

Talking Points

Rules of Superintendence 66.01 - 66.09

In General

- The Supreme Court of Ohio announced on March 10, 2015 the adoption of new rules to govern adult guardianships in Ohio.
- The rules become effective on June 1, 2015.
- The rules can be divided into three general topics:
 - Sup.R. 66.01 and .02 apply to the overall scope of the rules;
 - Sup.R. 66.03 - .05 discuss the requirements and responsibilities of the courts in adult guardianship cases;
 - Sup.R. 66.06 - .09 describe the requirements and responsibilities of guardians.

Overall Scope of Rules

- Applies to adult wards, and not minors.
- Applies to all guardians.
 - However, Sup.R. 66.02 provides discretion to the probate courts to determine, on a case-by-case basis for good cause, the extent to which the rules apply to a guardian who is related to the ward by consanguinity or affinity.
- Sup. R. 66.01 makes clear the context in which “best interest” should be used in adult guardianship cases and emphasizes the importance of making least restrictive and most normalizing decisions on behalf of the ward.

Requirements and Responsibilities of Courts

- Local Rules: Sup.R. 66.03 requires probate courts to adopt local rules for two purposes. The rules must:
 - Address emergency guardianship procedures. The purpose of the rule is for the court to articulate the process for establishing emergency guardianships by providing clarity regarding the scope and breadth of an emergency guardianship, which is authorized by R.C. 2111.02(B) (3); and
 - Establish a complaint process regarding the performance of guardians appointed by the court, and a process whereby the court can consider such comments and complaints.
 - This requirement recognizes the enormous power courts put in the hands of guardians and acknowledges the importance of having a viable complaints process in place.
- Acknowledging the importance of court oversight, Sup.R. 66.05 gives the courts two new responsibilities when an individual files an application to be a court appointed guardian.
 - The court is required to conduct, or cause to be conducted, a criminal background check on the applicant.
 - However, if the applicant is an attorney, the court may require a certificate of good standing with disciplinary information issued by the Supreme Court of Ohio in lieu of a criminal background check.
 - The court must also require each guardian appointed by the court to submit documentation showing compliance with the educational requirements of Sup.R. 66.06 and .07.

- Sup.R. 66.05 requires courts to take an active role to ensure that court-appointed guardians are qualified and skilled to serve as guardian.
 - Sup.R. 66.05(B) describes additional responsibilities for close oversight of guardianship cases when the guardian has ten or more adult guardianship cases. The guardian with ten or more wards under their care must register with the court annually; the court is required to maintain and monitor a roster of those guardians.

Requirements and Responsibilities of Guardians

- Educated and knowledgeable guardians are a cornerstone of the new guardianship rules.
- Much like the education requirements in Sup.R. 48, which governs guardians ad litem, Sup.R. 66.06 sets forth minimum education requirements for adult guardians.
 - As of June 1, 2015, individuals interested in serving as guardians will be required to take a six-hour course on the fundamentals of adult guardianship.
 - The rule provides that guardians will have six months from the date of the appointment to complete the course.
 - The rule carves out an exception for experienced guardians, who will have one year from date of rules adoption to complete the initial six-hour course.
- To ensure guardians are aware of any changes in Ohio’s guardianship practices, Sup.R. 66.07 requires adult guardians to complete a three-hour continuing education course every calendar year.
 - A guardian who fails to comply with the requirements is not eligible to be appointed for new guardianships, but may continue to serve as guardian on an already existing case.
- The Supreme Court Judicial College is developing education courses to be delivered regionally and monthly, free of charge. By the end of 2015, the six-hour fundamentals course will be available to adult guardians online. The three-hour continuing education seminar will be available online beginning in the first quarter of 2016.
- Sup. R. 66.08 establishes core obligations and sets forth expectations for persons appointed as guardians. The focus of the rule stresses the importance of keeping the court informed about the well-being of the adult wards and the importance of guardians knowing their wards.
 - For example, a guardian is to notify the court when a ward’s living situation or income changes, there is a perceived conflict of interest, or a ward’s ability to make decisions has improved.
 - In addition to the guardian’s report, the guardian is required to prepare an annual plan indicating goals for the ward’s personal and financial needs.
 - The annual plan is separate from the biannual Guardian’s Report required by R.C. 2111.49 and underscores the importance of guardians knowing their ward and advocating for their best interest.
- Given the power and control guardianships confer on guardians, Sup.R. 66.09 outlines duties and responsibilities a guardian assumes with respect to a ward. While the rule is not intended to be an exhaustive list of duties, it provides for heightened protection of a ward’s best interests.

- A guardian is required to meet with his/her ward at least quarterly.
- A guardian has a duty to make a choice or decision for the ward that best meets their needs while protecting and preserving their rights to the fullest extent possible.
- While advocating for services that are in the best interest of the ward, the guardian is directed to be informed about the ward's belief system and preferences, and to make decisions consistent with the ward's preferences, when possible.
 - This includes fostering and preserving positive relationships in the ward's life in order to maintain a support system and also seek advice as appropriate.