

# Ethical Principles and Standards

*Participant Manual*



THE SUPREME COURT *of* OHIO  
JUDICIAL COLLEGE

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# THE SUPREME COURT *of* OHIO

## ETHICAL PRINCIPLES AND STANDARDS

### PARTICIPANT MANUAL



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# THE SUPREME COURT *of* OHIO JUDICIAL COLLEGE

## ETHICAL PRINCIPLES AND STANDARDS

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SUPREME COURT OF OHIO JUDICIAL COLLEGE  
*Adult Guardianship Continuing Education: Ethical Principles and Standards*

Session Agenda

Welcome & Introductions

Judicial College Staff

**1:00      National Guardianship Association  
            Ethical Principles 1-5**

2:30      Break

**2:45      National Guardianship Association  
            Ethical Principles 6-10**

**4:15      Adjourn**

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## FACULTY BIOGRAPHIES

**GIOVANNA BREMKE** has over ten years of experience and is experienced in a variety of legal matters including representing clients in both civil litigation, civil transactional work, probate, appellate practice, and criminal defense. Giovanna actively represents individuals facing criminal traffic, misdemeanor, and felony charges. She also dedicates a large area of her practice to appellate practice and has argued before the Ohio Supreme Court, Ninth District Court of Appeals, Eighth District Court of Appeals and Sixth District Court of Appeals. Giovanna has had multiple cases accepted to the Ohio Supreme Court after her petition to the Court. She represents individuals in civil litigation and transactional work in the areas of real estate, landlord/tenant disputes and evictions, guardianship, probate, estate planning, and small business matters. In 2018, Giovanna became the Lorain County Recovery Court defense attorney representing individuals in addiction recovery. Giovanna was selected to the Super Lawyers Rising Star List for 2020 and 2021. Each year, no more than 2.5% of the lawyers in the state are named to this list after a nomination, research, and evaluation process. Giovanna is proud to have served on the executive board of the Lorain County Bar Association (LCBA) since 2016. Giovanna is currently the treasurer of the Lorain County Bar Association and is a committee member of the Lorain County Ethics Committee. Giovanna is a frequent speaker for the LCBA at continuing education courses for fellow attorneys and a contributor to the Legal Times, a LCBA publication. In 2021, Attorney Bremke was selected to serve on the Magnificat High School anti-racism advisory task force. In 2019, Giovanna was appointed to the Board of the Lorain/Medina CBCF by Judge D. Christopher Cook in 2019. The mission of the Lorain/Medina Community Based Correctional Facility is to ensure public safety by reducing recidivism. Giovanna is an active member of the Stepping Up Initiative, a group focused at diverting individuals with serious mental illness out of correctional facilities. Giovanna serves as a caregiver mentor through the Fourth Angel Mentoring Program for caregivers with loved ones battling cancer. Additionally, Giovanna is a supporter of the Lorain County 4-H and FFA programs and is on the Board of Directors of the Livestock Youth Reserve, an organization that encourages youth engagement in livestock and the agriculture industry.

**RICHARD P. CAREY** is in his third term as the Probate Judge for Clark County, Ohio. After graduating at the bottom of his class from the University of Notre Dame and the Ohio Northern University Pettit School of Law, Carey is delighted to be invited anywhere to speak, let alone this conference of great probate minds. Carey claims to have served as an assistant prosecuting attorney for eight years and a municipal court judge for ten years before retiring to, err, serving on the probate bench. He was the starting center for his 6th grade basketball team and still has all four years of collegiate eligibility.

**ANDREW ELDER** has practiced law for over 30 years, focusing on probate, estate planning, guardianships, and real estate. Mr. Elder is a graduate of Butler University and the University of Cincinnati College of Law.

**LISA FRYE** has provided advocacy and support for others over the past 28 years and with LifeSpan's Guardianship program leading a team, including staff and volunteers, for over six years. As a National Master Guardian providing the highest quality of decision making is Lisa's goal; including coordination with all supports in the community. Lisa is also a member of the National Guardianship Association and board member of the Ohio Guardianship Association. In her spare time, Lisa enjoys volunteering for various community opportunities including hospice care.

**HON. LAURA J. GALLAGHER** has been a judge of the Cuyahoga County Probate Court since March 2009. From February 2003 through February 2009, she served as Assistant County Prosecutor for Cuyahoga County and supervisor of the Support Establishment/Enforcement Unit. Judge Gallagher served as Magistrate in the Medina County Court of Common Pleas Juvenile/Probate Division from March 1996 through February 2003. Previously, she served as an Assistant County Prosecutor for Medina County for six years and for Cuyahoga County for more than three years. Judge Gallagher is a member of the Ohio State Bar Association, the Cleveland Metro Bar Association, the Ohio Judges Association, the Southwest Area Bar Association, The American Judges Association, The Ohio Judicial Conference Probate Law and Procedure Committee, the Ohio Association of Probate Judges Forms Committee, The Supreme Court of Ohio Advisory Committee on Case Management, The Supreme Court of Ohio Commission on Technology

and the Court, Adult Protective Services Interdisciplinary Team Steering Committee, The Lawyers Guild of the Catholic Diocese of Cleveland Board Member and the Board of Directors for Incarnate Word Academy. She received a BA, cum laude, Phi Beta Kappa from Miami University, Oxford, and a JD, cum laude, from Case Western Reserve School of Law.

**DEREK GRAHAM** is an estate planning attorney and partner at Resch, Root, Philipps & Graham, LLC in Dublin, Ohio. Derek's practice focuses on estate planning, special needs estate planning, developmental disabilities law, guardianship, probate, probate litigation and business (organizational, transactional and succession). Early in his career he was fortunate to get experience in civil litigation, business transactions and estate planning. Then in 2009, he and his wife had their first daughter who was born with Down syndrome. Like many of his clients today, they were inundated with information and felt overwhelmed. Twelve years later, he now spends the majority of his days helping similarly situated families with the various resources that exist. Derek finds it very rewarding to help families understand how to effectively and practically plan their estate. More than that though, he enjoys helping families understand the resources available to them and how to get the most out of those resources.

**KRISTEN HENRY** is the Executive Director of Advocacy and Protective Services, Inc. (APSI), which provides guardianship and other protective services to over 3,200 adults with developmental disabilities in Ohio. She is an attorney with experience advocating for individuals with disabilities on issues related to guardianship, Medicaid, and civil rights, and she is a frequent presenter on guardianship topics. She earned her B.A. from The Ohio State University and her J.D. from The Ohio State University Moritz College of Law.

**PATRICIA A. HIDER** retired from the Butler County Probate Court in 2021 after eighteen years of service as a magistrate. Pat began her career as an Instructor at the Emory University School of Medicine and a clinical microbiology technologist at the Emory University Hospital after earning a BS in Biology from the University of Cincinnati and a Master of Medical Science in Clinical Microbiology from Emory University in Atlanta, Georgia. Pat worked in the medical device industry for about fifteen years where she published numerous articles in medical journals and held positions as the Clinical Trials Coordinator for Becton Dickinson & Company, Manager of both Clinical Affairs and Business Development for Baxter Health Care Corporation, and Manager of Product Acquisitions and Licensing for Medisense, Inc. Pat continued her education full-time at Suffolk University Law School in Boston, receiving a JD cum laude, and part-time at the Franklin Pierce Law School summer institute for intellectual property law. Before joining the court, Pat was employed by Procter & Gamble as Patent Counsel and was the Director of the Patent Estate for Ethicon Endo-Surgery, Inc. Pat lectures on assorted probate topics for the Supreme Court of Ohio Judicial College and the Ohio Association of Magistrates. In 2019, Pat was appointed to the Supreme Court Advisory Committee on Children and Families and sits on the Subcommittee for Adult Guardianships. Currently, Pat is a senior audit student at the University of Cincinnati College Conservatory of Music broadening her understanding of music and pursuing her amateur flute career.

**SALLY BACH HURME, J.D.**, has led the national conversation on many of the legal issues of concern to older persons, their families, and their caregivers. Whether the issue is how to make decisions for others or plan for what comes next, she has focused on explaining the law so everyone can understand it. Her broad experience includes working with AARP for 23 years, teaching elder law at George Washington University Law School, and lecturing with Great Courses on how to get your legal house in order. Hurme has authored five books in the award-winning ABA/AARP Checklist series: Checklist for My Family, Checklist for Family Caregivers, Checklist for Family Survivors, Wise Moves, and Get the Most Out of Retirement. She received her B.A. from Newcomb College, Tulane University and her J.D. cum laude from Washington College of Law, American University.

**WENDY HUX** is a Case Manager with the Volunteer Guardian Program at the Central Ohio Area Agency on Aging for the past 10 years. She is a member of the Ohio Guardianship Association, is a past OGA Board Member, where she served as Vice President for two years and was also Chair and served on the committee for OGA's Annual Educational Conference. Wendy's previous experience is in Social Service Administration in long term care as well as experience in



mental health. Wendy obtained her Bachelor's in Social Work at Wright State University in 1995 and is a LSW in the State of Ohio.

**JANE MOOG** is a Graduate of Miami University, Oxford Ohio and The Ohio State University College of Law. A lawyer for 30 years, she has experience in private law practice, as well as six years of experience with in home case management with a non-profit association. Jane came to the Central Ohio Area Agency on Aging (COAAA) in 2011 as a Medicare Outreach Specialist but transitioned to the Volunteer Guardian Program in 2012 where she works to train, support and obtain legal appointment for volunteers who become medical guardians for individuals living in protected settings. The program operates in six central Ohio counties and serves approximately 120 incapacitated individuals each year. Jane participates in the National Guardianship Association, of which the Volunteer Guardian Program is a member, by attending the annual conferences and is actively involved in the Ohio Guardianship Association where she has served several terms as a general board member and two terms as president.

**JULIA NACK** is certified as a National Master Guardian Emeritus by the Center for Guardianship Certification in Harrisburg, Pennsylvania. With over 40 years in the field of Adult Guardianship, she has extensive experience in leading local, state and national groups in the effort to establish national standards of best practice for guardians. She currently chairs CGC's NMG committee. Her work in guardianship includes 11 years as program director for a statewide guardianship nonprofit in Ohio, 4 years as Adult Guardianship Court Investigator in one of Ohio's largest counties, and 24 years as the director of the Volunteer Guardian Program at the Central Ohio Area Agency on Aging in Columbus. She is a consultant in her field. For 8 years she was on the board of the National Guardianship Association, serving as its President in 2011.

**SHAWNIEKA E. POPE MSW, LCSW, LISW** is the Assistant Clinical Professor for the Family Science and Social Work Department for Miami University, Ohio. Shawnieka previously served as Director of Guardianship for Montgomery County Probate Court. She is a trained mediator, elder mediator and an Eldercaring Coordinator. As the Guardianship Director, Shawnieka developed and facilitated the court's education and supportive services for court appointed guardians. Shawnieka developed the court's first social work internship program and has served as a field instructor for over 26 Bachelor's and master's level social work students. She was invited to participate on a national task force commissioned by the American Bar Association-Dispute Resolution Section to develop the only elder abuse screening tool for elder mediation. Shawnieka is a nationally certified mental health first aid instructor and teaches adult and youth mental health first aid in the community and many organizations within the state. Shawnieka is also a certified Trauma 101 and QPR suicide prevention instructor. She is also a certified crisis responder with The National Organization for Victim Assistance (NOVA). Shawnieka has a B.S. Degree in Psychology and a Master of Social Work Degree both from IUPUI. Prior to relocating to Dayton, OH in 2014, Shawnieka worked for over 22 years as a mental health therapist and crisis clinician for a community mental health agency. Shawnieka relocated to Ohio in 2014 and served as Director of Social Services for a long-term care facility giving her experience with individuals and families across the life span. Shawnieka previously served as a social work adjunct instructor for Sinclair Community College, Miami University (Oxford) and Xavier University (Cincinnati). Shawnieka has facilitated Guardianship, Trauma 101, Mental Health First Aid, Suicide Prevention and various professional development workshops in Montgomery County.

**HON. ROBERT N. RUSU, JR.** is the 20th Probate Judge of Mahoning County. Judge Rusu brought more than 27 years of Probate experience to the bench. Prior to becoming the judge, he practiced exclusively in the area of Probate Administrations, Guardianships, Estate Planning, Medicaid, and issues regarding aging. Judge Rusu is very active in his community. Judge Rusu has served on the "Alzheimer's Assistance and Referral Network", the "Mahoning Valley Campfire Council" and past president of the "Mahoning County Bar Association" and has been awarded the "2018 Practitioner of the Year Award" by the Ohio Association of Gerontology & Education and the "Valley Legacy Outstanding Senior Advocate Award" for 2018. In addition, Judge Rusu is also active as an executive officer with the Ohio Association of Probate Judges, a member of the Ohio Judicial College, Probate Law and Procedure Committee, and is the liaison for the Ohio Association of Probate Judges to the Ohio State Bar Association - Estate Planning, Trust, Probate Law Section Council.

**HON. ELINORE MARSH STORMER** graduated from Davidson College's Honors College and received her Juris Doctorate from The University of Akron School of Law. Judge Stormer practiced law until 1989 when she became General Counsel to the Summit County Executive. In 1991, Judge Stormer was elected judge of Akron Municipal Court, and in November 2004, judge in the Summit County Court of Common Pleas. As a judge, she has been a leader in specialized treatment courts for offenders. She began the first mental health court in Ohio and the first municipal drug court. In the Court of Common Pleas, she began a reentry court to help offenders returning from prison. In 2012, Judge Stormer was elected to the Probate Court and reelected in 2014. Since taking office, she has started a Mediation Program and a free Help Desk. Consistent with other Probate Courts, she has begun Senior Visitor and Volunteer Guardian Programs. In 2016, she began a New Day Court to assist those with mental illness transition successfully from the hospital to recovery. Among others, Judge Stormer serves as a board member of the Akron Children's Hospital. She is currently a member of the Probate Section of the Ohio Judicial Conference. In the past, she served on the Supreme Court of Ohio Advisory Committee on the Mentally Ill in the Courts, and numerous other community organizations. Judge Stormer has received many community awards including the 2018 Russ Pry Community Leader of the Year Award from The Summit County Developmental Disability Board, the Mature Services SOAR/Ed Kaufman Leadership in Aging Award in 2017, the 2016 Akron Bar Association Liberty Bell Award, the 2015 Woman of Achievement Award from Women's Network, the 2014 Pinnacle Award of Summit County and the Spirit Award from Stewart's Caring Place. In 2013, she received the Outstanding Alumni Award from the University of Akron Law School and the Fred Frese Advocacy Award, the ATHENA Award for Leadership, the HEROES Award from the National Alliance on Mental Illness, the statewide OCCO C. J. McLin Award, the Urban Light Award for Public Service, the Fred Frese Advocacy Award, the 2013 Outstanding Leadership Award from Mental Health America of Summit County and the Public Official of the Year Award from the DAR.

**HON. JAMES T. WALTHER** is currently serving his second term as Judge of the Lorain County Probate Court and the Lorain County Veterans Treatment Court. He previously served for 11 years as a staff attorney in the General Division of the Lorain County Court of Common Pleas, Acting Judge of the Lorain Municipal Court and as an assistant law director/prosecutor for the City of Lorain. Before his election to the bench, Judge Walther was in private practice concentrating on civil litigation and probate matters. Judge Walther received his BBA in Economics from Cleveland State University and his JD from Cleveland Marshall College of Law in 1987. Judge Walther is the past District Chairman for Boy Scouts of America for the Great Frontier District, which serves all of Lorain County. In 2015, he was the first recipient of the Lorain County Friend of 4-H Award and in 2017 received the Ohio Friend of 4-H Award. He is a frequent presenter around the State of Ohio for the Ohio Judicial College and other legal organizations. Judge Walther is a member and Treasurer of the Ohio Association of Probate Judges and serves on the Executive Committee of the National College of Probate Judges. Judge Walther also serves on the Subcommittee for Adult Guardianship, the Ohio Supreme Court's Commission on Technology and the Courts, the Ohio Attorney General's Elder Abuse Commission and the Ohio Judicial Conference Probate Law and Procedure Committee. He is a member of the American Judges Association, National Guardianship Association, and Ohio Guardianship Association. He also is a member and serves on various committees of the Lorain County, Ohio State and American Bar Associations.

**ERICA WOOD** is a lawyer specializing in aging issues. She spent most of her professional career at the American Bar Association Commission on Law and Aging, where she devoted her time primarily to guardianship, health and financial planning and decision-making, capacity and related areas. She participated in many national studies on guardianship, and played a role in convening national consensus conferences on guardianship law and practice. While she retired in 2020, she continues to work on guardianship issues. She received her B.A. from the University of Michigan and her J.D. from the George Washington University.

# 1. A guardian treats the person with dignity.

## NGA Standard 3 – The Guardian’s Professional Relationship with the Person



- I. The guardian shall treat the person under guardianship with dignity.
- II. The guardian shall avoid personal relationships with the person, the person's family, or the person's friends, unless the guardian is a family member, or unless such a relationship existed before the appointment of the guardian.
- III. The guardian may not engage in sexual relations with a person unless the guardian is the person's spouse or in a physical relationship that existed before the appointment of the guardian.
- IV. The guardian shall seek ongoing education concerning the following:
  - A. Person-centered planning,
  - B. Surrogate decision-making,
  - C. Responsibilities and duties of guardians,
  - D. Legal processes of guardianship, and
  - E. State certification of guardians.

## Ohio Rule of Superintendence 66.09(A)

“A guardian shall act in a manner above reproach, including but not limited to avoiding financial exploitation, sexual exploitation, and any other activity that is not in the best interest of the ward.”



## 2. A guardian involves the person to the greatest extent possible in all decision making.

### NGA Standard 9– Self-Determination of the Person



- I. The guardian shall provide the person under guardianship with every opportunity to exercise those individual rights that the person might be capable of exercising as they relate to the personal care and financial needs of the person.
- II. The guardian shall attempt to maximize the self-reliance and independence of the person.
- III. The guardian shall encourage the person to participate, to the maximum extent of the person's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the person is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.
- IV. The guardian shall make and implement a plan that seeks to fulfill the person's goals, needs, and preferences. The plan shall emphasize the person's strengths, skills, and abilities to the fullest extent in order to favor the least restrictive setting.
- V. The guardian shall wherever possible, seek to ensure that the person leads the planning process; and at a minimum to ensure that the person participates in the process.

### Ohio Rules of Superintendence 66.08(B) and 66.09(B)



Sup.R. 66.08(B): “Unless otherwise determined by the probate division of a court of common pleas, an applicant guardian shall meet with a proposed ward at least once prior to appearing before the court for a guardianship appointment.”

Sup.R. 66.09(B): “A guardian shall exercise due diligence in making decisions that are in the best interest of a ward, including but not limited to communicating with the ward and being fully informed about the implications of the decisions.”

### **3. A guardian selects the option that places the least restrictions on the person's freedom and rights.**

#### **NGA Standard 8 – Least Restrictive Alternative**



- I. The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of the person under guardianship while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment.
- II. The guardian shall weigh the risks and benefits and develop a balance between maximizing the independence and self-determination of the person and maintaining the person's dignity, protection and safety.
- III. The guardian shall make individualized decisions. The least restrictive alternative for one person might not be the least restrictive alternative for another person.
- IV. The following guidelines apply in the determination of the least restrictive alternative:
  - A. The guardian shall become familiar with the available options for residence, care, medical treatment, vocational training, and education.
  - B. The guardian shall strive to know the person's goals and preferences.
  - C. The guardian shall consider assessments of the person's needs as determined by specialists. This may include an independent assessment of the person's functional ability, health status, and care needs.

## Ohio Rules of Superintendence



Sup.R. 66.01(A): “Best interest” means the course of action that maximizes what is best for a ward, including consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the ward.”

Sup.R. 66.09(C): “Unless otherwise approved by the probate division of a court of common pleas, a guardian shall make a choice or decision for a ward that best meets the needs of the ward while imposing the least limitations on the ward's rights, freedom, or ability to control the ward's environment. To determine the least restrictive alternative, a guardian may seek and consider an independent assessment of the ward's functional ability, health status, and care needs.”

## 4. A guardian identifies and advocates for the person's goals, needs, and preferences.

### NGA Standard 7 – Standards for Decision-Making



- I. Each decision made by the guardian shall be an informed decision based on the principle of Informed Consent as set forth in Standard 6.
- II. The guardian shall identify and advocate for the person's goals, needs, and preferences. Goals are what are important to the person under guardianship, whereas preferences are specific expressions of choice.
  - A. First, the guardian shall ask the person what he or she wants.
  - B. Second, if the person has difficulty expressing what he or she wants, the guardian shall do everything possible to help the person express his or her goals, needs, and preferences.
  - C. Third, only when the person, even with assistance, cannot express his or her goals and preferences, shall the guardian seek input from others familiar with the person to determine what the individual would have wanted.
  - D. Finally, only when the person's goals and preferences cannot be ascertained, may the guardian make a decision in the person's best interest.
- III. Substituted Judgment
  - A. Substituted Judgment is the principle of decision-making that substitutes the decision the person would have made when the person had capacity as the guiding force in any surrogate decision the guardian makes.

- B. Substituted Judgment promotes the underlying values of self-determination and well-being of the person.
- C. Substituted Judgment is not used when following the person's wishes would cause substantial harm to the person or when the guardian cannot establish the person's goals and preferences even with support.

#### IV. Best Interest

- A. Best Interest is the principle of decision-making that should be used only when the person has never had capacity, when the person's goals and preferences cannot be ascertained even with support, or when following the person's wishes would cause substantial harm to the person.
- B. The Best Interest principle requires the guardian to consider the least intrusive, most normalizing, and least restrictive course of action possible to provide for the needs of the person.
- C. The Best Interest principle requires the guardian to consider past practice and evaluate reliable evidence of likely choices.

### **Ohio Rules of Superintendence**



Sup.R. 66.08(B): “Unless otherwise determined by the probate division of a court of common pleas, an applicant guardian shall meet with a proposed ward at least once prior to appearing before the court for a guardianship appointment.”

Sup.R. 66.09(F) (1): “A guardian shall strive to know a ward's preferences and belief system by seeking information from the ward and the ward's family and friends.”



Sup.R. 66.09(F) (2): “A guardian shall do all of the following:

- a) Meet with the ward as needed, but not less than once quarterly or as determined by the probate division of the court of common pleas;
- b) Communicate privately with the ward;
- c) Assess the ward's physical and mental conditions and limitations;
- d) Assess the appropriateness of the ward's current living arrangements;
- e) Assess the needs for additional services;
- f) Notify the court if the ward's level of care is not being met;
- g) Document all complaints made by a ward and assess the need to report the complaints to the court of common pleas.”

Sup.R. 66.09(I) (2): “A guardian shall strive to honor the ward's preferences and belief system concerning extraordinary medical issues.”

Sup.R. 66.09(J): “A guardian shall make every effort to be informed about the ward's preferences and belief system in making end of life decisions on behalf of the ward.”

## 5. A guardian maximizes the self-reliance and independence of the person.

### NGA Standard 9– Self-Determination of the Person



- I. The guardian shall provide the person under guardianship with every opportunity to exercise those individual rights that the person might be capable of exercising as they relate to the personal care and financial needs of the person.
- II. The guardian shall attempt to maximize the self-reliance and independence of the person.
- III. The guardian shall encourage the person to participate, to the maximum extent of the person's abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the person is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.
- IV. The guardian shall make and implement a plan that seeks to fulfill the person's goals, needs, and preferences. The plan shall emphasize the person's strengths, skills, and abilities to the fullest extent in order to favor the least restrictive setting.
- V. The guardian shall wherever possible, seek to ensure that the person leads the planning process; and at a minimum to ensure that the person participates in the process.

### Ohio Rule of Superintendence 66.09(D)

“A guardian shall advocate for services focused on a ward's wishes and needs to reach the ward's full potential. A guardian shall strive to balance a ward's maximum independence and self-reliance with the ward's best interest.”



## 6. A guardian keeps confidential the affairs of the person.

### NGA Standard 11 - Confidentiality



- I. The guardian shall keep the affairs of the person under guardianship confidential.
- II. The guardian shall respect the person's privacy and dignity, especially when the disclosure of information is necessary.
- III. Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.
- IV. The guardian may disclose or assist the person in communicating sensitive information to the person's family and friends, as defined by the person, unless it will substantially harm the person.
- V. The guardian may refuse to disclose sensitive information about the person where disclosure would be detrimental to the well-being of the person or would subject the person's estate to undue risk. Such a refusal to disclose information must be reported to the court.

### Ohio Rule of Superintendence 66.09(L)

“A guardian shall keep the ward's personal and financial information confidential, except when disclosure is in the best interest of the ward or upon order of the probate division of a court of common pleas.”



## **7. A guardian avoids conflicts of interest and self-dealing.**

### **NGA Standard 16 – Conflict of Interest: Ancillary and Support Services**



- I. The guardian shall avoid all conflicts of interest and self-dealing or the appearance of a conflict of interest and self-dealing when addressing the needs of the person under guardianship. Impropriety or conflict of interest arises where the guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of the person. Self-dealing arises when the guardian seeks to take advantage of his or her position as a guardian and acts for his or her own interests rather than for the interests of the person.
- II. The guardian shall become fully educated as to what constitutes a conflict of interest and self-dealing, and why they should be avoided.
- III. Rules relating to specific ancillary and support service situations that might create an impropriety or conflict of interest include the following:
  - A. The guardian may not directly provide housing, medical, legal, or other direct services to the person. Some direct services may be approved by the court for family guardians.
    1. The guardian shall coordinate and assure the provision of all necessary services to the person rather than providing those services directly.

2. The guardian shall be independent from all service providers, thus ensuring that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the person.
  3. When a guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services, an exception can be made, provided that the exception is in the best interest of the person. Reasons for the exception must be documented and the court notified.
- B. A guardianship program must be a freestanding entity and must not be subject to undue influence.
  - C. When a guardianship program is a part of a larger organization or governmental entity, there must be an arm's-length relationship with the larger organization or governmental entity and it shall have independent decision-making ability.
  - D. The guardian may not be in a position of representing both the person and the service provider.
  - E. A guardian who is not a family guardian may act as petitioner only when no other entity is available to act, provided all alternatives have been exhausted.
  - F. The guardian shall consider all possible consequences of serving the dual roles of guardian and expert witness. Serving in both roles may present a conflict. The guardian's primary duty and responsibility is always to the person.
  - G. The guardian may not employ his or her friends or family to provide services for a profit or fee unless no alternative is available and the guardian discloses this arrangement to the court.

- H. The guardian shall neither solicit nor accept incentives from service providers.
- I. The guardian shall consider various ancillaries or support service providers and select the providers that best meet the needs of the person.
- J. A guardian who is an attorney or employs attorneys may provide legal services to a person only when doing so best meets the needs of the person and is approved by the court following full disclosure of the conflict of interest. The guardian who is an attorney shall ensure that the services and fees are differentiated and are reasonable. The services and fees are subject to court approval.
- K. The guardian may enter into a transaction that may be a conflict of interest only when necessary, or when there is a significant benefit to the person under the guardianship, and shall disclose such transactions to interested parties and obtain prior court approval.

### **Ohio Rules of Superintendence**



Sup.R. 66.04(D): “The probate division of a court of common pleas shall not issue letters of guardianship to any direct service provider to serve as a guardian for a ward for whom the provider provides direct services, unless otherwise authorized by law.”

Sup.R. 66.04(K): “A guardian shall avoid actual or apparent conflicts of interest regarding a ward’s personal or business affairs. A guardian shall report to the probate division of the court of common pleas all actual or apparent conflicts of interest for review and determination as to whether a waiver of the conflict of interest is in the best interest of the ward.”

Sup.R. 66.09(G): “Except as provided in Sup.R. 66.04(D), a guardian shall not provide any direct services to a ward, unless otherwise approved by the court.

## 8. A guardian complies with all laws and court orders.

### NGA Standard 2 – The Guardian’s Relationship to the Court



- I. The guardian shall know the extent of the powers and the limitations of authority granted by the court and all decisions and actions shall be consistent with that court order.
- II. The guardian shall obtain court authorization for actions that are subject to court approval.
- III. The guardian shall clarify with the court any questions about the meaning of the order or directions from the court before taking action based on the order or directions.
- IV. The guardian shall seek assistance as needed to fulfill responsibilities to the person under guardianship.
- V. All payments to the guardian from the assets of the person shall follow applicable federal or state statutes, rules, and requirements and are subject to review by the court.
- VI. The guardian shall submit reports regarding the status of the guardianship to the court as ordered by the court or required by state statute, but no less often than annually. Ways that guardians of the person and of the estate keep the court informed about the well-being of the person and the status of the estate include but not limited to:
  - A. Personal care plans and financial plans,
  - B. Inventories and appraisals, and
  - C. Reports and accountings.
- VII. The guardian shall use available technology to:
  - A. File the general plan, inventory and appraisal, and annual reports and accountings,

- B. Access responsible education and information about guardianships, and
  - C. Assist in the administration of the estate.
- VIII. The guardian shall promptly inform the court of any change in the capacity of the person that warrants an expansion or restriction of the guardian's authority.

### **Ohio Revised Code and Rules of Superintendence**



R.C. 2111.50(A)(1): “At all times, the probate court is the superior guardian of wards who are subject to its jurisdiction, and all guardians who are subject to the jurisdiction of the court shall obey all orders of the court that concern their wards or guardianships.”

Sup.R. 66.08(A): “A guardian shall obey all orders of the probate division of a court of common pleas establishing the guardianship and shall perform duties in accordance with local rules and state and federal law governing guardianships.”

R.C. 2111.14(A) “In addition to a guardian's other duties, every guardian appointed to take care of the estate of a ward shall have the following duties: (2) To obey all orders and judgments of the courts touching the guardianship;”

R.C. 2111.13(A): “When a guardian is appointed to have the custody and maintenance of a ward, and to have charge of the education of the ward if the ward is a minor, the guardian's duties are as follows: (4) To obey all the orders and judgments of the probate court touching the guardianship.”



## **9. A guardian manages all financial matters carefully.**

### **NGA Standard 18 – Guardian of the Estate: Initial and Ongoing Responsibilities**



- I. With the proper authority, the initial steps after appointment as guardian are as follows:
  - A. The guardian shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.
    1. The guardian shall ascertain the income, assets, and liabilities of the person.
    2. The guardian shall ascertain the goals, needs and preferences of the person.
    3. The guardian shall coordinate and consult with others close to the person.
  - B. The guardian shall meet with the person under guardianship as soon after the appointment as feasible. At the first meeting the guardian shall:
    1. Communicate to the person the role of the guardian;
    2. Outline the rights retained by the person and the grievance procedures available;
    3. Assess the previously and currently expressed wishes of the person and evaluate them based on current acuity; and
    4. Attempt to gather from the person any necessary information regarding the estate.

- II. The guardian shall become educated about the nature of any incapacity, condition and functional capabilities of the person.
- III. The guardian shall develop and implement a financial plan and budget for the management of income and assets that corresponds with the care plan for the person and aims to address the goals, needs and preferences of the person. The guardian of the estate and the guardian of the person (if one exists) or other health care decision-maker shall communicate regularly and coordinate efforts with regard to the care and financial plans, as well as other events that might affect the person.
  - A. Guardian shall value the well-being of the person over the preservation of the estate.
  - B. Guardian shall maintain the goal of managing, but not necessarily eliminating, risks.
  - C. The financial plan shall emphasize a “person-centered philosophy”.
- IV. The guardian shall take all steps necessary to obtain a bond to protect the estate, including obtaining a court order.
- V. The guardian shall obtain all public and insurance benefits for which the person is eligible.
- VI. The guardian shall thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.
- VII. The guardian shall prepare an inventory of all property for which he or she is responsible. The inventory must list all the assets owned by the person with their values on the date the guardian was appointed and must be independently verified.

- VIII. All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. All accountings must be complete, accurate, and understandable.
- IX. The guardian shall oversee the disposition of the person's assets to qualify the person for any public benefits program.
- X. On the termination of the guardianship or the death of the person, the guardian shall facilitate the appropriate closing of the estate and submit a final accounting to the court.
- XI. The guardian may monitor, provide oversight or manage the personal allowance of the person.
- XII. XII. The guardian shall, when appropriate, open a burial trust account and make funeral arrangements for the person.

### **Ohio Rules of Superintendence and Ohio Revised Code**



Sup.R. 66.08(L): “In addition to filing an inventory, if applicable, pursuant to R.C. 2111.14(A)(1) and within three months after the guardian's appointment, a guardian shall file with the probate division of the court of common pleas 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.”

Sup.R. 66(B): “An Application for Authority to Expend Funds (Standard Probate Form 15.7) shall not be approved until an Inventory (Standard Probate Form 15.5) has been filed.”

See also, R.C. 2111.50(D)(1): “The exercise of the particular power shall not impair the financial ability of the estate of the ward whom the probate court has found to be an incompetent or a minor subject to guardianship and for whom the court has appointed a guardian, to provide for the ward's foreseeable

needs for maintenance and care;”

Sup.R. 73(B): “A guardian shall itemize all expenses relative to the guardianship of the ward and shall not charge fees or costs in excess of those approved by the probate division of a court of common pleas.”

R.C. 2109.30(A): “Every guardian or conservator shall render an account of the ward's estate at the time and in the manner prescribed in section 2109.302 of the Revised Code.”

R.C. 2109.37(C)(1): “In addition to the investments allowed by this section, a guardian or trustee, with the approval of the court, may invest funds belonging to the trust in productive real property located within the state, provided that neither the guardian nor the trustee nor any member of the family of either has any interest in the real property or in the proceeds of the purchase price. The title to any real property so purchased by a guardian shall be taken in the name of the ward.”

See also, R.C. 2111.14

See also, R.C. 2111.50(B) (1)-(7)

**10. A guardian respects that the money and property being managed belong to the person.**

**NGA Standard 17 – Duties of the Guardian of the Estate**



- I. The guardian, as a fiduciary, shall manage the financial affairs of the person under guardianship in a way that maximizes the dignity, autonomy, and self-determination of the person.
- II. When making decisions the guardian shall:
  - A. Give priority to the goals, needs and preferences of the person, and
  - B. Weigh the costs and benefits to the estate.
- III. The guardian shall consider the current wishes, past practices, and reliable evidence of likely choices. If substantial harm would result or there is no reliable evidence of likely choices, the guardian shall consider the best interests of the person.
- IV. The guardian shall assist and encourage the person to act on his or her own behalf and to participate in decisions.
- V. The guardian shall use reasonable efforts to provide oversight to any income and assets under the control of the person.
- VI. The guardian shall, consistent with court order and state statutes, exercise authority only as necessitated by the limitations of the person.
- VII. The guardian shall act in a manner above reproach, and his or her actions will be open to scrutiny at all times.
- VIII. The guardian shall provide competent management of the person's property and, shall supervise all income and disbursements of the estate

- IX. The guardian shall manage the estate only for the benefit of the person.
- X. The guardian shall keep estate assets safe by keeping accurate records of all transactions and be able to fully account for all the assets in the estate.
- XI. The guardian shall keep estate money separate from the guardian's personal money; the guardian shall keep the money of individual estates separate unless accurate separate accounting exists within the combined accounts.
- XII. The guardian shall make claims against others on behalf of the estate as deemed in the best interest of the person and shall defend against actions that would result in a loss of estate assets.
- XIII. The guardian shall apply state law regarding prudent investment practices, including seeking responsible consultation with and delegation to people with appropriate expertise when managing the estate.
- XIV. The guardian shall employ prudent accounting procedures when managing the estate.
- XV. The guardian shall determine if a will exists and obtain a copy to determine how to manage estate assets and property.
- XVI. The guardian shall obtain and maintain a current understanding of what is required and expected of the guardian, statutory and local court rule requirements, and necessary filings and reports.
- XVII. The guardian shall promptly report to the appropriate authorities abuse, neglect and/or exploitation as defined by state statute.

## Ohio Rules of Superintendence and Ohio Revised Code



Sup.R. 66.09(A): “A guardian shall act in a manner above reproach, including but not limited to avoiding financial exploitation, sexual exploitation, and any other activity that is not in the best interest of the ward.”

Sup.R. 66.08(I): “A guardian shall inform the probate division of the court of common pleas and apply to close the guardianship of the estate if the principal income of the ward is from governmental entities, a payee for that income is identified, and no other significant assets or income exist.

Sup.R. 66.09(H) (4): “Where the guardian of the person and guardian of the estate are different individuals, consulting regularly with each other.”

Sup.R. 66.09(L): “A guardian shall keep the ward's personal and financial information confidential, except when disclosure is in the best interest of the ward or upon order of the probate division of a court of common pleas.

R.C. 2111.14 (A): “In addition to a guardian's other duties, every guardian appointed to take care of the estate of a ward shall have the following duties:

- (1) To make and file within three months after the guardian's appointment a full inventory of the real and personal property of the ward, its value, and the value of the yearly rent of the real property, provided that, if the guardian fails to file the inventory for thirty days after having been notified of the expiration of the time by the probate judge, the judge shall remove the guardian and appoint a successor;
- (2) To manage the estate for the best interest of the ward;
- (3) To pay all just debts due from the ward out of the estate in the possession or under the control of the guardian, collect all debts due to the ward, compound doubtful debts, and appear for and defend, or cause to be defended, all suits against the ward;

- (4) To obey all orders and judgments of the courts touching the guardianship;
- (5) To bring suit for the ward when a suit is in the best interests of the ward;
- (6) To settle and adjust, when necessary or desirable, the assets that the guardian may receive in kind from an executor or administrator to the greatest advantage of the ward. Before a settlement and adjustment is valid and binding, it shall be approved by the probate court and the approval shall be entered on its journal. The guardian also shall have the approval of the probate court to hold the assets as received from the executor or administrator or to hold what may be received in the settlement and adjustment of those assets.”

See also, R.C. 2111.50(B) (1)-(7)



## Links to Full Text of NGA and Ohio Materials

[Ethical Principles, National Guardianship Association](#)

[Standards of Practice, National Guardianship Association](#)

[Rule 66 Guardianships, Ohio Rules of Superintendence](#)







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