

GUARDIANSHIPS

Robert V. Morris II, Administrative Magistrate

Franklin County Probate Court
373 South High Street, 22nd Floor
Columbus, Ohio 43215-6633
614-525-3896

Robert G. Montgomery, Judge

Franklin County Probate Court

Benjamin F. Suffron, Chief Magistrate

Franklin County Probate Court

Heather Joan Worthington, Staff Attorney

Franklin County Probate Court

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Overview of the Guardianship Process

THE GUARDIANSHIP PROCESS

- A. The guardianship process has been developed to provide an orderly method to appoint a person, association, or corporation to have the care and management of the person and/or the estate of an incompetent person or a minor person.
- B. An “incompetent” person has been defined as:
 - any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a correctional institution within this state. Ohio Rev. Code § 2111.01(D).
- C. "Ward" means any person for whom a guardian is acting or for whom the probate court is acting pursuant to section 2111.50 of the Revised Code. Ohio Rev. Code § 2111.01 (B).
- D. A minor has been defined as any person under the age of 18 years. The guardianship of a minor terminates as a matter of law when the minor turns age 18 and the probate court loses jurisdiction over the minor.
- E. The probate court has exclusive jurisdiction over the appointment of a guardian, the management of the guardianship case, and the removal of the guardian. Ohio Rev. Code § 2101.24(A)(e).
- F. The probate court is the superior guardian and delegates to the appointed guardian the care and management of the person and/or estate of an incompetent or a minor. The appointed guardian acts as an agent for the probate court and is subject to the control of the probate court. Ohio Rev. Code § 2111.50(A).
- G. Ohio has adopted a veterans guardianship law, Ohio Rev. Code § 5905.01 to 5905.19, to provide for the administration of the estates of

incompetent veterans and their dependents when the estate consists of funds received from the Veterans Administration.

- H. Federal law gives special protections to members of American Indian tribes and may prohibit the appointment of a guardian, under state law, for members of certain tribes.

APPOINTMENT OF A GUARDIAN

- A. In order to appoint a person, association, or corporation to care and manage the person and/or estate of a minor or incompetent, it is necessary to open a guardianship case. A guardianship case is usually initiated by an interested party filing an application in the probate court requesting that the probate court appoint a guardian for the person and/or estate of an incompetent or minor. Standard probate form PC-G-17.0A, Application for Appointment of Guardian of Incompetent; or standard probate form PC-G-16.0, Application for Appointment of Guardian of Minor are used unless a different form is required by the probate court. The application must comply with Ohio Rev. Code § 2111.03. An interested party may include a person nominated in a durable power of attorney as described in division (D) of § 1337.09 of the Ohio Rev. Code or in writing as described in division (A) of § 2111.121 of the Ohio Rev. Code. The motion of the probate court can also trigger this process. The Bureau of Worker's Compensation may also request the appointment of a guardian. The application process for appointment of a guardian is as follows:

1. To determine if the person is subject to a guardianship action due to the minority of the prospective ward or the incompetence of the prospective ward;
 - a. The probate court must conduct a hearing prior to the appointment of a guardian. The proposed guardian is required to attend the hearing. The prospective ward must be advised of his or her rights under Ohio Rev. Code § 2111.02.
 - b. The hearing is a three-part determination. The court must first determine if the proposed ward is a minor or a qualified respondent. Second, if a guardianship is necessary, and third determine who is a suitable person to be the guardian.
 - c. The burden of proof in an alleged incompetent case is by clear and convincing evidence.
 - d. The application must be filed in the probate court in the county where the prospective ward resides or has a legal settlement. Residence or legal settlement requires actual

physical presence at some place of dwelling, coupled with intent to remain there for some period of time.

- e. The application must be accompanied by a statement of a physician. If a physician's statement is not attached to the application a statement must be attached setting forth that the prospective ward has refused to submit to an examination.
 - f. A number of probate courts in Ohio require persons who apply to serve as a guardian to submit to a criminal background check.
 - g. If a probate court appoints both a guardian of the person and a guardian of the estate for the ward, the probate court will try to appoint the same person if possible.
2. Evidence of a least restrictive alternative for a person found to be incompetent shall be considered by the probate court. This evidence can be used as a basis to deny the appointment of a guardian. If the probate court does appoint a guardian, the guardian may revoke a power of attorney executed by the ward when he or she was competent.
 3. The guardian of the person shall have the custody and provide for the maintenance of the ward. The guardian shall protect and control the person of the ward; shall provide suitable maintenance for his or her ward when necessary; and may authorize or approve medical, or other professional care, counseling, treatment, or services unless the ward or another interested person files objections with the probate court or the court, by order or rule, provides otherwise.

The probate court has full *parens patriae* powers when issuing orders for medical or surgical treatment unless otherwise provided for by a specific section of the Ohio Rev. Code.

4. Individuals with mental retardation and other developmental disabilities, including those who have been adjudicated incompetent pursuant to Chapter 2111 of the Revised Code, have the right to participate in decisions that affect their lives and to have their needs, desires, and preferences shall make a decision that is in the best interests of the individual on whose behalf the decision is made and that is consistent with the needs, desires, and preferences of that individual.
5. To appoint a guardian of the ward's estate if necessary. The person appointed must be suitable. The guardian of the estate must manage the estate of the ward for the best interest of the ward, pay all just debts of the ward, collect all debts owed to the

ward, appear and defend all suits against the ward, and bring suit for the ward when a suit is in the best interest of the ward.

The probate court may also dispense with the need for a guardianship of an estate if there is \$25,000 or less in assets involved under Ohio Rev. Code § 2111.05. Some probate courts, such as Franklin County Probate Court, have adopted local probate forms to dispense with the guardianship of a minor where the minor's estate is \$25,000 or less.

B. Types of guardian.

1. Natural guardian.

The parents of a minor, if married, are the joint natural guardians of a minor and are charged with the care and management of the minor. The parents of a minor have no legal right to manage the estate of the minor. The probate court may not appoint a judicial guardian for the person of a minor unless the parents are deceased, the parents are determined to be unsuitable to have custody, or the guardianship will promote the interests of the minor. Ohio Rev. Code § 2111.06.

2. Judicially appointed guardian.

A guardian of the person and/or estate of a minor or incompetent is appointed through the normal application process. The guardian may be considered a "full" guardian if the guardian is granted unlimited authority. A guardian with unlimited authority may perform most acts that the ward could perform if competent, with court approval, and while acting in the best interest of the ward.

3. Limited guardian.

A guardian appointed by judicial process for a limited purpose and/or with limited powers. The duration of the guardianship may be for a limited time and/or indefinite.

4. Interim guardian.

A guardian appointed by judicial process to serve when a regular guardian has been removed or resigns, and the welfare of the ward requires immediate action. The court may appoint an interim guardian without notice to the ward or interested persons. The maximum period of service is 15 days. The probate court may grant an extension of time but not to exceed an additional 30 days after proper service of notice on the ward, a hearing, and upon finding good cause.

5. **Emergency guardian.**

A guardian appointed by judicial process where it is reasonably certain that immediate action is required to prevent significant risk of harm to the prospective ward's person and/or estate. The court may issue an *ex parte* order with no notice to the prospective ward or interested persons. An emergency guardianship lasts 72 hours. The probate court may grant a 30-day extension with notice to the ward, interested parties, a hearing, and the finding of good cause. The powers of an emergency guardian are limited to those powers that are necessary to prevent the injury to the person or estate of the prospective ward and must be specified on the letters of appointment.

6. **Testamentary guardian.**

A guardian of a minor appointed by a parent's last will and testament. This person has preference to serve as guardian of the estate of the minor. This person does not have preference to serve over the person selected by the minor as the guardian of his or her person.

7. **Nominated guardian.**

A surviving parent may nominate a person to be a guardian of his or her minor children in a writing or durable power of attorney.

A person may nominate an attorney-in-fact or any other person to be the guardian of his or her person, estate, or both in a durable power of attorney. The probate court shall appoint the nominated person as guardian in any guardianship proceeding if the nominated person is competent, suitable, and willing to accept the appointment. The principal of a durable power of attorney may also direct that bond be waived for the nominated guardian to serve as guardian of his or her estate. An out-of-state resident may be nominated to serve as a guardian by a durable power of attorney.

A person may use a writing other than a durable power of attorney to nominate another person to be appointed as the guardian of his or her person, estate, or both under Ohio Rev. Code § 2111.121. The writing must be signed by the maker, and his or her signature must be witnessed by two witnesses who attest that the person making the nomination signed the writing in their presence. The writing must also be acknowledged before

a notary public. The writing may also waive any bond requirement. The probate court shall appoint the nominated person as guardian in any guardianship proceeding if the nominated person is competent, suitable, and willing to accept the appointment.

8. **Conservator.**

Where a petitioner is an adult and physically infirmed but not mentally incompetent, the probate court may appoint a Conservator. The petitioner defines the scope of powers and duties. The petitioner may place any or all of his or her real or personal property or both under a conservatorship. The petitioner can direct the actions of the conservator. The petitioner can terminate the appointment at any time with written notice. The conservatorship may also be terminated by the death of the ward, a determination by the probate court that the applicant is incompetent or by an order of the probate court.

9. **Resident guardian.**

A guardian appointed by an Ohio probate court to have the care and management of property in Ohio that belongs to a nonresident ward.

C. **Notice.**

1. Except in case of the appointment of an emergency or interim guardian, at least seven days' notice of the time and place of the hearing must be given to the prospective ward before the probate court can appoint a guardian. Standard probate form 15.0 is filed with the application to appoint a guardian to notify the court of the next of kin of the alleged ward. Personal service of notice shall be made on the alleged incompetent ward by a probate court investigator. The investigator will file a report with the probate court.
2. The notice must contain a disclosure to the alleged incompetent that he or she has the right to be present at the hearing, the right to contest the application, the right to have a family member present at the hearing, and the right to be represented by an attorney. If the alleged incompetent cannot afford an attorney he or she has the right to appointed counsel. An indigent alleged incompetent is also entitled to an independent expert evaluation at court expense. The applicant also has a right to request a record of the hearing be made. The probate court maintains an indigent guardian fund to cover the costs of these expenses.
3. Notice is also required to all next of kin of the alleged incompetent that reside in this state. No notice is required to next of kin who do not reside in this state. The requirement to

notify only the next of kin who reside in this state has been determined to be constitutional.

4. The person for whom the appointment is sought cannot waive notice. All other persons can waive notice so long as they are not under a disability.

D. Appointment of independent expert evaluator.

1. The proposed ward has a right to have an independent expert evaluator appointed to examine the proposed ward and to testify at the hearing. If the proposed ward cannot afford the expert evaluator, the probate court must appoint the expert evaluator at no cost to the proposed ward.
2. The probate court may also appoint a physician or other qualified person to examine the alleged incompetent and to assist the court in deciding whether a guardian is necessary. This evaluator is an independent evaluator that works for—patient privilege discussed below does not attached to communications with this physician. The court may assess the costs of this examination to the applicant if the proposed ward is determined to not be incompetent.

E. Physician-patient privilege.

1. Ohio Rev. Code § 2317.02 creates a physician-patient privilege that prevents the admission into evidence of communications between a physician and a patient. A nurse who works for the physician may also be covered by this privilege. Ohio Rev. Code § 4732.19 creates a licensed psychologist-patient privilege. Ohio Rev. Code § 2317.02(G) creates a limited privilege for licensed social workers and guidance counselors. A guardian may waive the ward's physician patient privilege.
2. A physician may be compelled to testify as to observations that are not within the scope of his or her treatment.
3. The disclosure of health care information has been further regulated by the passage of Health Insurance Portability and Accountability Act (HIPAA). Health care providers are restricted under this act in the type of medical information that they may disclose without proper consents or court orders.

F. Protection of property pending appointment.

1. Ohio Rev. Code § 2111.04(D) provides that no sale, gift, conveyance, or encumbrance is valid until hearing on the application as to all persons who have notice of the proceeding.

2. See emergency orders under Ohio Rev. Code § 2111.02 and § 2111.022.
3. See Adult Guardianship and Protective Proceedings Jurisdiction Act at Ohio Rev. Code § 2112.21

G. Order of appointment.

1. In many probate courts guardianship hearings are held before a magistrate. Rule 53 of the Ohio Civil Rules governs proceedings held before a magistrate. Any decision issued by a magistrate is effective only when adopted by the judge of the court. The judge may adopt the decisions without waiting for the 14-day objection period to pass. The judge may adopt the decision if, on its face, the decision has no errors of law or otherwise defective.
2. The judge may enter an interim order on the basis of the magistrate's decision without ruling on the objections where immediate relief is justified. The interim order is not subject to the automatic stay and may not extend for more than 28 days from issuance. The court may extend the interim order for an additional 28 days for good cause shown.
3. The ward, the ward's attorney, or any other interested party may make a written request at any time after 120 days from the appointment of the guardian for a review hearing. The review hearing requires the court to consider the necessity of the continuation of the guardianship. The review hearing is conducted in the same manner as the original hearing. No more than one review hearing is required to be conducted in each

FORMS USED IN GUARDIANSHIP CASES

- A. The Ohio Supreme Court has adopted a series of standard probate forms. These forms can be found in Ohio Superintendence Ct. R. 51. Ohio R. Civ. P. 73(H) requires that these forms be used in all probate proceedings before Ohio courts. The standard forms only cover certain proceedings and if there are no standard forms prescribed for a proceeding the practitioner must look to forms allowed by the Rules of Civil Procedure or those permitted by the probate division of the common pleas court in which the estate is pending.
- B. See page 22 for samples of probate court websites containing the probate forms used in guardianship cases.
- C. In Franklin County, guardianship forms are available at:

<http://www.franklincountyohio.gov/probate/forms/guardianship/>

GUARDIAN DUTIES AND AUTHORITY

A. Guardian of the estate.

1. Make and file an inventory within three months of appointment.
2. Deposit funds of the ward's estate. Ohio Rev. Code § 2111.091 specifically prohibits someone other than the appointed guardian from acting as a cosigner or as a person acting with co-responsibility over a ward's assets. The guardian will need to obtain a written order from the probate court to authorize the release of the ward's assets to the guardian.
3. Manage the assets of the ward's estate.
4. File an account every two years or as directed by the probate court. Many probate courts have required by local rules that accounts be filed on an annual basis.
5. File a final account within 30 days of the termination of the guardianship.
6. Expend funds only with the written approval of the probate court. Standard probate form PC-G-15.7 is used to make this request. The court may authorize routine and repetitive expenditure without having to request repeated orders.
7. To bring suits in his or her own name on behalf of the ward if the litigation is in the best interest of the ward. If a cause of action survives the guardianship a proper party may be substituted under Ohio Civil Rule 25(A).
8. The guardian may waive the physician-patient privilege for the ward.
9. Pay the ward's debts. If the ward's estate is insolvent, the guardian shall settle the ward's estate using the insolvency procedures set forth in Ohio Rev. Code §§ 2117.15 and 2117.25 that are used for a decedent's estate. A guardian may be able to file a bankruptcy petition for the ward, and a creditor may be able to force the ward's estate into an involuntary bankruptcy.
10. Defend all lawsuits against the ward.
11. To settle, adjust, or hold the assets received in kind from an executor or administrator with the advice, approval, and consent of the probate court. Minor injury claims must be set for hearing and meet the standards set forth in Ohio Superintendence Ct. R. 66 to 68.

12. A guardian may lease the ward's real property for a term not to exceed three years without application to the probate court. The guardian may also seek authority from the probate court to lease the ward's real estate for a term of years, renewable or otherwise, by perpetual lease.
13. A guardian may seek authority from the probate court to use the ward's moneys to improve the ward's real estate.
14. A guardian may petition the probate court for authority to mortgage the ward's real estate.
15. To have access the contents of a safe deposit box of the ward after the inventory of the safe deposit box.
16. Preserve and/or deposit any and all wills of the ward. *See* local rules.
17. The guardian may employ agents, resident or nonresident, to assist the guardian in carrying out his or her duties.
18. The guardian may settle claims for damage to the person or property of the ward with the advise, approval, and consent of the probate court. A guardian of the estate of a minor is necessary to settle minor claims of more than \$25,000. In minor settlement claims of \$25,000 or less, an application may be filed to settle the claim without the appointment of a guardian of the estate of the minor.
19. Notify the probate court of any change in address for the guardian or the ward.
20. File a guardian's report in incompetence cases every two years. A number of probate courts have included a provision in their local rules of court that allow a guardian to request an order from the court to dispense with the filing of subsequent statement of expert evaluations if an expert has verified in a statement of expert evaluation that to a reasonable degree of medical certainty it is unlikely that the ward's mental competence will improve. For an example of such a local rule see Franklin County Probate Court's Local Rule 66.6 and their local probate form PC-G-17.1D.
21. To prepare and file any tax returns required for the ward.
22. The guardian of an incompetent is also the guardian of the minor children of the incompetent ward unless the court appoints some other persons except in cases where the guardianship has been initiated under §§ 5123.55 to 5123.59 of the Ohio Rev. Code.

23. A guardian of the person of a deceased ward may consent to an autopsy or *post mortem* examination under Ohio Rev. Code § 2108.50 and if there is no guardian of the ward's estate and/or probate estate the guardian may authorize burial or cremation of the deceased ward.
24. A guardian of an estate may disclaim with court approval, in whole or in part, the succession to any property that the ward could disclaim if competent. The probate court may approve a disclaimer, upon hearing after notice to all interested persons, if the court finds that the disclaimer is in the best interest of the ward's estate and the persons who will take the disclaimed interest, and the disclaimer will not materially or adversely affect the ward.
25. Obey all orders of the probate court. The probate court is the superior guardian of the ward and all guardians of the ward must obey the orders of the court.
26. Ohio Rev. Code § 2111.50(B) contains a number of specific powers that the probate court can grant to the guardian. These powers shall be exercised in the best interest of the ward and the dependents of the ward and include the following:
 - a. Convey or release the present, contingent, or expectant interests of the ward in real or personal property, including the right to dower and any survivorship interest;
 - b. Enter into revocable trusts of property of the estate of the ward that may not extend beyond the majority, disability, or life of the ward;
 - c. Exercise or release powers as a trustee, personal representative, custodian for a minor, or donee of a power of appointment;
 - d. Exercise options to purchase securities or other property;
 - e. Exercise rights to elect options under insurance or annuity policies and to surrender an annuity or insurance policy for its cash value;
 - f. Exercise the right to an elective share in the estate of the deceased spouse of the ward, pursuant to Ohio Rev. Code § 2106.01; and
 - g. Make gifts if the exercise of this power will not impair the ability to provide for the maintenance and care of the ward for the foreseeable future. The court must also consider any estate of tax advantages to the gift, any

pattern of giving prior to the ward's incompetence, and the disposition of property in the ward's will and if no will to the ward's next of kin. The court is required to hold a hearing if the gift is for more than \$1000. Notice of hearing must be given to the guardian, the ward, the ward's next of kin or known legatees and devisees, and other persons designated by the court.

B. Guardian of the person.

1. Control and protect the person of the ward. A guardian, subject to control review, may determine who may visit with the ward.
2. Provide suitable maintenance from the ward's estate.
3. Provide for the education of the ward, if a minor.
 - a. The guardian's residence determines the ward's residence for school purposes.
 - b. The probate court will not appoint a guardian for a minor solely for school purposes.
 - c. The guardian is liable for the minor ward attending school under the compulsory school attendance law.
4. Authorize or approve the medical care of the ward unless the ward or an interested party files objections with the probate court. This includes the power of the guardian to withdraw nutrition and hydration. This also includes the power to donate organs and to consent to an autopsy.
5. File a guardian's report every two years in adult incompetent cases.
6. Notify the probate court of any change in address for the guardian or the ward.
7. Obey all orders of the probate court.

GUARDIAN LIABILITIES

- A. A guardian is a fiduciary as defined in Ohio Rev. Code § 2109.01. As a fiduciary, the guardian owes the highest duty of loyalty and trust to the person and/or property of the ward. A guardian can be held liable for damages that may result from his or her failure to maintain this standard.

- B. The guardian is liable for failure to properly invest the assets of the estate.
- C. The guardian is not allowed to have personal use of the assets of the ward's estate.
- D. The guardian is not allowed to have dealings with the ward's estate.
- E. The guardian is subject to being removed if he or she does not timely file an inventory and accounts.
- F. The guardian is not personally liable on a contract entered into in his or her representative capacity unless the contract provides otherwise.
- G. The guardian is not personally liable for the debts of the ward unless (1) the guardian agreed to be responsible; (2) the debts were for the support of the ward, and the guardian is liable for these debts due to some other relationship with the ward, such as being the ward's parent or spouse; (3) the debt was incurred due to the negligence of the guardian; or (4) the debt was incurred by an act of the guardian that was beyond his or her authority.
- H. The guardian of a minor may be liable for damages caused by a minor ward while driving a motor vehicle if the guardian signs for a driver's license or temporary instruction permit for the minor ward.
- I. The probate court may reduce or deny guardian fees if there is a delinquency in the filing of an inventory or account. Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in the filing of accounts.
- J. The probate judge may appoint a suitable person to investigate the administration of a guardianship, estate, or trust when determined necessary by the court or upon application of an interested person under Ohio Rev. Code § 2109.49. The court may assess the costs of the investigation against the ward's estate or the person who requested the investigation.
- K. The probate court may refer information of abuse, exploitation, or theft to appropriate law enforcement authorities for investigation and prosecution.

MANAGEMENT OF THE WARD'S ESTATE

- A. The guardian is required to deposit estate funds into an interest bearing account. Ohio Rev. Code § 2109.41 provides that:

[i]mmediately after appointment and throughout the administration of a trust, but subject to section 2109.372 of the Revised Code, every fiduciary, pending payment of current obligations of his trust, distribution, or investment pursuant to law, shall deposit all funds received by him in his name as such fiduciary in one or more depositories. Each depository shall be a bank or savings and loan association located in this state... All deposits made pursuant to this section shall be in such class of account as will be most advantageous to the trust, and each depository shall pay interest at the highest rate customarily paid to patrons on deposits in accounts of the same class.

- B. The fiduciary is required to invest any funds belonging to an estate that are not required to pay current obligations or distributions. If a fiduciary fails to invest the assets of the estate, the fiduciary is obligated to account to the estate for any loss of interest due to his or her negligence.
- C. The guardian must look to Ohio Rev. Code § 2109.37, 2109.371, and Ohio Rev. Code § 2109.372 for his or her investment authority.
- D. The guardian may sue to enforce rights of the ward.
- E. The guardian may settle claims for loss or damage to the ward or the ward's property with advice, approval, and consent of the probate court.
- F. The guardian may complete contracts of the ward for the purchase or sale of real estate. The guardian should use the procedures outline in Ohio Rev. Code § 2113.48 to 2113.50.
- G. The guardian may purchase a home for the ward with the approval of the probate court. The real estate must be titled in the name of the ward.
- H. The guardian of a ward who has a claim of dower may sell, compromise, release, or adjust the ward's right of dower upon terms approved by the probate court.
- I. The guardian may release and quitclaim the ward's title to real estate held by tax title.
- J. If the guardian has a personal interest in any suit or proceeding involving the ward a guardian *ad litem* shall be appointed to represent the ward.
- K. The guardian of the estate may without application to the probate court lease the ward's real estate for a term not to exceed three years or the majority of the ward.

- L. The guardian, with the approval of the probate court, may lease the use and possession of land of the ward containing coal, gypsum, petroleum oil, natural gas, gravel, stone, or other mineral substance.
- M. The guardian may use moneys and the personal estate of the ward to improve real estate with the permission of the probate court.
- N. The guardian may pledge real estate of the ward for a mortgage loan with approval of the probate court.
- O. The guardian may seek the authority of the probate court to make gifts from the ward's estate.

EXPENDITURES

- A. The guardian must obtain the written approval of the probate court before making any disbursements from the ward's estate.
- B. The guardian uses standard probate form 15.7, Application for Authority to Expend Funds form, to obtain the approval of the probate court.
- C. The probate court can approve expenditures for the support, maintenance or education of the ward.
- D. If the guardianship of the estate is for a minor, additional rules apply. The minor's parents have the duty to support their child. The guardianship funds are not available for normal support expenses unless the parents can show that they cannot afford these needs.
- E. The probate court will approve expenditures only after an inventory has been filed with the court.

ACCOUNTS

- A. A guardian of the estate is required by Ohio Rev. Code § 2109.302 to file a guardian's account at least every two years. Many probate courts require annual accounts to be filed by local rule of court.

GUARDIAN REPORTS

- A. The guardian must file a guardian's report biennially after appointment.

ATTORNEY FEES

- A. The guardian has the right to employ an attorney. The guardian is personally liable on any contract made with the attorney. The ward's estate may reimburse for attorney fees for legal services that were reasonable, necessary, and for the benefit of the ward. The standards set forth in OHIO RULES OF PROF'L CONDUCT R. 1.5 are used to determine reasonable attorney fees.

GUARDIAN FEES

- A. Ohio Superintendence Ct. R. 73 provides that guardian's compensation shall be set by local rule of court.

REMOVAL OF A GUARDIAN

- A. The guardian may be removed after first giving not less than 10 days notice for habitual drunkenness, neglect of duty, incompetency, fraudulent conduct, because the interest of the trust demands it, or for any other cause authorized by law.
- B. The guardian may be removed upon proof that the guardian is no longer a resident of this state unless the guardian was appointed by a writing pursuant to Ohio Rev. Code § 2109.21 or 2111.121. The guardian may be removed upon proof that the guardian is no longer a resident of the county in which the guardian resided at the time of his or her appointment unless he or she was nominated by writing as set forth above.

TERMINATION OF GUARDIANSHIP

- A. The death of the ward will terminate a guardianship.
- B. Marriage of the ward will terminate the guardianship of the person, but not the guardianship of the ward's estate.
- C. A guardianship of the person and/or estate of a minor terminates when the ward reaches the age of 18.
- D. The death, resignation, removal, or incompetency of the guardian may terminate the guardianship unless the probate court appoints a successor guardian.
- E. A guardianship of an incompetent will terminate if the ward is returned to competence. The ward, the ward's counsel, or any other interested person may at any time, after 120 days from the appointment of the original guardian, apply to the probate court for a hearing to determine if the guardianship needs to be continued. Upon

request the probate court shall conduct at least one hearing for continuation of the guardianship each calendar year. The burden of proof that the guardianship should continue is on the guardian by clear and convincing evidence.

- F. If the ward moves to another county in this state, the guardianship may be transferred to the probate court of the county of the ward's new residence upon motion of the guardian and/or the probate court. The probate court in the county where the ward has relocated must accept the transfer of jurisdiction.

- G. If the ward's estate is less than \$25,000, the probate court may authorize the guardianship of the estate to be terminated and/or not created. If the ward is a minor, Ohio Rev. Code § 2111.05 allows the probate court to order the funds deposited in a depository authorized to receive fiduciary funds, deliver the funds to the minor's natural guardian, delivery the funds to the person caring for the minor, deliver the funds to the executive director of the county children's services, or deliver the funds to the minor himself or herself. If the ward is an incompetent, the court may order the funds deposited in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court, or if the assets do not consist of money by delivery of the assets to a person designated by the court. The person

FORM AVAILABILITY

Many of the local probate courts provide court documents online. Specifically see:

- www.sconet.state.oh.us Ohio Rules of Court
- <http://www.franklincountyohio.gov/probate/forms.cfm> Probate Forms

PROBATE COURT WEBSITES

BUTLER COUNTY

www.butlercountyprobatecourt.org

CUYAHOGA COUNTY

<http://probate.cuyahogacounty.us/home.htm>

DELAWARE COUNTY

<http://www.co.delaware.oh.us/court/probate/>

FRANKLIN COUNTY

www.franklincountyohio.gov/probate

HAMILTON COUNTY

www.probatect.org

LICKING COUNTY

<http://www.lcounty.com/probate/>

LORAIN COUNTY

www.loraincounty.com/probate

PROBATE COURT OF FRANKLIN COUNTY, OHIO
ROBERT G. MONTGOMERY, JUDGE

IN THE MATTER OF THE GUARDIANSHIP OF _____

CASE NO. _____

STATEMENT OF EXPERT EVALUATION

[Sup. R. 66 & R.C. 2111.49]

Definition of incompetent [O.R.C.2111.01 (D)]: "Incompetent" means any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a correctional institution within this State."

The Statement of Evaluation does not declare the individual competent or incompetent, but is evidence to be considered by the Court.

The fee for completing this evaluation WILL NOT be paid by the Probate Court. Each evaluator should secure payment from the Applicant/Guardian.

1. This Statement of Expert Evaluation is to be filed with or attached to:
 - A. Guardianship Application: Completed by Licensed Physician Licensed Clinical Psychologist prior to the filing and attached to the application.
 - B. Guardian's Report: To be completed by Licensed Physician Licensed Clinical Psychologist Licensed Independent Social Worker Licensed Professional Clinical Counselor or Mental Retardation Team
The evaluation or examination shall be completed within three months prior of the date of the Report. O.R.C.2111.49.
 - C. Application for Emergency Guardian: of the person; a Licensed Physician shall complete the Supplement For Emergency Guardian, Form 17.1B, with specificity indicating the emergency, and why immediate action is required to prevent significant injury to the person. The Supplement shall be signed, dated, and attached as part of this Statement.
2. Statement completed by:

Name & Title/Profession: _____

Business Address: _____

Business Telephone Number: _____
3. Date(s) of evaluation: _____
- Place(s) of evaluation: _____
- Amount of time spent on evaluation: _____
- Length of time individual has been your patient: _____

4. Is the individual presently under medication? Yes No If yes, what is the medication, dosage, and purpose?

Are there any signs of physical and/or mental impairments caused by the medications themselves?

5. Is the subject mentally impaired? Yes No If yes, indicate the diagnosis below:

Mental Retardation/Developmental Disabilities:

Profound Severe Moderate Mild

Mental Illness: Type and Severity

Substance Abuse: Description _____

Dementia: Description _____

Other: Description _____

Please provide additional comments and test scores if available. (Continue comments on page 4):

6. During the examination did you notice an impairment of the individual's:

- a) Orientation Yes No Unknown
- b) Speech Yes No Unknown
- c) Motor Behavior Yes No Unknown
- d) Thought Process Yes No Unknown
- e) Affect Yes No Unknown
- f) Memory Yes No Unknown
- g) Concentration and comprehension Yes No Unknown
- h) Judgment Yes No Unknown

7. Please describe any impairments identified in question six. (Continue comments on page 4)

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- 8. Is the subject physically impaired? Yes No If yes, description:

- 9. Are there any special characteristics of the individual which should be considered in evaluating the individual for guardianship? Yes No If yes, explain:

- 10. Are there any indications of abuse, neglect or exploitation of the individual? Yes No
If yes, explain: _____

- 11. Do you believe this individual is capable of managing the individual's activities of daily living or making decisions concerning medical treatments, living arrangements and diet?
 Yes No
If no, explain: _____

- 12. Do you believe this individual is capable of managing the individual's finances and property?
 Yes No If no, explain:

- 13. Prognosis:
A. Is the condition stabilized? Yes No
B. Is the condition reversible? Yes No

- 14. In my opinion a guardianship should be:
 Established/Continued
 Denied/Terminated

I certify that I have evaluated the individual on _____, 20_____.

Date: _____

Signature of Evaluator

GUARDIAN'S REPORT ADDENDUM
(Not to be used with initial Application)

It is my opinion, based upon a reasonable degree of medical or psychological certainty, that the mental capacity of this ward will not improve.

As a result of this statement, the guardian may file a motion to dispense with the filing of future Statements of Expert Evaluation. Refer to Local Court Rule 66.6.

Date: _____

Signature - Licensed Physician/Clinical Psychologist

