

ANALYSIS OF THE AMENDMENTS TO OHIO RULE OF SUPERINTENDENCE RULE 66

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During 2022, the Ohio Supreme Court was busy addressing matters which impacted guardianships by amending Rule 66 of the Ohio Rules of Superintendence. In having made these amendments, the Court addressed various problems associated with

isolation, visitation, abuse, neglect, and exploitation of persons under guardianship. The Amendments took effect on July 1, 2022 and will continue to have real impact on the way guardianships are handled by the probate courts.

When a client's loved one is at risk for abuse, neglect, or exploitation, it can be difficult to obtain a medical evaluation because the alleged abuser has gained emotional power over the proposed ward which is sufficient to block access to a medical evaluation. Ohio Sup. R. 66(A) was amended to expand the circumstances in which an application for guardianship can be filed without a statement of expert evaluation. According to this rule, when an applicant cannot supply a statement of expert evaluation because either the prospective ward or some other person has refused to permit a medical exam to be performed, the court will make an exception to the requirement that a statement of expert evaluation be attached. In such a case, the applicant will need to provide a statement that the prospective ward or other individual has refused to consent to an examination.

Helping persons under guardianship maintain meaningful relationships is an important focus behind some of the amendments to Ohio Sup. R. 66. For instance, Ohio Sup. R. 66.03 requires the probate courts to develop local rules that establish a process for submitting comments and complaints about a guardian, including actions of the guardian in denying a request of a person to visit the ward. Additionally, the Guardian is, pursuant to Ohio Sup. R. 66.09(F)(1), encouraged to identify those persons with whom the ward desires to communicate and facilitate the communication the guardian be-

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lieves is in the best interests of the ward. However, pursuant to Ohio Sup. R. 66.09(2)(h), a guardian does not need to encourage visitation and communication with a person whose contact with the ward would not be in the best interests of the ward. To further the court's ability to monitor decisions to exclude persons from communicating with the ward, Ohio Sup. R. 66.09(F)(2)(i) was amended to require a guardian to promptly submit a list of names to the court of any persons or entities with whom the guardian has excluded or seeks to exclude from visiting or communicating with the ward.

It is easy to see how differences of opinion amongst the guardian and the person who wishes to communicate with the ward can lead to court action under the probate court's complaint procedures. If the court investigators carefully evaluate the ward's preferences as required under Ohio Sup. R. 66.05(A)(5), the court will have some information from a disinterested source to help guide it to a decision. Ohio Sup. R. 66.05(A)(5), therefore, "[d]irect[s] the court investigator to inquire into the visitation history and preferences of the prospective ward during the service of notice and initial guardianship investigation pursuant to R.C. 2111.041 or at any other time that the court directs. The court investigator shall make a written report of the visitation recommendation to the court."

Finally, the six-hour fundamentals course as required under Ohio Sup. R. 66.06(A) will now include education on abuse, neglect, and exploitation in order to detect and report allegations to authorities, which, under Ohio Sup. R. 66.08(C), includes reporting to the probate court, applicable long-term care ombudsman or law enforcement.

In totality, the July 2022 amendments to

Ohio Sup. R. 66 will better permit the probate courts to evaluate whether a potential ward should be placed under guardianship, improve the process for managing guardianships in the best interest of persons under guardianship, and provide necessary information for making informed decisions regarding visitation. Furthermore, by extending the training requirements to include education on abuse, neglect, and exploitation, the rule will better serve the ward by promoting awareness.

ENDNOTES:

¹Ohio Sup. R. 66, Guardianships.

