

MONTGOMERY COUNTY COMMON PLEAS COURT  
PROBATE DIVISION

NOTICE OF CHANGE IN LOCAL RULES OF COURT

After notice and opportunity for comment three changes have been adopted effective May 19, 2008 to the Local Rules of Court.

Local Rule 66.1 - Guardianships

The first change to the Local Rule is an addition to paragraph B of Local Rule 66.1 to provide that:

“When a physician or clinical psychologist states on a Statement of Expert Evaluation, that to a reasonable degree of medical certainty it is unlikely that the ward’s medical competence will improve, the Guardian may apply to the court to dispense with the filing of updated Statement of Expert Evaluation when filing subsequent Annual Guardian’s Reports.”

Also adopted with this change in Local Rule 66.1 is Local Probate Form 17.D - Application and Entry to Dispense with Subsequent Statements of Expert Evaluation.

This change has been made in the recognition that: 1) Certain medical conditions are irreversible; (2) That it is sometimes difficult to obtain an updated statement of expert evaluation; and (3) The Guardian usually must advance any costs to obtain an updated Statement of Expert Evaluation..

The second change is also to Local Rule 66.1 and involves the adoption of a new paragraph K to this Local Rule that provides:

“Any applicant for guardianship, except an attorney licensed to practice in Ohio or a state agency, must complete a criminal record check which is acceptable to the court. The costs of any criminal record check shall be paid by the applicant.”

Standard Probate Form 17.0, Application for Appointment of Guardian of Alleged Incompetent, and Standard Probate Form 16.0, Application For Appointment of Guardian of Minor, require the applicant to disclose if the applicant has been charged with or convicted of a crime involving theft, physical violence, or sexual, alcohol or substance abuse.

Over the past two years, the Court has been conducting a review of the local public criminal records for Montgomery County Court to verify if the applicant for the appointment of a guardian has fully disclosed any prior charges or convictions for theft offenses, physical violence, sexual, alcohol or substance abuse. During this time period, the Court has identified a significant number of cases where the applicant has failed to disclose prior charges or convictions for theft, physical violence, or sex offenses, alcohol or substance abuse.

This type of information is a factor that is considered by the Court in determining if a person is a suitable person to serve as a Guardian of the person and/or the estate of a minor or incompetent. The existence of a prior charge or conviction is not an automatic disqualification to the appointment. The circumstances surrounding any prior charge or conviction are required to determine if the applicant is a suitable person to be appointed as a guardian.

However, in cases where the applicant has a prior record of physical violence or theft offenses involving the minor or the incompetent, the court is not likely to find that the applicant qualifies for appointment.

The Ohio guardianship laws allow the probate court to appoint a Ohio resident who is a non-resident of the county to serve as a guardian. In cases where a non-resident of the county is being appointed, the Court has no way to verify the criminal background of the applicant. In addition, residents of this county may be charged or convicted of criminal offenses in other counties of this state or in other states.

Given the concerns of making sure that a person appointed as a guardian is a proper person and given this Court's experience with our limited local criminal background check the Court believes that it is time to go to a more formal system of conducting a criminal background check that provides for broader criminal background check.

The Court has opted to use a web check through BCI that requires the applicant to submit fingerprints that are scanned into an online web check of the applicant's background. This check will require the applicant to physically appear at the court to be fingerprinted. The information received from any criminal background check will be considered non-public information unless it is used as part of a hearing to appoint the applicant as Guardian. The records of any background check will be stored in the Court Administrator's office and will not be available to the public.

The web check allows the court to request either a BCI check or an FBI check. There is currently a cost of \$22.00 for the BCI check and a cost of \$24.00 for the FBI check. This cost is subject to change without notice. In most cases the BCI check will be used.

The web check results **must** be received prior to the hearing on the applicant for appointment of a guardian.

In pro se cases the applicant will be fingerprinted when the application is filed. In cases where there is an attorney, this court will allow the attorney to submit the forms and to allow the applicant to come in either when the forms are submitted or after the submission of the forms so long as the applicant comes in to be fingerprinted in time for the background check to be returned before the hearing. It is estimated that it will take ten days for the background check to be returned after the applicant is fingerprinted.

It will be counsel's responsibility to make sure that his or her client is fingerprinted in time for the background check to be returned prior to the hearing. In cases where there are no next of kin to be served, a hearing can be set in as little as ten days. In these cases the applicant should be fingerprinted when the application is filed. In cases where notice is issued to next of kin by certified mail, the hearing will not be set for approximately six weeks. The applicant should come in at least three weeks prior to the hearing to be fingerprinted.

If counsel does not handle this responsibility properly, this Court reserves the right to require all applicants to be fingerprinted when the application is filed. This Court also reserves the right to require the clients of a particular attorney to be fingerprinted when the application is filed if the attorney has abused the privilege of controlling when the applicant is fingerprinted.

An issue has been raised as to whether a spouse of the ward should be fingerprinted. As spouses are not immune from domestic violence charges or convictions or charges or convictions for theft offenses, there appears to be no justification to treat spouses differently.

An issue has been raised as to whether a parent should be fingerprinted to serve as guardian of a minor child estate. As parents may also have charges or convictions for theft offenses there appears to be no justification to treat parents differently. In a guardianship of the person of a minor case where a non-parent will be the applicant, the criminal background check is essential.

If the applicant is an employee or volunteer of a private agency, such as Life Essentials, the Court will establish individual procedures to be followed with each private agency.

If an applicant has been fingerprinted recently, the court may waive the fingerprint requirement if a subsequent application is filed by the same applicant. The Court will make a decision if this type of circumstance occurs on a case by case basis.

A form entitled “Waiver”, Local Form 5D, has been adopted to be used with the web check program.

The third change in the Local Rules is also to Local Rule 66.1 and involves the adoption of a new paragraph L to the Local Rule. This new paragraph provides:

“All applicants for the appointment of a guardian of an incompetent must complete and file the Applicants Report on Alleged Ward’s Information and Applicant’s Information Form.”

The Court Investigator is required to complete a new Investigators Report form that this Court is required to consider as part of any application to appoint a guardian of an alleged incompetent’s person, estate or both. This new Investigator’s Report form requires information that is not available on the application and in many cases can not be collected from the alleged incompetent ward when the Court Investigator serves the alleged ward. This new form requires the applicant to provide this additional information if it is within the knowledge of the applicant. Without a competent source for this additional information the Investigators Report will in many cases have the required boxes completed with a notation of “unknown” or “no information available”. This will limit the information that the court has available on issues required to be addressed in the Court Investigators Report. Some of the required information, such as if the alleged ward has a power of attorney, is relevant to any decisions that will be issued by the court on the application for the appointment of a guardian.

Local Probate Form 5E, Applicant’s Report on Alleged Ward’s Information and Applicant’s Information has been adopted.

#### Local Rule 71.1

The fourth change is an addition to Local Rule 71.1(2) (b) as to the use of consents to pay attorney fees on a partial account. This change provides:

“Consents may not be used if a will contest action, determination of heirship action or any other action has been filed that may modify or alter the persons who would be the beneficiaries of the decedent’s estate. The Probate Court may require an application for payment of attorney fees to be filed even when consents have been submitted by all beneficiaries and creditors of the decedent’s estate.”

Local Rule 71.1 (2) (b) was never designed to be used where the next of kin or legatees or devisees of the decedent’s estate are in dispute.

#### Local Rule 78.1

This fifth change is an addition to Local Rule 78.1 (A) (4) to add the following language:

“A Status Report shall be filed whenever a partial account or waivers of partial account are filed in a decedent’s estate.”

The prior local rule required a Status report to be filed after an estate was open for more than 13 months. This standard required the Court to maintain a separate tracking system to monitor estates and to issue notice to file Status Report after 13 months. This then required the fiduciary or counsel to prepare the Status Report and to file same within the time period set forth in the Court notice. If the Status Report was not filed timely an order was issued to set the case for hearing and to require the fiduciary to appear before the Court if the Status Report is not filed prior to the hearing.

By making the above change, counsel and the fiduciary can prepare the Status Report at the same time they prepare a partial account or waiver of partial account for filing. Counsel will not need to keep track of a separate due date.

A Status Report is not required to be filed when a Statement in Lieu of Partial Account is filed if the Statement in Lieu sets forth why the estate is still open and a copy of the Statement in Lieu of Partial Account is certified as being served upon all next of kin or legatees and devisees by filing the Form 13.9.