program
12. SPF 7.0(A) Notice to Administrator of Medicaid Estate Recovery Program
13. SPF 7.2: Application for Apportionment of Family Allowance
14. SPF 11.0: Consent to Power to Sell Real Estate
15. SPF 12.0: Application for Certificate of Transfer
16. SPF 12.1: Certificate of Transfer

## APPLICANT [R.C. 2113.03]

### Surviving Spouse:

1. The value of the probate assets are \$100,000.00 or less for death on or after March 18, 1999 (SPF 5.0) and:
  - a. The surviving spouse is entitled to all assets of the estate by the terms of a valid will; or
  - b. The surviving spouse is entitled to receive all assets of the estate for the allowance for support under R.C. 2106.13(B) and/or

for inheritance under R.C. 2105.06, and the marriage was solemnized in a manner consistent with R.C. 3101.

### Other Persons:

1. The value of probate assets are \$35,000.00 or less for deaths on or after November 9, 1994 (SPF 5.0).

## APPLICATION (SPF 5.0)

1. Must state if the decedent died testate or intestate. If testate, pleadings to probate the will may be required. [R.C. 2113.03(F)]
2. Must state that the value of the probate assets meet the requirements for a release for the date of death as noted on SPF 5.0.
3. The probate court may order notice to be given to the surviving spouse and heirs at law, and order notice to all interested parties by publication. (SPF 5.2, 5.3, and 5.4)

## ASSETS (SPF 5.1)

1. The applicant is required to describe and to value the probate assets on SPF 5.1.
2. An approved appraiser may be used to value assets that do not have a readily ascertainable value, and be paid as provided for under R.C. 2115.06.
3. The applicant is required to list all known debts of the decedent on the SPF 5.1.
4. The applicant is required to serve SPF 7.0(A) on the Administrator of the Medicaid Estate Recovery Program and to file SPF 7.0 with the probate court if the decedent was age 55 or older or was a permanently institutionalized individual who was receiving Medicaid assistance. [R.C. 2117.061]
5. If the allowance for support must be apportioned under R.C. 2106.13 the applicant shall file SPF 7.2 and obtain an order for the probate court.

## **ENTRY** (SPF 5.6)

1. Probate Court shall order the estate relieved from administration if:
  - a. The assets meet the statutory requirements of [R.C. 2113.031](#); and
  - b. Required notice has been given.  
[\[R.C. 2113.03\(B\)\]](#)

## **CERTIFICATE OF TRANSFER** (SPF 12.0 and 12.1)

1. Surviving spouse may elect to receive the mansion house under [R.C. 2106.10\(D\)](#) in a release from administration.
2. The applicant shall file an Application for Certificate of Transfer (SPF 12.0) if an interest in real property is listed on SPF 5.1.  
[\[R.C. 2113.61\]](#)
3. The probate court is required to issue a Certificate of Transfer (SPF 12.1) within five days of the filing of the Application for Certificate of Transfer under [R.C. 2113.61\(C\)](#).

## **APPOINTMENT OF COMMISSIONER**

[\[R.C. 2113.03\(E\)\]](#)

1. The probate court may appoint a commissioner to receive the assets, to sell personal property assets, to pay the debts and expenses and to distribute the assets as authorized.
2. The commissioner may be authorized by the filing of consents to a power of sale of real property (SPF 11.0) under [R.C. 2127.011](#) or to sell the decedent's interest in real property.
3. The commissioner may be ordered to file a Commissioner's Report within 60 days of his or her appointment to verify that the commissioner has performed his or her duties. (SPF 5.6)

# ADOPTION

Adoption



**FILINGS**

1. Form 18.0: Petition for Adoption of Minor
2. Form 18.1: Judgment Entry Setting Hearing
3. Form 18.2: Notice of Hearing on Petition for Adoption
4. Form 18.3: Consent to Adoption
5. Form 18.4: Judgment Entry Finding Consent Not Required
6. Form 18.5: Interlocutory Order of Adoption
7. Form 18.6: Final Decree of Adoption (After Interlocutory Order)
8. Form 18.7: Final Decree of Adoption (Without Interlocutory Order)
9. Form 18.8: Adoption Certificate for Parents
10. Form 18.9: Petitioner's Account
11. Vital Statistics - Certificate of Adoption (HEA 2757)
12. Form 19.0: Petition for Adoption of Adult
13. Form 19.1: Final Order of Adult Adoption
14. Form 19.2: Petition to Recognize Foreign Adoption
15. Form 19.3: Order for Ohio Birth Record for Foreign Born Child

**WHO MAY BE ADOPTED** [R.C. 3107.02]

- A minor, or
- A non-objecting adult if:
  1. Totally or permanently disabled
  2. Intellectual disability (as defined in R.C. 5123.01)
  3. Established child-foster caregiver, kinship caregiver or child-stepparent relationship while a minor and consents
  4. On 18th birthday was in permanent custody or in Planned Permanent Living Arrangement of a children's services agency and consents or
  5. Adult is child of spouse of petitioner and consents
  6. Became 18 between filing of petition and court decision and consents in writing

**WHO MAY ADOPT** [R.C. 3107.03]

- Married couple
- Unmarried adult
- Unmarried minor parent of adoptee or
- Married adult without joining spouse if:
  1. stepparent adoption
  2. legally separated pursuant to R.C. 3103.06 or 3105.17
  3. spouse fails to join because of a prolonged, unexplained absence, unavailability, incapacity, or other reasonable circumstances.

**VENUE** [R.C. 3107.04]

- Petition for adoption filed in the county where:
  1. adoptee was born or resides
  2. petitioner resides
  3. parent of adoptee resides
  4. petitioner is stationed for military service or
  5. agency having permanent custody is located.

**PLACEMENT** [R.C. 5103.15 and 5103.16]

- Persons having custody of child may enter into written agreement with agency certified by Department of Job & Family Services to give custody of child to the agency or may place/receive child for adoption or intent to adopt if all of the following criteria are met:
  1. Parent[s] have applied to and appeared before probate court, where they reside or where person seeking to adopt resides, for approval of placement and signed/filed written statement they are aware of right to contest decree of adoption [R.C. 5103.16(D)(1)]
  2. Court ordered independent home study per R.C. 3107.031 and after completion, court determined placement in best interest of child [R.C. 5103.16(D)(2)]
  3. Court approved of record the proposed placement. [R.C. 5103.16(D)(3)]
  4. Suitability of placement of foreign children

for adoption determined by probate court; look to compliance with laws of the country in which the child resides and release in accordance with the “Immigration and Nationality Act” 8 U.S.C. 101 (b)(1)(F). [R.C. 5103.16(D)(3)]

*\*Does not apply to adoption by stepparent, grandparent, grandparent’s husband or wife, a legal custodian or a guardian.*

- Placement by Attorney
  - A. Preplacement/Post Placement Approval of Prospective Adoptive Parent(\*s)
    - 1. Filing of Pre or Post Placement Application
      - a. File Supplement to Preplacement Application and any other requested documents
  - B. Birth Parent requirements Prior to Placement Hearing [R.C. 5103.16]
    - 1. Birth parent(s) must meet with an Adoption Assessor
      - a. Assessor’s duties [R.C. 3107.082 and 3107.03]
    - 2. The court may want to assign counsel for minor parent(s) and parent(s) under guardianship
  - C. Placement Hearing requirements
    - 1. Birth parent must appear in the probate court county where a birth parent resides or where the prospective adoptive parent(s) reside [R.C. 3107.04]
    - 2. Determination of necessity of parental consent [R.C. 3107.06 and R.C. 3107.07]
    - 3. Execution of parental consent [R.C. 3107.08 and R.C. 3107.081]
    - 4. Preliminary check of the Putative Father Registry
    - 5. The court must:
      - a. Approve the birth parents’ application for placement
      - b. Find that birth parent(s) have consented to the adoption as proposed and understand her/his/their right to contest the adoption under R.C. 3107.16

- c. Find that the proposed placement is in the “best interest” of the child to be adopted [R.C. 3107.161]

#### D. Post Placement Orders and Filings

1. Hospital Release
2. Petition for adoption is filed [R.C. 3107.04 through R.C. 3107.051]

- Placement by Adoption Agency
  - A. Agency will prepare all documentation necessary for approval of adoptive parent(s)
  - B. Agency assessor will meet with biological parent(s) [R.C. 3107.082]
  - C. See previous section, Placement by Attorney (A), (B), and (C)
- Placement statute does not apply to relative/guardian's placement [R.C. 5103.16(E)(1)]

### INTERSTATE COMPACT [R.C. 5103.20]

Controls the Adoption of Children Born in One State to Be Adopted in Another

- Form 100A – signed by Compact Director from sending state and receiving state
- Form 100B – report on placement status/compact termination
- Forms can be found at Interstate Compact on the Placement of Children (ICPC) website: [http://glossary.adoption.com/interstate-compact-on-the-placement-of-children-\(icpc\).html](http://glossary.adoption.com/interstate-compact-on-the-placement-of-children-(icpc).html)

### PETITION FOR ADOPTION [R.C. 3107.05]

- Must contain:
  1. date and place of birth of adoptee
  2. name of adoptee, if known
  3. new name to be used
  4. date of placement and name of person placing minor
  5. petitioner’s full name, age, place and duration of residence
  6. petitioner’s marital status (date and place of marriage)



7. relationship of petitioner to adoptee, if any
  8. petitioner's resources
  9. account of property of adoptee;
  10. name and address, if known, of the person whose consent is required, but has not consented, and facts explaining lack of consent.
- Must also have certified copy of adoptee's birth certificate and ordinary copy of required consents.

### **CONSENT REQUIRED BY:** [R.C. 3107.06]

- Mother of the minor;
- Father, if:
  1. minor was conceived while mother and father were married
  2. minor was adopted by father or
  3. paternity was established in a court proceeding or acknowledged'
- Putative father of minor;
- Any person or agency having permanent custody or court order to consent;
- Minor if more than 12 years old, unless court determines consent is not required.

### **CONSENT NOT REQUIRED BY:** [R.C. 3107.07]

- Parent who has not communicated with the minor or provided support for 1 year
- Putative father who didn't timely register with the putative father registry, is not the father, willfully abandoned or didn't support child, or willfully abandoned the mother during pregnancy
- Parent whose right to consent was relinquished or terminated
- Legal guardian who failed to respond to request for consent within 30 days or who is withholding consent unreasonably
- The spouse of the adoptee if consent cannot be attained because of prolonged unexplained absence, unavailability, incapacity, or circumstances that make it impossible or

unreasonably difficult to obtain the consent or refusal of the spouse.

- Does not include all situations under R.C. 3107.07(F) speaks to consent of convicted rapist where adoptee conceived by rape and R.C. 3107.07(J) considers consent of the parent/guardian located in a foreign county.)

### **EXECUTION OF CONSENT** [R.C. 3107.08]

- Consent to adoption may be executed 72 hours after the birth of the minor by:
  1. person to be adopted, in the presence of the court
  2. parent of person to be adopted
  3. executive head or other authorized representative of an agency
  4. any other person, in the presence of the court or an authorized person or
  5. a juvenile court, by appropriate order.

### **WITHDRAWAL OF CONSENT** [R.C. 3107.084]

- Can be withdrawn prior to entry of interlocutory order or final order.
  - o Hearing to determine best interest of the child with notice to petitioner, person seeking withdrawal, and placing agency.
- Cannot be withdrawn after entry of interlocutory order or final order.

### **PRELIMINARY ESTIMATES AND FINAL ACCOUNTING** [R.C. 3107.055]

- Petitioners file preliminary estimate not later than the time adoption petition is filed.
- Itemized, attested final accounting of all disbursements made in connection with adoption, including charges of attorney/agency, filed no later than 10 days before final hearing; final decree not issued until at least 10 days after final accounting filed.
- Permissible disbursements found in R.C. 3107.055; court may reduce or prohibit.
- No accounting for stepparent adoptions.

## HEARING AND NOTICE [R.C. 3107.11]

- After petition, court sets hearing any time more than 30 days after placement.
- At least 20 days' notice of hearing given to:
  1. anyone whose consent is required but who has not consented
  2. person whose consent is dispensed with but who hasn't consented; and
  3. anyone having temporary or permanent custody of child.

## ASSESSMENT [R.C. 3107.12]

- Before court issues final decree or finalizes interlocutory order, assessor must conduct a prefinalization assessment of minor/petitioner; written report at least 20 days before final hearing (stepparent adoption assessment optional).
- Assessment includes:
  1. adjustment to placement
  2. needs of minor and petitioner
  3. physical, mental, and developmental condition of the minor
  4. minor's biological family background
  5. reasons for placement
  6. attitude of minor toward adoption;
  7. if the minor is an Indian Child how placement complies with Indian Child Welfare Act of 1978
  8. psychological history, including prior abuse
  9. if applicable, forms and documents required under R.C. 3107.032, 3107.10, and 3107.101.
  10. Social and medical history of biological parents.

## HOME STUDY [R.C. 3107.031]

- Except for foster children in the home for at least 6 months, the home study shall be filed with court at least 10 days before petition for adoption is heard.

- A qualified adoption assessor shall prepare the home study, prefinalization assessments, and any other reports required by the court
- Assessor qualifications under R.C. 3107.014. Must be employed by, appointed by or under contract with a court, public children services agency, private child placing agency or private noncustodial agency. Individual must be a:
  1. Licensed professional counselor, social worker or marriage and family therapist
  2. Licensed psychologist
  3. Student working to earn a four year, post-secondary degree or higher in a social or behavior science, who conducts assessor's duties under the supervision of a licensed professional counselor, social worker, marriage and family therapist, psychologist (as of July 1, 2009, a student is eligible only if the supervising professional counselor, social worker, marriage and family therapist or psychologist has completed training in accordance with rules adopted under R.C. 3107.015)
  4. Civil service employee engaging in social work without a license under R.C. 4757.
  5. Former employee of a public children services agency who, while employed, conducted the duties of an assessor.

## EFFECT OF FINAL DECREE [R.C. 3107.15]

- Decree relieves biological or other legal parents of parental rights and responsibilities, except with respect to spouse of petitioner.

## APPEAL [R.C. 3107.16]

- After 1 year, the order cannot be questioned, even for fraud, unless:
  1. petitioner has not taken custody of minor
  2. stepparent adoption would not have been granted but for fraud of the petitioner stepparent or spouse or
  3. in an adult adoption, the adult has no knowledge of the order within a 6-month period.

### **CERTIFICATE OF ADOPTION** [R.C. 3107.19]

- Clerk or adoptive parents may forward copy of Certificate of Adoption to Bureau of Vital Statistics within 30 days of final order.

### **RELEASE OF IDENTIFYING INFORMATION**

- Adopted prior to 1964, adoptees and lineal descendants over the age of 18 may file an Application for Adoption File with the Ohio Department of Health (ODH) (Form HEA 3011) [R.C. 3107.38]
- Adopted Jan. 1, 1964 through Sept. 18, 1996, adoptees and lineal descendants over the age of 18 may file an Application for Adoption File and Authorization of Release of Adopted Name with ODH
  - Application for Adoption File (Form HEA 3011)
    - a. \$20 filing fee
    - b. Two forms of identification
    - c. Lineal descendants will have to show lineal relationship between themselves and the adoptee
  - Authorization of Release of Adopted Name (Form HEA 3036)
    - a. Filed by adoptee
    - b. Allows ODH to release adopted name to biological parents or siblings upon their request
    - c. May be rescinded by filing Rescission of Authorization of Release of Adopted Name (Form HEA 3037)
- Adopted after Sept. 18, 1996
  - Adoption records may be opened if the adopted person is older than 21 by filing Application for Adoption File with ODH (Form HEA 3011) [R.C. 3107.47]
  - If between the ages of 18 and 21, adoptive parent may request adoption file [R.C. 3107.47]
- Regardless of date of adoption, and upon request to the court, the Social/Medical History form maintained by the court may be inspected

by the adoptive parents during the minority of adopted person, or by the adopted person once he/she reaches the age of majority [R.C. 3107.17]

### **OPEN ADOPTIONS**

- Profiles of prospective adoptive parents may be shown to birth parent. [R.C. 3107.61]
- Does not provide for birth parent to maintain parental authority or control. [R.C. 3107.065(A)(1)]

### **REFINALIZATION OF FOREIGN ADOPTION**

[R.C. 3107.18(A) and (B)]

- Child born in foreign country is placed with adoptive parent(s) in this state for purpose of adoption and if adoption was previously finalized in country of child's birth, adoptive parents may file petition in probate court in their county of residence requesting court issue a final decree of adoption or interlocutory order of adoption pursuant to R.C. 3107.14
- Proof of finalization of adoption outside U.S. is prima-facie evidence of consent of parties who are required to give consent even if foreign decree or certificate of adoption was issued with respect to only one of two adoptive parents who seek to adopt child in this state
- Visa IH-4 or IR-4
- Cases where adoption completed prior to adoptive parents seeing the child, often by use of proxy or power of attorney
- Ohio recognizes the adoption of child, with or without citizenship attaching. Ohio gives full faith and credit to a foreign decree for child legally residing in the state
- Upon completion of adoption, couple must file with Bureau of Citizenship and Immigration Services to obtain citizenship for the child
- IH-4 Visa if child was adopted from a Hague country and the adoption was finalized in the United States or an IR-4 Visa if the child was adopted from a non-Hague country and the adoption was finalized in the United States
- Need all of above information

## REGISTRATION OF FOREIGN BIRTH RECORD [R.C. 3107.18(C)]

- Person who has adopted child pursuant to decree or certificate of adoption recognized in this state that was issued outside the U.S. can request the court of county in which person resides to order the department of health to issue a foreign birth record for the adoptive person under **R.C. 3705.12(A)(4)**
  - Court may specify change of name for child and if physician recommended a revision of birth date, a revised birth date
  - Court shall send to department of health: order and copy of foreign adoption decree or certificate of adoption and, if not in English, a certified translation
- Visa IH-3 or IR-3
- Each adoptive parent personally observed child prior to adoption finalization and child is less than 16 years old
- Child becomes citizen upon going through customs in U.S. airport
- IH-3 Visa if child was adopted from a Hague country and the adoption was finalized in that country or an IR-3 Visa if the child was adopted from a non-Hague country and the adoption was finalized in that country
- Foreign Adoption Decree Translation
- Foreign Birth Certificate Translation
- Documentation regarding immigration status

*\*See [www.USCIS.gov](http://www.USCIS.gov) (U.S. Citizenship & Immigration Services).*

## PUTATIVE FATHER REGISTRY [R.C. 3107.064]

- Court shall not issue final decree or finalize interlocutory order unless, pursuant to **R.C. 3107.063**, a certified document from the Ohio Department of Job & Family Services is filed, which must be dated 31 or more days after date of minor's birth.
- This document not required if any of following apply:
  1. Mother was married at time minor was conceived or born
  2. Parent placing minor for adoption previously adopted the minor
  3. Prior to date petition is filed, a man has been determined to have a parent and child relationship with minor by court pursuant to **R.C. 3111.01** to **3111.18**, by court proceeding in another state, administrative agency proceeding pursuant to **R.C. 3111.38** to **3111.54**, or administrative agency proceeding in another state
  4. Minor's father acknowledged paternity of minor or
  5. Public children services agency has permanent custody of minor pursuant to **R.C. 2151** or **R.C. 5103.15(B)** after both parents lost or surrendered parental rights, privileges and responsibilities over minor.

# GUARDIANSHIP

Guardianship

Emergency Guardianship





## FILINGS

1. SPF 15.0: Next of Kin of Proposed Ward
2. SPF 15.01: Judgment Entry Setting Hearing on Application for Appointment of Guardian
3. SPF 15.1: Waiver of Notice and Consent
4. SPF 15.2: Fiduciary's Acceptance – Guardian
5. SPF 15.3: Guardian's Bond
6. SPF 15.4: Letter of Guardianship
7. SPF 15.5: Guardian's Inventory
8. SPF 15.9: Oath of Guardian
9. SPF 17.1: Statement of Expert Evaluation
10. SPF 17.7: Guardian's Report
11. SPF 17.8: Court Investigator's Report on Proposed Guardianship

## JURISDICTION & VENUE [R.C. 2111.02(A)]

Proposed ward has, or had before losing cognitive ability to choose, residence in this county.

## NOTICE/SERVICE [R.C. 2111.04]

Notice provided to the ward, next of kin, and other interested persons.

## PROPOSED WARD'S RIGHTS [R.C. 2111.02(C)(7)]

1. The right to be represented by independent counsel of the proposed ward's choice.
2. The right to have a friend or family member of proposed ward's choice present.
3. The right to have evidence of an independent expert evaluation introduced.
4. If the proposed ward is indigent, upon the proposed ward's request:
  - a. The right to have counsel and an independent expert evaluator appointed at court expense; and
  - b. If the appointment of a guardian is appealed, the right to have counsel appointed and necessary transcripts prepared at court expense.

## GUARDIAN'S RESPONSIBILITIES/DUTIES

1. General Responsibilities
  - a. Obey all orders of the probate court and comply with all local, state, and federal law governing guardianships. [Sup.R. 66.08(A)]
  - b. Meet with the proposed ward at least. [Sup.R. 66.08(B)]
  - c. Immediately report any allegations of abuse, neglect, or exploitation of a ward. [Sup.R. 66.08(C)]
  - d. Notify the court and seek to limit or terminate the guardianship authority if necessary. [Sup.R. 66.08(D)]
  - e. Notify of change of residence. [Sup.R. 66.08(E)]
  - f. Seek approval from this court before filing a suit for the ward. [Sup.R. 66.08(F)]
  - g. File annually a guardianship. [Sup.R. 66.08(G)]
  - h. If a guardian has 10 or more wards, register with the court and provide required information. [Sup.R. 66.08(H)]
  - i. Inform the court of the ward's income. [Sup.R. 66.08(I)]
  - j. Avoid conflicts of interest. [Sup.R. 66.08(K)]
  - k. File ward's legal papers. [Sup.R. 66.08(L)]
2. Responsibilities to ward
  - a. Professionalism, character, and integrity. [Sup.R. 66.09(A)]
  - b. Exercise due diligence when making decisions. [Sup.R. 66.09(B)]
  - c. Make choices that are the least restrictive. [Sup.R. 66.09(C)]
  - d. Advocate for services focused on ward's wishes. [Sup.R. 66.09(D)]
  - e. Foster and preserve positive relationships in ward life. [Sup.R. 66.09(E)]
  - f. Communicate privately with the ward by meeting at least once quarterly or as determined by the court. [Sup.R. 66.09(F)]

- g. Do not provide direct services to the ward. [Sup.R. 66.09(G)]
- h. Monitor and coordinate all services and benefits provide to the ward. [Sup.R. 66.09(H)]
- i. Seek advice and strive to honor ward's wishes regarding extraordinary medical issues. [Sup.R. 66.09(I)]
- j. Be informed about the ward's end-of-life preferences. [Sup.R. 66.09(I)]
- k. Manage caseload. [Sup.R. 66.09(K)]
- l. Keep the ward's personal and financial information confidential. [Sup.R. 66.09(L)]

## HEARING REQUIREMENTS [R.C. 2111.02(C)]

1. Requirements:
  - a. Prior to the appointment of a guardian or limited guardian under division R.C. 2111.02(A) or (B)(1) of this section, the court shall conduct a hearing on the matter of the appointment.
  - b. Any proposed guardian shall appear at the hearing.
  - c. All appointed guardians of the estate shall swear under oath that the guardian:
    - i. Will fulfill the duties of a guardian; and [R.C. 211.13]
    - ii. In addition, guardians of the estate shall swear under oath that the guardian has made and will continue to make diligent efforts to find and report all assets belonging to the estate of the ward in a true inventory in accordance with R.C. 2111.14 and will faithfully and completely file timely and accurate reports and accountings.
  - d. If the hearing is conducted by a magistrate, the procedures set forth in Civ.R. 53 shall be followed.

- e. The burden of proving incompetency shall be on the applicant for appointment as guardian and shall be by clear and convincing evidence.
  - f. Upon request of any interested party, a recording or record of the hearing shall be made.
2. Is the proposed ward incompetent? [R.C. 2111.01(D) and 2111.02(C)(3)]
    - a. Expert evaluation [R.C. 2111.031; Sup.R. 66(A)]
    - b. Investigator's report [R.C. 2111.041]
    - c. Other interested parties
    - d. Other evidence
  3. Are there less restrictive alternatives? [R.C. 2111.02(C)(5) and (6)]
    - a. The court may deny a guardianship based upon a finding that a less restrictive alternative to guardianship such as the following exists:
      - i. Limited Guardianship
      - ii. Durable General Power of Attorney;
      - iii. Health-Care Power of Attorney;
      - iv. Living Will; or
      - v. Conservatorship. [R.C. 2111.021]
  4. Is the applicant a suitable person/agency to serve as guardian? [R.C. 2111.02(C)(1)]
    - a. Residency [R.C. 2109.21(C)]
    - b. Prior criminal record [R.C. 2111.03]
    - c. Criminal background check [Sup.R. 66.05(A)(1)]
    - d. Civil background check
    - e. Education/continuing education documentation [Sup.R. 66.05(A)(2)]
    - f. Caseload of guardianships of the guardian. [Sup.R. 66.05(B)]



## PRIOR TO THE MONITORING HEARING

1. Notice of the hearing shall be sent at least 7 days prior to the: [R.C. 2111.04]
  - a. ward;
  - b. next of kin; and
  - c. other interested persons.
2. Is the most recent guardian's report timely and has it been reviewed? [R.C. 2111.49(A) and (B)]; [Sup.R. 78]
3. Is the most recent Statement of Expert Evaluation within 3 months prior to the date of the report and has it been reviewed? [R.C. 2111.49(A)(1)(i)]
4. Has the guardian completed and evidenced Guardian Continuing Education? [Sup.R. 66.07]
5. Is a Guardian ad litem required? [R.C. 2111.23]; [Sup.R. 48]
6. Is an updated investigation required? [R.C. 2111.49(A)(2)]
7. Should the ward be present? Is the ward able to be present? [R.C. 2111.49(B) and (C)]
8. Are there any unique logistical concerns for the case (security considerations, court interpreter, mobility accommodations, participant separation)?
9. What triggered the need for a hearing (nature of complaint received by the court, changing guardian's status, change in the ward's capacity, or family conflicts)? [R.C. 2111.49]

## MONITORING HEARING

1. Address any issues raised by the Statement of Expert Evaluation (change in diagnosis) [R.C. 2111.49(A)(1)(e)]
2. Address any issues raised by the guardian's report. [R.C. 2111.49]
  - a. Is the guardian still living in the county?  
*In re Guardianship of Santrucek*, 120 Ohio St.3d 67, 2008-Ohio-4915, 896 N.E.2d 683; *In re Guardianship of Replogle*, 164 Ohio App.3d 54, 2005-Ohio-5530, 841 N.E.2d 330 (2d Dist.); *State ex rel. Florence v. Zitter*,

*106 Ohio St.3d 87, 2005-Ohio-3804, 831 N.E.2d 1003.*

- b. Has there been any legal proceedings involving either the ward or the guardian? If living at home, has there been any legal proceedings involving anyone living in the home? [R.C. 2111.17, 2111.18, 2111.181, and 2111.19]; [Sup.R. 65(D), 68, and 69]
3. If not living with the ward, address the frequency, nature and duration of guardian contact with the ward. [R.C. 2111.49(A)(d)]
4. Inquire if there any significant celebratory or special events that have occurred since the last report.
5. Inquire if there are any changes in the status of guardian: [R.C. 2111.49]
  - a. Change of living arrangement:
    - i. Guardian must provide current address in guardian's report; and [R.C. 2111.49(A)(1)(b)]; [Sup.R. 66.08(E)(1)]
    - ii. Residency requirement of guardian. [R.C. 2109.21(C)]
  - b. Health
  - c. Functioning
  - d. Parenting issues
  - e. Employment
    - i. Conflict of interest for person providing services to a ward to serve as guardian of ward. [R.C. 5123.93]; [Sup.R. 66.04(D)]
  - f. Criminal record
  - g. If a public guardian, inquire into the current caseload size.
    - i. Guardian's report shall include number of times guardian has visited with Ward during the period. [R.C. 2111.49(A)(1)(d)]
6. Is there a change in the ward's financial status (inheritance, lump-sum Social Security payment, lottery winnings, or other)?
  - a. Duties of guardian of estate [R.C. 2111.14]

- b. Investment powers [R.C. 2109.37]
  - c. Deposit of funds [R.C. 2109.41]
7. Are any of the following necessary?
- a. Funeral arrangements:
    - i. *Simpson v. Holmes*, 106 Ohio St. 437, 140 N.E. 395 (1922): legal effect of the guardianship ends upon the death of a ward.
    - ii. *State ex rel. Beedle v. Kiracofe*, 176 Ohio St. 149, 194 N.E.2d 61 (1964): a guardian has the power after the ward's death to make a proper accounting and settlement of any acts taken in regard to the ward's assets.
    - iii. Consent for autopsy. [R.C. 2111.13(D) and (F)]
    - iv. Disposition of ward's remains. [R.C. 2111.13(E) and (F)]
  - b. Guardianship plan
  - c. Financial management plan
  - d. An inventory of all important legal documents:
    - i. Duties of guardian of estate; and [R.C. 2111.14]
    - ii. Evidence to support inventory, and verification of inventory. [R.C. 2111.141]
  - e. Establishment of a will
  - f. Other (land sale)
    - i. Completion of real property contracts. [R.C. 2111.19]; [Sup.R. 65]
8. Closing
- a. Should a follow-up review be set?
    - i. Hearings for guardianship. [R.C. 2111.49(C)]
  - b. Review the duties of the guardian. (report due dates)
    - i. Probate court powers of guardianship [R.C. 2111.50]
    - ii. Guardian's report and court intervention [R.C. 2111.49]
    - iii. Duties of guardian of person [R.C. 2111.13]
    - iv. Duties of guardian of estate [R.C. 2111.14]

- c. Inform the guardian that they may be required to have contact with the court investigator.
  - i. Duties of guardian of person [R.C. 2111.13]
  - ii. Court intervention in guardianship [R.C. 2111.49(A)(2)]
  - iii. Investigating circumstances of alleged incompetent. [R.C. 2111.041]
- d. Remind participants that at any time a monitoring hearing can be set by the court or at the request of the guardian or other interested person. [R.C. 2111.49(C)]

### ADDITIONAL REVIEW ITEMS FOR GUARDIAN OF THE ESTATE

1. Should the representative payee status be changed to guardian of the estate, from guardian of the estate, or bifurcated?
  - a. Appointment of guardian [R.C. 2111.02]
  - b. Duties of guardian of person and estate [R.C. 2111.15]
  - c. Probate court powers of guardianship [R.C. 2111.50]
2. Is the posted bond adequate and maintained?
  - a. Bond [R.C. 2109.04]
  - b. Bond conditions – guardians [R.C. 2109.12]
  - c. New or additional bond [R.C. 2109.06]
3. Has a separate bank account been established accessible only by the guardian?
  - a. Deposit of funds [R.C. 2109.41]
4. Address issues, if any, arising from the annual account (unauthorized expenditures, lack of receipts)
  - a. Verification of inventory [R.C. 2111.141]

## OTHER CONSIDERATIONS

1. Master Commissioners – appointment, bond, and duties [R.C. 2101.06]
2. Jurisdiction of probate court [R.C. 2101.24]
3. Removal of fiduciary [R.C. 2109.24]
4. Appointment of guardian [R.C. 2111.02]
5. Court intervention in guardianship [R.C. 2111.49(B)]
6. Probate court powers of guardianship [R.C. 2111.50]
7. Jurisdiction and other states [R.C. 2112.]



**NOTE**

Courts should adopt a local rule for the Emergency Guardianship process [Sup.R. 66.03(A)]

**FILINGS**

1. SPF 17.1: Statement of Expert Evaluation
2. SPF 17.1A: Supplement for Emergency Guardian of Person
3. SPF 15.4: Letters of Guardianship

**VENUE**

Filed in the county in which the ward resides or has legal settlement

**GROUND**

1. Minor or incompetent has not been placed under guardianship pursuant to R.C. 2111.02(A)
2. An emergency exists; and
3. It is reasonably certain that immediate action is required to prevent significant injury to person or estate of minor or incompetent.

**APPLICATION**

1. Notice of emergency presented to court

**NOTE**

There are no Standard Probate Forms for emergency guardianship proceedings other than noted above.

**HEARING/NOTICE OF HEARING**

1. Court may issue an emergency order ex parte

**ORDER**

1. Court may issue an order, ex parte, at any time after it receives notice of the emergency
2. Court may issue any order considered necessary to prevent injury to person or estate of minor or incompetent; or
3. Court may appoint an emergency guardian for maximum of 72 hours
4. Order shall be served upon incompetent or minor as soon as possible after issuance
  - a. Failure to serve order after issuance or prior to taking of any action under its authority does not invalidate the order or actions taken
5. Letters of appointment shall specify powers of an emergency guardian
  - a. Powers limited to those necessary to prevent injury to person or estate of minor or incompetent
6. Court shall enter upon the journal:
  - a. A record of case; and
  - b. Specific reasons for acting ex parte or without notice

**EXTENSION**

1. Extension may be granted by court:
  - a. For good cause shown; and
  - b. After notice to minor, or incompetent, and interested parties; and
  - c. After a hearing.
2. Extension may be granted for specific period, but not exceeding additional 30 days



# CIVIL COMMITMENT

Civil Commitment in Criminal Cases

Civil Commitment of the Mentally Ill

Voluntary Admission





## JURISIDCTION FOR CIVIL COMMITMENT OF A MENTALLY ILL PERSON OR A PERSON WITH AN INTELLECTUAL DISABILITY WHO WAS FOUND INCOMPETENT TO STAND TRIAL OR NOT GUILTY BY REASON OF INSANITY [R.C. 2945.39; R.C. 2945.401]

### NOTE

Forms must be created locally by probate court.

If jurisdiction to commit a person is terminated under R.C. 2945 due to the expiration of the maximum prison term or term of imprisonment for a defendant found incompetent to stand trial or not guilty by reason of insanity, the criminal court or the prosecutor may file an affidavit for civil commitment of a defendant under R.C. 5122 or R.C. 5123.

### NOTE

See Civil Commitment Bench Card. After the affidavit, the process for civil commitment of the defendant is the same.

The court retains jurisdiction over the person for 10 days after the filing of an affidavit for the probate court to conduct a civil-commitment hearing.

If the probate court commits the person, the chief clinical officer of the facility or the person to which the defendant is committed or admitted shall send to the prosecutor the notices required under R.C. 2945.38(H)(4)(a)(i) - (iii).

- R.C. 5122 covers the involuntary civil commitment of a mentally ill person subject to hospitalization as defined under R.C. 5122.01(B).
- R.C. 5123 covers the civil commitment of a person with an intellectual disability, 18 years of age or older, who is subject to institutionalization by court order as defined under R.C. 5123.01(O).



## FILINGS

### Available Standard Forms

1. Affidavit of Mental Illness [R.C. 5122.111]
2. Notification Form for Record Checks (available from BCI)
3. Application for Emergency Admission [R.C. 5122.10] - available from Ohio Department of Mental Health, form DMH-0025)

### Forms Filed by the Local Prosecutor

1. Motion For Continuance [R.C. 5122.141(B)]
2. Motion for Change of Place of Detention [R.C. 5122.15(L) or (N)]
3. Application for Continued Commitment [R.C. 5122.15(H)]
4. Motion for Court Ordered Medication and/or Treatment [R.C. 2101.24(A)(1)(u)]

### Forms Filed by the Local Board of Mental Health and Addiction Recovery Services (or Designee)

1. Prescreening Investigation Report [R.C. 5122.13]
2. Notice to Court or Agency [R.C. 5122.15(F)(1)] - available from Ohio Department of Mental Health, form DMH-0041

### Forms Must Be Created Locally by Probate Court

1. Certificate of Examination [R.C. 5122.11 & R.C. 5122.19]
2. Temporary Order of Detention [R.C. 5122.11]
3. Order Appointing Independent Evaluator [R.C. 5122.14] – may be optional, consult your appellate law
4. Order Referring Affidavit for Screening [R.C. 5122.13]
5. Order Granting Motion for Continuance [R.C. 5122.141(B)]
6. Entry Setting Full Hearing and Ordering Notice [R.C. 5122.12 & 5122.141(A)]
7. Notice to Respondent of Hearing and Service of Rights of an Involuntarily Detained Person [R.C. 5122.05(C) and R.C. 5122.29]
8. Rights of an Involuntarily Detained Person [R.C. 5122.05(C) & R.C. 5122.29]

9. Entry Appointing Counsel for Respondent [R.C. 5122.05(C)(2)]
10. Precipe for Subpoena Duces Tecum
11. Subpoena for Witness
12. Order to Produce Hospital Records (Subpoena Duces Tecum)
13. Decision and Judgment Entry of Commitment After Initial Full Hearing [R.C. 5122.15(C)]
14. Entry Ordering Continued Commitment [R.C. 5122.15(H)]
15. Entry Changing Least Restrictive Setting [R.C. 5122.15(F) & (N)]
16. Entry Granting Motion for Court Ordered Medication and/or Treatment [R.C. 2101.24(A)(1)(u)]

## DEFINITIONS (as outlined in R.C. 5122.01 & R.C. 5119)

- A. “Mental illness” means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or capacity to recognize reality, or ability to meet the ordinary demands of life. [R.C. 5122.01(A)]
  - An anti-social personality disorder may qualify as a “mental illness” under Ohio law if the disorder is “substantial” and there is “gross” impairment. *State v. Welch*, 125 Ohio App. 3d 49, 707 N.E. 2d 1133, 1997 Ohio App. LEXIS 5335 (Ohio Ct. App., Portage County 1997)
- B. “Mentally ill person subject to court order” means a mentally ill person who, because of the person’s illness:
  1. Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
  2. Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;

3. Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community;
4. Would benefit from treatment for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person;
5.
  - (a) Would benefit from treatment as manifested by evidence of behavior that indicates all of the following:
    - (i) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.
    - (ii) The person has a history of lack of compliance with treatment for mental illness and one of the following applies:
      - I. At least twice within the 36 months prior to the filing of an affidavit seeking court-ordered treatment of the person under R.C. 5122.111, the lack of compliance has been a significant factor in necessitating hospitalization in a hospital or receipt of services in a forensic or other mental-health unit of a correctional facility, provided that the 36-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the 36 months.

- II. Within the 48 months prior to the filing of an affidavit seeking court-ordered treatment of the person under R.C. 5122.111, the lack of compliance resulted in one or more acts of serious violent behavior toward self or others, or threats of, or attempts at, serious physical harm to self or others, provided that the 48-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the 48-month period.

(iii) The person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment.

(iv) In view of the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would likely result in substantial risk of serious harm to the person or others.

(b) An individual who meets only the criteria described in division (B) (5) (a) of this section is not subject to hospitalization. [R.C. 5122.01(B)(1 - 5)]



When the affiant is seeking inpatient treatment, boxes 1 - 4 usually are checked; when the affiant is seeking outpatient treatment, box 5 is checked.

## EMERGENCY HOSPITALIZATION

1. **CUSTODY & TRANSPORT FOR MEDICAL EXAMINATION** – Any psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, police officer, or sheriff may take a person into custody if he or she has reason to believe that the person is a mentally ill person subject to court order under [R.C. 5122.01\(B\)](#) and that the person represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination.
  - a. The person should be taken into custody in the least conspicuous manner.
  - b. The person taking the respondent into custody shall explain their name, professional designation, that the custody is not a criminal arrest, and that the person is being taken for examination by mental-health professionals. [\[R.C. 5122.10\]](#)
2. **APPLICATION FOR EMERGENCY ADMISSION** – A written statement must be given to the hospital by the transporting party stating the circumstances under which the person was taken into custody and the reasons for the transporting parties' belief that the person is a mentally ill person subject to court order under [R.C. 5122.01\(B\)](#) and that the person represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination. [\[R.C. 5122.10\]](#)
3. **INITIAL EXAMINATION (CERTIFICATE OF EXAMINATION)** – Persons transported to a hospital shall be examined within 24 hours after arrival at the hospital. [\[R.C. 5122.10 & R.C. 5122.19\]](#)
4. **INVOLUNTARY HOLD** – The chief clinical officer may detain a patient for not more than 3 court days (after the initial 24 hours). During the 3 court days, the chief clinical officer may admit the person as a voluntary patient, discharge the patient, or file an AFFIDAVIT with the probate court. [\[R.C. 5122.10\]](#) See also, *In re John Doe*, 2002 Ohio 5210 and 150 Ohio App.3d 532.



In some counties, the involuntary hold is referred to as a “pink slip.”



If a hospital uses the Application for Emergency Admission available from the Ohio Dept. of Mental Health (form DMH-0025), the date the application is “approved” by the chief clinical officer may be the date of the beginning of the involuntary hold.



[R.C. 5122.141](#) should be used for the initial hearing before a person is detained.

5. **AFFIDAVIT** – Filed in any county according to form and content specified in [R.C. 5122.111](#).
  - a. In the case of emergency hospitalization, the affidavit usually is completed by a psychiatrist.
  - b. An affidavit may be filed by a member of the public presenting to the probate court when the person alleged to be mentally ill resides in the community.
6. **DETENTION ORDER AND NOTICE**
  - a. Probate court issues a temporary order of detention; if hospital outside county, court retains jurisdiction. [\[R.C. 5122.11\]](#)
  - b. Person may be observed and treated until the hearing, provided for in [R.C. 5122.141](#) or [R.C. 5122.15](#).
  - c. Any person who is involuntarily detained in a hospital or otherwise in custody under [R.C. 5122](#), immediately upon being taken into custody, shall be informed and provided with a written statement that the person may do any of the following:
    - i. Immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, a licensed physician, or a

licensed clinical psychologist, to contact any other person or persons to secure representation by counsel, or to obtain medical or psychological assistance, and be provided assistance in making calls if the assistance is needed and requested;

- ii. Retain counsel and have independent expert evaluation of the person's mental condition and, if the person is unable to obtain an attorney or independent expert evaluation, be represented by court-appointed counsel or have independent expert evaluation of the person's mental condition, or both, at public expense if the person is indigent;
- iii. "Independent expert evaluation" means an evaluation conducted by a licensed clinical psychologist, psychiatrist, or licensed clinical physician who has been selected by the respondent or the respondent's counsel. [R.C. 5122.01(P)]
- iv. Have a hearing to determine whether or not the person is a mentally ill person subject to court order. [R.C. 5122.05(C)(1 - 3)]

- 7. **PRESCREENING INVESTIGATION REPORT** – Within 2 business days, the affidavit is referred to the board of alcohol, drug addiction, and mental health services or community mental health services provider the board designates for investigation. [R.C. 5122.13]
- 8. **APPOINTMENT OF INDEPENDENT EVALUATOR** – Immediately after acceptance of an affidavit, the court may appoint a psychiatrist, or a licensed clinical psychologist and a licensed physician to examine the respondent. At the first hearing, the psychiatrist, psychologist, and/or physician shall report to the court his or her findings as to the mental condition of the respondent, and need for custody, care, or treatment in a mental hospital. [R.C. 5122.14]
- 9. **SCHEDULING THE HEARING** - The hearing must be held within 5 court days from the day on which the person is detained or an affidavit is filed, whichever occurs first. The hearing may be

conducted in a hospital in or out of the county. [R.C. 5122.141(B)]

- 10. **NOTICE OF HEARING** – Upon receipt of an affidavit under R.C. 5122.11, the court shall issue written notice by mail, or, as the court directs, to the following:
  - a. The respondent;
  - b. The legal guardian for the respondent, or the spouse of the respondent, or the respondent's parents if a minor, if these persons' addresses are known or can be obtained through exercise of reasonable diligence;
  - c. The person who filed the affidavit;
  - d. Any one person designated by the respondent and if the respondent does not make a selection, to an adult next of kin;
  - e. To respondent's counsel along with a copy of the affidavit and the temporary order of detention;
  - f. The director, chief clinical officer, or designee of the hospital, board, community mental health service provider, or facility to which the person has been committed;
  - g. The board of alcohol, drug addiction, and mental services serving the respondent's county of residence or a services provider designated by the board.

Adult and competent persons, other than the respondent, may waive notice. [R.C. 5122.12]


- 11. **CONTINUANCE** – A continuance of the hearing may be granted for no more than 10 calendar days from the day on which the person is detained or the affidavit is filed, whichever occurs first. [R.C. 5122.141(B)]
- 12. **RIGHTS OF THE RESPONDENT AT THE HEARING** –
  - a. To attend the hearing and to be represented by counsel of the respondent's choice or by court-appointed counsel if the respondent is indigent.
  - b. To subpoena witnesses and documents and to examine and cross-examine witnesses.



- c. To have all relevant documents, information, hospital records, and other evidence.
  - d. To testify, but the respondent may not be compelled to testify. [R.C. 5122.15(A)]
13. **FULL HEARING** – By clear and convincing evidence, court finds respondent mentally ill and subject to court order, court may order respondent, for not more than 90 days, to: See 1 - 6 in R.C. 5122.15(C).
- a. Burden of Proof. See, *Addington v. Texas*, 441 U.S. 418 and *State v. Castrataro*, 2007 Ohio 2764 App. LEXIS 2552 (Ohio Ct. App., Cuyahoga County June 7, 2007).
  - b. “Totality of the Circumstances” – Test is to be used to determine whether an alleged mentally ill person is subject to hospitalization under R.C. 5122.01(B). See, *In re Burton*, 11 Ohio St. 3d 147, 464 N.E. 2d 530, 1984 LEXIS 1123 (Ohio 1984).
  - c. Three-part Test for Involuntary Commitment – See, *In re TB.*, 2006 Ohio 4789, 2006 Ohio App. LEXIS 4639 (Ohio Ct. App., Franklin county, Sept. 12, 2006).
    - i There must be a substantial disorder of thought, mood, perception, orientation, or memory. [R.C. 5122.01(A)]
    - ii The substantial disorder of thought, mood, perception, orientation, or memory must grossly impair judgment, behavior, or capacity to recognize reality, or the ability to meet the ordinary demands of life. [R.C. 5122.01(A)]
    - iii The mentally ill person must be hospitalized for one of the reasons set forth in R.C. 5122.01(B).
  - d. Closed Hearing – The hearing shall be closed to the public. Counsel for the respondent, with the permission of the respondent, may request the hearing be open to the public. For good cause shown, the court may admit persons who have a legitimate interest in the proceedings, but the respondent may object. [R.C. 5122.15(A)(5) & (6)]; [Sup. R. 55]

## COMMITMENT OF A PERSON RESIDING IN THE COMMUNITY

1. A person, who resides in the community and is not hospitalized at the time of the hearing, may be found mentally ill and subject to court order prior to being taken into custody. Proceedings have to be initiated under R.C. 5122.11 (i.e., an affidavit must have been filed with the probate court).
2. Pursuant to R.C. 5122.141(A) and (B), an initial hearing, rather than a full hearing which is held when a person is hospitalized, may be conducted and the respondent shall have the right to counsel, notice, and be afforded all other procedural due-process safeguards that apply when a full hearing is held, pursuant to R.C. 5122.15. An initial hearing shall be held within 5 court days from the day on which the respondent is detained or an affidavit is filed, whichever occurs first or within 10 calendar days from the day on which the respondent is detained or the affidavit is filed, whichever occurs first.
3. If a person who resides in the community has been found by the court to be mentally ill and subject to court order, the court may issue an interim order of detention ordering any health or police officer, or sheriff to take the person into custody. See R.C. 5122.10.
  - a. When the interim order of detention is issued, the court must have an agreement from the receiving hospital to admit the respondent or the order may be ineffective.
  - b. The court’s finding of mentally ill and subject to court order must be based on clear and convincing evidence. When a person is at large in the community, the prosecutor may be challenged to find a medical professional to testify as to the person’s current medical condition and mental state.
  - c. An individual who meets only the criteria described in R.C. 5122.01(B)(5)(a) is not subject to hospitalization.



The initial hearing may be waived, but a mandatory full hearing shall be held by the 30th day after the original involuntary detention of the respondent.

[R.C. 5122.141(D & E)]

## CONTINUED COMMITMENT HEARINGS

1. A full evidentiary hearing must be held at the end of the first 90-day period of civil commitment, and at least every 2 years thereafter; this hearing may not be waived. [R.C. 5122.15(H)]
2. A full evidentiary hearing must be held every 180 days if requested by respondent or respondent's counsel. [R.C. 5122.15(H)]

## FORCED MEDICATION ORDERS

The state's *parens patriae* power can override a mentally ill patient's decision to refuse antipsychotic medication. A person need not be adjudicated incompetent before the state's *parens patriae* power may be legitimately exercised in a forced-medication hearing. A court may issue an order permitting the administration of antipsychotic medication, by hospital employees, against a patient's wishes and without a finding that the patient is dangerous, when the court finds by clear and convincing evidence that:

1. The patient lacks the capacity to give or withhold informed consent regarding treatment;
2. The medication is in the patient's best interest; **AND**
3. No less intrusive treatment will be as effective in treating the mental illness. *Steele v. Hamilton County Community Mental Health Board*, 90 Ohio St. 3d 176, 180, 185, 2000-Ohio 47.

Procedural due-process concerns:

1. An attorney must be appointed to represent the patient;
2. An independent psychiatrist or licensed clinical psychologist and a licensed physician must be appointed to examine the patient, to evaluate the recommended treatment, and to report such findings and conclusions to the court regarding the patient's capacity to give or withhold informed consent, as well as the appropriateness of the proposed treatment;
3. The patient, appointed counsel, and treating physicians must receive notice of all hearings;
4. Patient must be provided the opportunity to be present at all hearings and to present and cross-examine witnesses. *Id.* at 189, 190.

## TRANSFERS

1. The director of mental health and addiction services or his or her designee may file a motion with the court to seek an order to transfer an involuntary patient if the transfer is consistent with the medical needs of the patient. [R.C. 5122.15(N) & R.C. 5122.20]
2. If the transfer is to a more restrictive setting, the involuntary patient may request a hearing on the transfer. The hearing shall be held with all the rights of a full hearing under R.C. 5122.15.
3. The hearing shall be held within 10 days of the transfer and may be continued for up to an additional 10 days. [R.C. 5122.20]
4. Written notice of the transfer of an involuntary patient shall be given to the patient's legal guardian, parents, spouse, counsel, and, if none, to the patient's nearest-known relative or friend. [R.C. 5122.20]



## DISMISSAL & EXPUNGEMENT

1. Patients may consent to voluntary treatment and court may dismiss case. [R.C. 5122.15(G)(1)]
2. If treatment needs could be met in less restrictive setting, court may dismiss case. [R.C. 5122.15 (F)(2)]
3. Board and treatment provider may recommend the court discontinue court-ordered treatment if respondent fails to comply with treatment plan. [R.C. 5122.15(N)]
4. If a person taken into custody under R.C. 5122.10 or R.C. 5122.11 is released from custody prior to a hearing, the probate court shall expunge any records of the person. [R.C. 5122.09]

## CONFIDENTIALITY

All records, other than court journal entries or court docket entries, shall be kept confidential and shall not be released except as otherwise allowed under R.C. 5122.31.

## REPORTING CIVIL COMMITMENTS TO BCI



The reporting to BCI of a civil commitment pursuant to R.C. 5122.311 can be accomplished via the Ohio Courts Network (OCN) portal, using the Mental Illness Adjudication Reporting (MIAR) module. In addition to being an efficient paperless-notification method, the MIAR module permits courts to modify and view previously submitted commitment records. For information on using the MIAR module in OCN, contact the OCN Help Desk at [OCNHelp@sc.ohio.gov](mailto:OCNHelp@sc.ohio.gov) or 614.387.9980.



## VOLUNTARY ADMISSION OF MENTALLY ILL PERSONS

### NOTE

Forms must be created locally by probate court.

### **VOLUNTARY ADMISSION** [R.C. 5122.02]

1. A person 18 years of age or older may apply for voluntary admission to the chief medical officer of a hospital if the person:
  - a. Appears to be mentally ill, or
  - b. Believes self to be mentally ill.
2. A parent may make application for voluntary admission on behalf of a minor.



Some hospitals do not permit a parent to admit a minor for mental-health treatment under R.C. 5122. Oftentimes, the parent admits the child for general medical treatment, instead of psychiatric treatment.

3. A guardian of a person may make application on behalf of an adult incompetent ward.
4. The chief clinical officer shall discharge any voluntary patient who has recovered or whose continued hospitalization is no longer advisable.
5. The chief clinical officer may deny admission if he or she finds that hospitalization of the person is inappropriate.
6. The chief clinical officer may discharge any voluntary patient who refuses to accept treatment consistent with the written treatment plan required by R.C. 5122.27 or may file an Affidavit of Mental Illness under R.C. 5122.11.
7. A person found incompetent to stand trial or not guilty by reason of insanity, and who was committed under R.C. 2945.39, R.C. 2945.40, R.C. 2945.401 or R.C. 2945.402 shall not be voluntarily admitted to a hospital until after the final termination of commitment, as provided under R.C. 2945.401(J).

### **RELEASE OF VOLUNTARY PATIENTS**

[R.C. 5122.03]

A person who was admitted voluntarily shall be released upon written request unless within 3 court days of receipt of the request, the chief clinical officer of the hospital files with the probate court of the county where the patient is hospitalized or the probate county where the patient resides, an Affidavit of Mental Illness under R.C. 5122.11.

If the patient is not released within 3 days of the receipt of the request for release, the request shall serve as a request for an initial hearing under R.C. 5122.141.

The chief clinical officer of the hospital shall provide reasonable means and arrangements for informing patients of their right to release under R.C. 5122.03(B).

### **PATIENT RIGHTS** [R.C. 5122.29]

A person who has been admitted for voluntary treatment has all patient rights set forth under R.C. 5122.29.

### **CIVIL RIGHTS OF PATIENTS** [R.C. 5122.301]

Any person admitted voluntarily to a hospital retains all civil rights not specifically denied in the Revised Code or removed by an adjudication of incompetence as provided for under the Revised Code.



# MISCELLANEOUS

Adult Protective Services

Concealment of Assets

Minor Settlements

Name Change



## FILINGS

1. SPF 23.0 Petition for Protective Services
2. SPF 23.1 Notice of Petition for Court Ordered Protective Services
3. SPF 23.2 Petition for Emergency Protective Services
4. SPF 23.3 Notice of Petition for Court Ordered Protective Services on an Emergency Basis
5. SPF 23.4 Petition for Temporary Restraining Order to Prevent Interference with Investigation of Reported Abuse of an Adult
6. SPF 23.6 Petition for Temporary Restraining Order to Prevent Interference with the Provision of Protective Services to an Adult
7. SPF 23.7 Notice of Hearing on Petition for Temporary Restraining Order to Prevent Interference With the Provision of Services

## DEFINITIONS [R.C. 5101.60]

**Adult** – Person age 60 or older within this state handicapped by infirmities of aging or has physical or mental impairment that prevents person from providing for their own care or protection and who resides in an independent living arrangement, including residential facility licensed under [R.C. 5119.22](#)

**Court** – Probate court in county where adult resides

**Emergency** – Adult is living in conditions that present substantial risk of immediate and irreparable physical harm or death to self or another person

**Incapacitated person**– Person who is impaired to the extent that person lacks sufficient understanding or capacity to make and carry out reasonable decisions concerning person’s self or resources, with or without the assistance of a caretaker. Refusal to consent to provision of services shall not be the sole determinative that person is incapacitated.

**In need of protective services** – An adult known or suspected to be suffering from abuse, neglect, or exploitation to an extent that either life is endangered or physical harm, mental anguish, or mental illness results or is likely to result

**Abuse** – Infliction upon adult by self or others of injury, unreasonable confinement, intimidating or cruel punishment with resulting physical harm, pain, or mental anguish

**Neglect** – Failure of an adult to provide for self the goods or services necessary to avoid physical harm, mental anguish, or mental illness, failure of caretaker to provide such goods or services, or abandonment

**Exploitation** – Unlawful or improper act of a person using, in one or more transactions, an adult or adult’s resources for monetary or personal benefit, profit or gain when the person obtained or exerted control over adult or the adult’s resources in any of the following ways:

- Without adult’s consent or consent of the person authorized to give consent
- Beyond scope of express or implied consent of adult or person authorized to give consent
- By deception
- By threat
- By intimidation

### NOTE

These provisions apply to involuntary protective service proceedings. For voluntary proceedings, refer to [R.C. 5101.66](#).

## **TEMPORARY RESTRAINING ORDER** [R.C. 5101.651]; [R.C. 5101.69]

### **Investigation/Access to Residence** [R.C. 5101.651]

- County Dept. of Job & Family Services (Co. DJFS) may petition the court for temporary restraining order to prevent interference or obstruction by any person, including the adult, who denies or obstructs access to residence of adult during course of investigation under R.C. 5101.65
- **Temporary Restraining Order** – Court shall issue temporary restraining order if it finds reasonable cause to believe:
  - Adult is being or has been abused, neglected, or exploited, **AND**
  - Access to adult's residence has been denied or obstructed
  - Such finding is prima-facie evidence that immediate and irreparable injury, loss, or damage will result, so notice is not required

### **Provision of Services** [R.C. 5101.69]

- Co. DJFS may petition court for temporary restraining order to restrain any person from interfering with provision of protective services for the adult, when the adult has consented to the provision
  - **Petition** – Petition shall state specific facts sufficient to demonstrate need for protective services, the consent of adult, and refusal of some person to allow provision of services
  - **Notice** – Notice of petition shall be given to person alleged to be interfering
  - **Hearing** – Court shall hold hearing on petition within **14 days** after its filing
  - **Temporary Restraining Order** – Court shall issue temporary restraining order if it finds:
    - Protective services are necessary
    - Adult has consented to provision of services
    - The person who is subject of petition has prevented such provision

## **COURT ORDERED PROTECTIVE SERVICES** [R.C. 5101.68]; [R.C. 5101.681 - .682]

### **Petition** [R.C. 5101.68]

- Co. DJFS may petition court for an order authorizing provision of protective services if it determines the adult is in need of protective services and is an incapacitated person (adult did not voluntarily accept services)

### **Notice of Petition** [R.C. 5101.681]

- Notice to be personally served on adult at least 5 working days prior to hearing date
- Notice to adult shall be given orally or in writing
- Notice shall include all petitioners' names, basis of belief that protective services are needed, rights of adult in court proceedings, consequences of court order, adult's right to counsel, adult's right to appointed counsel if indigent and requests appointed counsel
- Written notice by certified mail shall be given to adult's guardian, legal counsel, caretaker, and spouse, if any, or, if none of these, to adult children or next of kin if any, or to any other person court may require
- Adult may not waive notice

### **Hearing & Order** [R.C. 5101.682]

- **Hearing** held within **14 days** after filing of petition
- Rights of adult:
  - Be present at hearing
  - Present evidence
  - Examine and cross-examine witnesses
  - Be represented by counsel unless knowingly waived
  - Court appointed counsel if indigent
  - Court appointed counsel if court determines adult lacks capacity to waive right to counsel



## Order

- Court shall issue order requiring provision of protective services **IF**:
  - Court finds by clear and convincing evidence that:
    - Adult has been abused, neglected, or exploited;
    - Is in need of protective services;
    - Is incapacitated; **AND**
    - No person authorized by law or court order is available to give consent.
    - If above findings are made, protective services are ordered to be provided only if services are available locally

## Placement

- If placement is ordered, consideration shall be given to choice of residence of the adult
- May be in settings approved by the DJFS that meet minimum community standards for safety, security, and requirements of daily living
- Institutional placement shall not be ordered unless specific finding was entered in the record that no less restrictive alternative can be found to meet the adult's needs
- Cannot order commitment to a hospital or public hospital as defined in [R.C. 5122.01](#)
- Change of placement ordered only upon court's finding of compelling reasons to justify transfer
- Court shall notify adult of transfer at least 30 days prior, unless emergency exists
- Order provided for in this section shall remain in effect for no longer than 6 months
- If Co. DJFS determines continued need for services after review of adult's needs, it shall apply for renewal of order for additional periods of no longer than one year each
- Adult may petition for modification of order at any time

## COURT ORDERED PROTECTIVE SERVICES – EMERGENCY BASIS [\[R.C. 5101.70\]](#)

### Petition (Emergency Basis) [\[R.C. 5101.70\]](#)

- Filed by Co. DJFS or its designee and shall include:
  - Adult's name, age, address
  - Nature of emergency
  - Proposed protective services
  - Petitioner's reasonable belief and supportive facts that:
    - Adult is incapacitated
    - An emergency exists
    - No person is available or willing to consent for the adult
  - Facts showing attempts to obtain adult's consent

### Notice of filing and petition contents

- To adult, shall include both:
  - Right to be present at hearing, present evidence, examine and cross-examine witnesses
  - Possible consequences of order
- To spouse, if any, or to adult child or next of kin, and guardian, if any, if whereabouts known
  - Given 24 hours prior to hearing, unless waived by court if:
    - Immediate and irreparable physical or financial harm to adult or other will result from 24-hour delay; and
    - Reasonable attempts were made to notify adult, spouse, if any, adult children or next of kin, if any, and guardian, if any, if whereabouts are known
    - If 24-hour notice is waived, notice of this determination shall be given to persons receiving notice

## Hearing

- Shall be held no sooner than 24 and no later than 72 hours after notice is given, unless court waived notice

## Order (Emergency Basis)

- Court shall issue order if it finds by clear and convincing evidence that:
  - Adult is incapacitated;
  - Emergency exists; and
  - No person authorized by law or court order is available to consent.

## Limitations to Order

- Specifically designate only necessary and locally available services to remove the emergency
- No change of residence unless finding necessary
- Services for **14 days**, unless Co. DJFS or its designee petitions court for renewal of 14-day order upon showing is necessary to remove emergency
  - If services are necessary beyond emergency period, petition can be filed under [R.C. 5101.68](#); Co. DJFS or its designee, after filing petition, permitted under [R.C. 5101.70\(F\)](#) to continue to provide services pending hearing by court
    - Authorize Co. DJFS director, designee, or rep. of designee to give consent for adult until order expires
    - Cannot order commitment to a hospital or public hospital, as defined in [R.C. 5122.01](#)

## COURT ORDERED PROTECTIVE SERVICES - EX PARTE EMERGENCY BASIS [\[R.C. 5101.701\]](#)

### Ex Parte Emergency Order [\[R.C. 5101.701\]](#)

- Court (judge or magistrate under direction of judge) may issue by **telephone** an ex parte emergency order if ALL of the following are applicable:
  - Co. DJFS/authorized employee of Co. DJFS/Co. DJFS designee/authorized employee of designee notifies court that

they believe emergency order is needed as described herein;

- Reasonable cause to believe adult is incapacitated; and
- Reasonable cause to believe there is substantial risk to adult of immediate and irreparable physical or financial harm, or death.

- Order shall be journalized
- Order effective for not longer than **24 hours** (except if day following day on which order is issued is not a working day, then order shall remain in effect until next working day)
- Not later than **24 hours** after order is issued, petition under [R.C. 5101.70\(A\)](#) shall be filed with court (unless day following day on which order was issued is not a working day, then petition shall be filed on next working day)
- Proceedings shall be conducted in accordance with [R.C. 5101.70](#), except as provided in [R.C. 5101.702](#)

### Hearing [\[R.C. 5101.702\]](#)

- Shall be held not later than **24 hours** after issuance of order to determine if there is probable cause for the order (except if day following day on which order is issued is not a working day, then order shall remain in effect until next working day)
- Court shall determine whether protective services are least restrictive alternative available
- Court may issue temporary orders, including, but not limited to, temporary protection orders, evaluations, and orders requiring a party to vacate adult's place of residence or legal settlement
  - Temporary order(s) are effective for 30 days
  - Court may renew order for additional 30-day period
  - Information in order may be entered into law-enforcement automated-data system
  - Court may order emergency services
  - Court may freeze financial assets of adult

## **PAYMENT OF SERVICES** [R.C. 5101.71]

### **Payment of Services** [R.C. 5101.71]

- Adult shall not be required to pay for court-ordered services unless court determines upon a showing by Co. DJFS that adult is financially able to pay and court orders the same

#### **NOTE**

If adult is indigent, court shall appoint legal counsel whenever Co. DJFS has petitioned court to authorize provision of protective services.



### **JURISDICTION** [R.C. 2109.50]

Probate court has jurisdiction when:

- Court has jurisdiction of administration of an estate, testamentary trust, or guardianship; or
- Person subject of complaint resides in that county

Court has no jurisdiction over real estate

### **COMPLAINTS MADE BY** [R.C. 2109.50]

- A person interested in the estate, testamentary trust, or guardianship
- The creditor of a person interested in the estate, testamentary trust, or guardianship

### **COMPLAINTS MADE AGAINST** [R.C. 2109.50]

- Any person suspected of having concealed, embezzled, or conveyed away or of being or having been in the possession of any moneys, personal property, or choses in action of the estate, testamentary trust, or guardianship.

### **PROCEEDING** [R.C. 2109.50]

- 1) Complaint filed in probate/court's own motion
- 2) Issue citation/other judicial order to compel person suspected to appear to be examined, on oath
  - May be issued into any county in Ohio
  - Service and return by officer to whom it is delivered (Officer liable for negligence)
  - Before issuing extra-county citation, judge may require complainant to post security in an acceptable amount and form to cover costs of proceeding (e.g., travel expenses of person subject to extra-county citation)
- 3) Examination of person suspected, court may swear witnesses (examination and answers in writing, signed by party examined, filed in court)

- 4) Costs generally assessed against complainant
- 5) Burden of proof by preponderance of the evidence

### **IMPRISONMENT FOR DISOBEYING CITATION** [R.C. 2109.51]

- Court may commit person to county jail who fails to answer interrogatories; remain until complies

### **JUDGMENT ON COMPLAINT** [R.C. 2109.52]

- Jury may be demanded by either party
- Guilty verdict: court may assess damages, order return of asset, order restoration in kind
- Court may issue citation into any county in Ohio requiring any person who claims interest in assets to appear before the court (hearing to determine title)
- Except when person found guilty is fiduciary, judgment for fiduciary. If no fiduciary in Ohio, judgment for the state
- Judgment in amount of:
  - Moneys/value of personal property/ choses in action concealed, embezzled, conveyed away, or held in possession; **PLUS**
  - 10-percent penalty and all costs
  - Judgment reduced to extent of value of anything restored or returned in kind

### **FIDUCIARY FOUND GUILTY** [R.C. 2109.52, 2109.53]

- Judgment for the state against the fiduciary for amount of moneys or value of personal property or choses in action concealed, embezzled, conveyed away, or held in possession, together with penalty and costs

- Fiduciary removed with successor appointed
  - Removed fiduciary; no compensation
  - Charged amount of judgment
  - Fiduciary's property liable for satisfaction of judgment on execution issued on judgment

### **CERTIFICATE OF JUDGMENT; DELIVERY TO CLERK OF THE COURT OF COMMON PLEAS**

[R.C. 2109.54]

- 1) Fiduciary delivers certificate of judgment to clerk of court of common pleas
- 2) Probate court completes and delivers certificate to fiduciary on demand
- 3) Clerk issues execution of court of common pleas for amount of judgment and costs accrued or that may accrue on judgment
- 4) Further proceedings on execution same as if judgment rendered in court of common pleas

### **JUDGMENT IN FAVOR OF STATE [R.C. 2109.55]**

- When no fiduciary in Ohio, prosecuting attorney files certificate in clerk's office and executes on judgment
- Prosecuting attorney pays money realized upon execution to county treasurer for use of estate, testamentary trust, or guardianship (probate court allows reasonable attorney compensation)

### **CONVEYANCES [R.C. 2109.56]**

- All gifts, grants, or conveyances of real property, rents, or personal property and all bonds, judgments, or executions made or obtained with intent to avoid the purpose of concealment proceedings, or in contemplation of any examination or concealment complaint, are void

### FILINGS

1. SPF 22.0: Application to Settle a Minor's Claim and Entry Setting Hearing
2. SPF 22.1: Waiver and Consent to Settle Minor's Claim
3. SPF 22.2: Entry Approving Settlement of a Minor's Claim
4. SPF 22.3: Verification of Receipt and Deposit
5. SPF 22.4: Report of Distribution and Entry of a Minor's Claim

### APPLICATION

1. Brought by guardian of the estate or parent or the custodial parent if the court dispenses with the need for a guardian. [Sup.R. 68(A)]
2. Captioned in the name of the minor. [Sup.R. 68(A)]
3. Shall be accompanied by: [Sup.R. 68(B)]
  - a. A current statement of an examining physician stating the injuries sustained, the extent of recovery, and the permanency of any injuries.
  - b. The existence and amount of additional consideration being paid to persons other than the minor as a result of the incident causing injury.
  - c. The arrangement, if any, that has been made with respect to counsel fees (subject to court approval).

### NOTICE

Noncustodial parents are entitled to 7 days notice. The notice may be waived. [Sup.R. 68(A)]

### PRESENCE AT THE HEARING

Both the injured minor and the applicant are to be present at the hearing. [Sup.R. 68(C)]

The court has the ability to waive the appearance of the minor for good cause. [Sup.R. 76]

### APPOINTMENT OF GUARDIAN

1. Either parent or the custodian of the minor can apply. The court does not favor co-guardians.
2. The guardianship and settlement applications can be heard at the same time.
  - a. Exception: If the minor is over the age of 14, then personal service on the minor for the appointment of his or her guardian is required. A minimum of 7 days notice is required and cannot be waived. [R.C. 2111.04(A)(1)(a)]
3. Guardians may be required to give a bond. [R.C. 2111.38]

### ESTATE \$25,000 OR LESS

1. If the net proposed settlement of the claim is \$25,000 or less after payment of fees and expenses as allowed by the court, the court, upon application by any suitable person whom the court may authorize to receive and receipt for the settlement, may authorize without the appointment of a guardian. [R.C. 2111.18]
2. The court may authorize the delivery of monies in the following manner:
  - a. In a depository authorized to receive fiduciary funds, payable to the guardian when appointed, or to the ward when the ward attains majority; or
  - b. To the natural guardian of the minor, to the person by whom the minor is maintained, to the executive director of children services in the county, or to the minor's own self. [R.C. 2111.05]



### **ESTATE NOT MORE THAN \$10,000** [Sup.R. 67]

1. Each application shall indicate the amount of money or property to which the minor is entitled and to whom such money or property shall be paid or delivered.
2. The attorney representing the interests of the minor shall prepare an entry that orders the following:
  - a. The deposit of funds in a financial institution in the name of the minor;
  - b. Impounding the principal and interest;
  - c. Releasing the funds only upon an order of the court or to the minor at the age of majority.
3. The entry order shall be presented at the time the entry dispensing with appointment of a guardian or approving settlement is approved.
4. The attorney shall be responsible for depositing the funds and for providing the financial institution with a copy of the entry.
5. The attorney shall obtain a Verification of Receipt and Deposit (SPF 22.3) from the financial institution and file the form with the court within seven days from the issuance of the entry.

### **RELEASE**

The court may authorize the person receiving the moneys to execute a complete release on account of the receipt. The payment shall be a complete and final discharge of that claim. [R.C. 2111.18]

### **WAIVER BY MINOR'S PARENTS**

The parent(s) of the minor may waive all claims for damages on account of loss of service of the minor, and that claim may be included in the settlement. [R.C. 2111.18]



## FILINGS

### MINOR NAME CHANGE:

SPF 21.2: Application for Change of Name of Minor

SPF 21.2 (*On reverse side of SPF 21.2*): Judgment Entry

SPF 21.4: Consent to Change of Name

SPF 21.5: Notice of Hearing on Change of Name

SPF 21.3: Judgment Entry – Change of Name of Minor

### ADULT NAME CHANGE:

SPF 21.0: Application for Change of Name of Adult

SPF 21.0 (*On reverse side of SPF 21.0*): Judgment Entry Setting Hearing/Ordering Notice

SPF 21.5: Notice of Hearing on Change of Name

SPF 21.1: Judgment Entry – Change of Name of Adult

## VENUE

Application is filed in the county in which the person resides.

## TIME FRAME

Applicant shall be a bona fide resident of that county for at least one year prior to the filing of the application.

## APPLICATION

1. Made by person desiring change of name.
2. Made on behalf of a minor by either of minor's parents, legal guardian, or guardian ad litem.
3. Shall set forth cause for which change of name is sought.
4. Shall set forth requested new name.
5. Requires the applicant to state whether he/she has a duty to comply with R.C. 2950.04 or 2950.041 because he/she was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a

sexually oriented offense or a child-victim oriented offense.

6. Requires the applicant to state whether he/she has pleaded guilty to, been convicted or, or been adjudicated a delinquent child for committing violation of R.C. 2913.49 (identity fraud) unless the guilty plea, conviction, or adjudication has been reversed on appeal.

## NOTICE OF HEARING

1. Once by publication in a newspaper of general circulation in the county at least thirty days before the hearing.
  - a. If applicant submits to the court satisfactory proof that publication of notice would jeopardize personal safety, then:
    - i. Court shall waive notice requirement.
    - ii. If Court orders change of name, Court shall order record of proceeding sealed and opened only by order of the court for good cause shown or at request of applicant for any reason.
2. Additional requirements for a minor:
  - a. Notice given to parent or parents not consenting by certified mail, return receipt requested, or:
    - i. If no known father of minor, notice given to person who mother of minor alleged to be father.
    - ii. If no father is alleged or either parent or address of either parent is unknown, notice by publication is sufficient as to father or parent if applicant exercised reasonable diligence to locate parent. Notice by publication must include the name and last known address of the non-consenting parent.
    - iii. Any additional notice required may be waived in writing by any person entitled to the notice.

Question applicant/attorney if he/she has exhausted all means of locating a non-consenting parent, including contacting CSEA for a current address.

## ENTRY

1. Court may order change of name:
  - a. Upon proof that proper notice was given or that notice was waived.
  - b. Upon proof that the facts in application show reasonable and proper cause.
    - i. For a minor's name change, all factors relevant to the best interest of the child should also be considered.
2. Court shall NOT order change of name if:
  - a. Person applying or for whom application is made has a duty to comply with [R.C. 2950.04](#) or [2950.041](#) because was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense.
  - b. Person applying or for whom application is made has pleaded guilty to, been convicted or, or been adjudicated a delinquent child for committing violation of [R.C. 2913.49](#) unless the guilty plea, conviction, or adjudication has been reversed on appeal.

Court has discretion to deny the application and reasons for denial should be stated on the record.

Discretionary factors include:

- a. Potential for fraud
- b. Interferes with rights of other
- c. Allows the applicant to avoid a legal duty
- d. Change is contrary to strong public policy of Ohio

3. A certified copy of entry ordering change of name shall be sent to the Vital Statistics Office of the state of birth. [[R.C. 3705.13](#)]

### NOTE

It is the discretion of the court whether it will require applicant to perform this function or if court will do so, because the statute does not specify.)

Published by  
The Supreme Court of Ohio  
Office of Court Services  
Children & Families Section



# THE SUPREME COURT *of* OHIO

---

65 South Front Street Columbus, Ohio 43215-3431