

## FILINGS

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2. SPF 15.01: Judgment Entry Setting Hearing on Application for Appointment of Guardian
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## 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.]