

SHELBY COUNTY PROBATE COURT

www.shelbycoprobate.org

GUARDIANSHIP OF INCOMPETENT CHECKLIST (EFF. 06/07/2016)

EMERGENCY GUARDIANSHIP

___ PLEASE SEE LOCAL RULE 66.0(C) FOR PROCEDURES/REQUIREMENTS FOR FILING AN EMERGENCY GUARDIANSHIP.

INITIATION REQUIREMENTS

___ Form 17.0 - Application for Appointment of Guardian of Alleged Incompetent (RC 2111.03)

___ Form 17.1 – Statement of Expert Evaluation (2111.49, SupR 66)

___ Entire form/appropriate boxes must be completed

___ Must be dated within three (3) months of filing date

___ Must be legible

___ Form 15.0 - Next of Kin of Proposed Ward (RC 2111.03)

___ Form 15.01 - Judgment Entry Setting Hearing on Application for Appointment of Guardian

___ Form 15.1 - Waiver of Notice and Consent (RC 2111.04)

___ Form 17.4 - Notice of Hearing for Appointment of Guardian of Alleged Incompetent Person (to Spouse and Known Next of Kin) (RC 2111.04)

___ Form 17.3 - Notice to Prospective Ward of Application and Hearing (RC 2111.04, 2111.041)

___ Form 117.12 (website #) – Notice to Court Regarding Ohio Residency

___ Form 117.13 (website #) - Request for Background Check (this form is submitted by the applicant directly to the Sheriff's Office, along with the required fee, to commence fingerprinting and background check) (NOTE: results of the background check take several weeks to complete) Security deposit for costs (Local Rule 58.1) OR ___ Form 117.00 - Affidavit of Indigency & Entry

___ Signature of ___ Applicant ___ Fiduciary ___ Attorney required (SupR 57, CivR 11)

PRECEDING GUARDIAN'S APPOINTMENT

___ Ward is a resident of/has legal settlement in the county (RC 2111.021)

___ All paragraphs/boxes/fields of Application to be completed/check-marked (RC 2111.03)

___ R.C. 2111.06 – If the powers of the person appointed as guardian of a minor or incompetent are not limited by the order of appointment, the person shall be guardian both of the person and estate of the ward.

___ The powers of guardian on the proposed **Judgment Entry Setting Hearing, Notice of Hearing, Judgment Entry – Appointment of Guardian of Minor and Letters of Guardianship** shall correspond to the powers requested on the Application for Appointment (i.e. limited/non-limited)

___ Separate guardianship for each proposed ward (Local Rule 66.0)

___ Form 17.3 and 17.4 - Notice of Hearing will be personally served by Court Investigator on ward and facility administrator/superintendent (CivR 4.2C, E)

___ **Guardian's Bond (RC 2109.04) (also see below)**

___ Bond required but not filed

___ Motion/Order to Waive Bond with Consent (Local Rule 64.4)

___ Motion/Order for Custodial Deposit in Lieu of Bond (Local Rule 75.2)

___ **Criminal Background Check (SupR 66.05)**

___ Results of criminal background check to be filed with Court prior to hearing the Application for Appointment of Guardian of Alleged Incompetent

___ Resident of Ohio for five years immediately preceding filing of said application requires an Ohio Bureau of Criminal Identification and Investigation background check

___ NOT a resident of Ohio for five years immediately preceding filing of said application requires a Federal Bureau of Investigation background check

___ Reimbursement of fee paid for background check by Applicant to be appointed guardian of an **indigent** ward may be reimbursed by Court upon proper motion and entry with attached *original* receipt (Court's Form: "Motion, Entry and Certification for Reimbursement of Fees/Costs for Criminal Background Check)

PRE-APPOINTMENT EDUCATION (SupR 66.06)

___ Proof of Completion of Pre-appointment Education (fundamentals course) (NOTE: if not completed prior to hearing on appointment, the Court may order the fundamentals course to be completed within six months of appointment)

HEARING REQUIREMENTS

___ **Form 15.3 - Guardian's Bond (also see above) (RC 2109.04)**

___ **Form 17.5 - Judgment Entry – Appointment of Guardian for Incompetent Person (RC 2111.02)**

___ **Form 15.2 - Fiduciary's Acceptance – Guardian (RC 2111.14)**

___ **Form 15.9 - Oath of Guardian (RC 2111.02)**

___ **Form 15.4 - Letters of Guardianship (RC 2111.02)**

PROCEEDING GUARDIAN'S APPOINTMENT

Guardian's Inventory (RC 2111.14)

___ **Form 15.5 – Guardian's Inventory**

___ **Form 15.5JE - Judgment Entry/Orders on Filing Inventory**

___ Due within three months after appointment (RC 2111.14)

Application to Release/Expend Funds

___ **Form 15.6 - Application to Release Funds to Guardian/Order**

___ **Form 15.7 - Application for Authority to Expend Funds/Order**

___ Inventory must be filed before expenditure will be approved (SupR 66)

___ Except as provided in RC 2111.131, no part of ward's estate shall be used for support, maintenance or education of ward unless ordered and approved by Court (RC 2111.13)

Deposit of Wills/List of Important Papers (RC 2107.07, Local Rule 66.2, SupR 66.08)

___ Guardian must deposit with Court any and all **original Wills and Codicils** of the ward for safekeeping

___ Will and/or Codicil should be placed in sealed envelope that contains endorsement on outside of envelope naming Executor and also successor Executor

___ Within three months after appointment, Guardian shall file a list of all of the ward's important legal papers, including but not limited to estate planning documents, advance directives, and powers of attorney, and the location of such legal papers, if known at the time of the filing.

Continuing Education (SupR 66.07)

___ Successfully complete an annual continuing education course

___ File information with Court annually documenting compliance with continuing education requirement

Annual Plan (SupR66.08)

___ Annually file a plan which states the guardian's goals for meeting the ward's personal and financial needs

Guardian's Account

___ **Form 15.8 – Guardian's Account** (RC 2109.302)

___ Evidence of assets remaining must be documented (*Local Rule 64.5*)

___ **Form 15.81 – Bank Certificate** (RC 2109.302)

___ **Form 15.82 - Certificate of Service of Notice of Filing Guardian's Account** (*Local Rule 64.1*)

___ to be filed simultaneous with account (*RC 2109.32*)

___ **Form 15.83 - Affidavit of Service of Notice of Hearing** (*RC 2109.33, Local Rule 64.1*)

___ **Form 13.7 - Waiver of Notice of Hearing on Account** (*RC 2109.33*)

___ **Form 13.5 - Notice of Hearing on Account** (*RC 2109.33*)

___ **Form 13.5 - Notice of Hearing on Account** (*RC 2109.33*)

___ Notice of Hearing on Account must be served by **certified mail, return receipt requested**; original signed certified mail card to be filed with copy of Notice

___ **Form 13.3 - Entry Approving and Settling Account** (*RC 2109.32*)

___ Attorney or Fiduciary must check any applicable boxes

___ Calculations/totals must be correct

___ Account must be filed on annual basis unless otherwise ordered by court (*Local Rule 64.1, SupR 64*)

___ All fiduciaries must sign account when multiple fiduciaries have been appointed (*RC 2109.32, Local Rule 64.1*)

___ If Account is delinquent, no expenditure/sale/distribution, or fee will be approved (*Local Rule 64.2*)

___ Vouchers in support of account not required if fiduciary is represented by counsel (*Local Rule 64.3*)

___ Costs must be paid before final/distributive account is approved (*SupR 64*)

Extension of Time

___ Application to extend time to file inventory or account shall not be granted unless fiduciary has signed the application (*SupR 78*)

Counsel Fees

___ Fees for establishment/inventory/first account shall be reasonable and beneficial, in writing, using calculations (*Local Rule 71.2B, C, D, SupR 71*) (see website for use of Guardianship Fee Calculator)

___ After first account, applications shall be reasonable and beneficial, in writing setting forth details of calculations (*Local Rule 71.2E*)

___ Attorney is also Guardian: time records should show separate duties; if fails to maintain these records, only Guardian's compensation will be allowed (*Local Rule 71.2F, 73.1*)

Form 117.10 - Motion, Entry And Certification For Counsel Fees And/Or Guardian Fees For Indigent Individual

___ Fees exceed those permitted for court appointed counsel for an indigent ward, or for attorney serving as Guardian of an indigent ward (*Local Rule 8.1*)

___ Postage fees (other than for overnight, certified or registered mail, or certificate of mailing), copy costs, and telephone charges shall be considered part of the legal services of an ordinary nature rendered by the attorney for the guardian in the administration of the guardianship. An attorney may be reimbursed for the advancement of other costs and expenses, such as overnight, certified and registered

mail, court deposits, court costs, vehicle titles, recording fees and death certificates. However, all such reimbursements are subject to Court review.

___ Applications for approval of counsel fees in a guardianship shall be filed preceding or simultaneous with the filing of a Partial Account or Final Account, to ensure the frequency of the filing of an application at least every year or every two years. Fee applications submitted for time spans covering more than two years, or submitted after the Final Account has been approved and filed, will not be approved without proof of justifiable cause.

Guardian's Compensation

___ Computations do not comply with Local Rule (*Local Rule 73.1, SupR73*)

Form 117.10 - Motion, Entry And Certification For Counsel Fees And/Or Guardian Fees For Indigent Individual

___ Fees exceed those permitted for a lay person appointed as Guardian for an indigent ward (*Local Rule 8.1*)

___ Lay persons appointed as Guardians for an indigent ward shall be compensated at the rate of \$25.00 per hour to the maximum of \$200.00 per year (the same rate as defined by Local Rule 8.1 – Court Appointments).

___ Applications for approval of guardian fees shall be filed preceding or simultaneous with the filing of a Partial Account or Final Account, to ensure the frequency of the filing of an application at least every year or every two years. Fee applications submitted for time spans covering more than two years, or submitted after the Final Account has been approved and filed, will not be approved without proof of justifiable cause.

Guardian's Report (RC 2111.49, Local Rule 66.4)

Form 17.7 – Guardian's Report

___ Report is due two years after the date of the issuance of the guardian's letters of appointment and biennially (every two years) after that time

___ Entire form/appropriate boxes must be completed

Form 17.1 - Statement of Expert Evaluation

___ To be attached to/filed simultaneously with Guardian's Report

___ Expert to have evaluated/examined ward within three months prior to date of Guardian's Report

___ Entire form/appropriate boxes must be completed

___ Must be legible

SETTLEMENT OF CLAIM OF ADULT WARD (SupR 69)

Form 22.5 – Application to Settle a Claim of an Adult Ward/Entry Setting Hearing and Ordering Notice

___ Narrative statement in support of settlement describing occurrence, injury or damage (*to be attached per application*)

___ Current statement of examining physician in respect to injuries sustained, extent of recovery from those injuries, and permanency of any injuries (*to be attached per application*)

___ Statement of physician must be on business letterhead

___ Statement must be dated within six (6) months of its filing date

___ Statement must be legible

___ List of unreimbursed medical/other expenses and proposed payees (*to be attached per application*)

- ___ Statement of what additional consideration, if any, is being paid to persons other than ward as result of incident causing injury to ward (*to be **attached** to application **OR** included as a **statement on** the Application*)
- ___ Statement of what arrangement, if any, has been made with respect to counsel fees; counsel fees shall be subject to approval by the Court (*copy of attorney's fee contract and itemization of suit expenses to be **attached** per application*)
- ___ Structured settlement documents including statement of present value of settlement (*to be **attached** per application*)
- ___ **Form 22.6 – Entry Approving Settlement of Claim of an Adult Ward (please submit Entry prior to hearing for Court's review)**
- ___ **Form 22.7 – Report of Distribution/Entry**

Termination of Guardianship

- ___ **Form 115.60 – Application to Terminate Guardianship (RC 2111.47)**
- ___ **Form 115.62 – Entry Terminating Guardianship**
- ___ Final Account, if applicable, due within 30 days of termination and costs to be paid in full (*RC 2109.32, SupR 64*)

OTHER _____
