

INSTRUCTIONS FOR FILING AN EMERGENCY GUARDIANSHIP

These instructions are intended as a guideline only and should not be relied upon as a comprehensive list of duties in an emergency guardianship.

A person can apply to be Emergency Guardian of the Person only, Estate only or Person & Estate of an alleged incompetent when the applicant believes that an adult is mentally incompetent and the situation is life threatening. The application will usually be heard ex-parte before the Magistrate.

A physician must appear before the Magistrate in a hearing to justify that an emergency guardianship is necessary to avoid immediate harm to the ward.

If the emergency guardian is appointed, the appointment is valid for 72 hours.

At the hearing the Court will set a date and time within the 72 hours to have a further hearing to determine whether the emergency guardianship should continue for 30 more days.

Notice of the continued hearing will be given to the incompetent.

It will usually be necessary to apply for full guardianship prior to the expiration of the emergency guardianship.

A filing fee is required at the time of filing. Current Court Costs are posted at: <https://www.probatect.org/about/general-resources>.

Please confirm the amount with the Cashier since filing fees may have changed subsequent to the publication of this instruction sheet. **This fee must be paid in cash, certified check, MasterCard, Discover, or American Express. No personal checks or money orders will be accepted.**

The forms may be obtained from the Information Desk on the 9th floor of the Probate Court, 230 East 9th Street, Cincinnati, Ohio or by downloading the forms from the web site.

PROCEDURAL STEPS

WHEN TO FILE

PROCEDURAL STEPS	WHEN TO FILE
STEP 1: COMPLETE THE FOLLOWING FORMS FOR THE INITIAL FILING	
Self-Representation Form (270.01) - Sign and Complete information if you do not have legal representation	Prior to hearing
Application for Appointment of Emergency Guardianship (17.03) - Complete form.	Prior to hearing
Entry Setting Hearing (H.C. 202.00) - Complete form. - Assigned magistrate will issue and date and time for hearing.	Prior to hearing
Authorization to Release Confidential Information (H.C. 15.11) - Complete form, sign in presence of a witness, and have witness sign. Witness cannot be a relative.	At the time of initial filing
Affidavit of Guardian Applicant (H.C Form 27.13) - This is necessary for all guardianships. - Complete form. - Have form notarized.	At the time of initial filing

<p>Next of Kin of Proposed Ward (15.0)</p> <ul style="list-style-type: none"> - List all <i>next of kin</i> (those people who are closest blood relatives) of the alleged incompetent. - Be sure to specify <i>complete</i> addresses of all those listed. If the address is unknown, please state so. 	At the time of initial filing
<p>Judgment Entry Appointing Emergency Guardian (17.04)</p> <ul style="list-style-type: none"> - Complete form except for new hearing date and time. - At the hearing if appointment is granted, Judge will set another date and time to continue the appointment. 	Prior to hearing
<p>Judgment Entry Continuing Appointment (17.05)</p> <ul style="list-style-type: none"> - Complete form - Magistrate will issue another date for appointment to be continued to. - The date will be within 30 days and will allow you to file for full guardianship and have hearing before emergency appointment terminates. 	Bring to Court day of hearing set on form 17.04
STEP 2: ASSIGNING OF MAGISTRATE, REVIEWING OF FORMS, AND SETTING HEARING DATE.	
<p>When all forms have been completed, present them to the magistrate's assistant at the information desk on the 9th Floor of Probate Court for a magistrate to be assigned. All forms are then taken to a magistrate for review and setting of hearing date.</p> <p>Find out the dates and times your doctor is available to appear in Court prior to presenting the emergency application to the magistrate.</p>	
STEP 3: FILING OF FORMS WITH CASHIER	
<p>All forms are taken to the cashier who will assign a case number. At this time, the cashier will require the payment of the filing fee. If filing the Affidavit of Indigency and Entry Authorizing Payment (H.C. 117.0), it must be approved by the magistrate prior to taking the forms to the cashier. The cashier will stamp the case number on all the papers plus one set of copies, if provided, and clock in the original forms that can be docketed that day. After clocking in the forms, the cashier will place the forms in a file folder and give it to you to take to the Issue Desk. If the hearing is scheduled for the day you filed, the clerk will docket the pleadings and take the file to the assigned magistrate.</p>	
STEP 4: THE HEARING	
<p>At the hearing, the doctor must appear and provide testimony that the situation is life threatening and that an emergency guardian should be appointed. If you are applying to be guardian of the estate you must have the bond in place to be appointed. The clerk will give you a copy of the entry. You must provide a copy of this entry to the incompetent before the next hearing. You may also be preparing the papers for a full guardianship in the meantime so the hearing can be set and service met. See Guardianship of Incompetents for instructions and forms required for a full guardianship.</p>	



A CITIZEN'S GUIDE TO COMMUNICATING WITH THE JUDGE AND MAGISTRATES

Why can't I communicate directly with the judge or magistrate on my case?

If the matters are contested, judges and magistrates are not allowed to communicate with individual parties. This is what the law calls an *ex-parte* communication (this is when a judge or magistrate only communicates with an individual party, on their own, without the knowledge of all parties to a case). In order to keep the court process as fair, equal and as transparent as possible, *ex-parte* communication is strictly forbidden. It is unfair for the court to share information without all of the parties present.

You cannot email the judge or magistrate, as the email is considered an *ex-parte* communication. In addition, emails are not pleadings (motions.) You cannot write a personal letter to the judge or magistrate as this may be considered an *ex-parte* communication.

How can I speak to the judge or magistrate on my case?

Typically, to speak to the judge or magistrate on your case, you must file a written motion with the court explaining what you want the court to do and all motions become part of the public record. You also have to send a copy of whatever you file to the other parties, or their attorney if they are represented by an attorney (this is called "service"). A motion is not considered an *ex-parte* communication because all parties are officially notified. You may be required to pay a filing fee when you file your written motion. Please note, there is no fee if you wish to speak to the magistrate in an uncontested matter, on their assigned walk-in days.

I've heard there's always a magistrate on duty to hear arguments immediately – what does that mean?

There is a magistrate on duty every business day. The on-duty magistrate may answer generic procedural questions. The on-duty magistrate may also discuss matters in an uncontested case. For all other matters, the on-duty magistrate is prohibited from speaking with you. To address the court for these matters, you must file a written motion. The on-duty magistrate will set the matter for hearing before the magistrate assigned on your case or the judge.

What if I need to tell the judge or magistrate something I don't want the other party to know about?

Unfortunately, you cannot withhold information from another party to your case. In order to keep the case fair to everyone involved, as soon as you tell the judge or magistrate something, you must also tell the other parties. All sides must have an opportunity to respond to the information that you have shared with the court.

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

IN THE MATTER OF: _____

CASE NO. _____

SELF-REPRESENTATION ACKNOWLEDGMENT

I acknowledge that I have read, understand and agree with all of the following statements:

1. The Court has recommended that I hire an attorney to represent me in this case. However, I have chosen to proceed with this case without the assistance of an attorney.
2. The Court and its Deputy Clerks are prohibited by law from providing legal advice. I will follow the instructions provided in the form packets and on the Court's website, www.probatect.org.
3. I am responsible for understanding and correctly applying any statutes, case law, rules, regulations, policies, and procedures that relate to this case, including, but not limited to, the Ohio Revised Code, Rules of Superintendence for the Courts of Ohio, Hamilton County Probate Court Local Rules of Practice, and the Ohio Rules of Civil Procedure.
4. The same standards that apply to attorneys and persons represented by attorneys in similar probate hearings will apply to myself.
5. If I do not fulfill my responsibilities in this case as required by law, I may be subject to sanctions or penalties as provided by law, which may include removal as fiduciary or being required to be represented by an attorney.
6. I may be personally liable to any person or entity that suffers damages as a result of anything I do or fail to do in this case that does not comply with the legal requirements.

Fiduciary/Applicant/Guardian

Typed Printed Name

Address

City/State/Zip

Telephone Number (include area code)

Email

PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE

GUARDIANSHIP OF _____ **INCOMPETENT**

CASE NO. _____

**APPLICATION FOR APPOINTMENT OF
EMERGENCY GUARDIAN**

[R.C 2111.02 (B)(3)]

Applicant moves this Court for Appointment of an Emergency Guardian for
_____, an alleged incompetent.

Applicant states:

☐ That an emergency exists because the alleged incompetent suffers from the following
medical problem(s). (Specify): _____

☐ That immediate action is required to prevent significant injury or harm to the alleged
incompetent by reason of _____

☐ That the alleged incompetent is unable to make informed decisions regarding medical care
or treatment.

Therefore, applicant prays for an order of the Court appointing
_____ as emergency guardian of the person
(and estate) of the alleged incompetent.

Attorney for Applicant

Typed or Printed Name

Address

City, State, Zip Code

Phone Number (include area code)

Attorney Registration No.

Applicant

Typed or Printed Name

Address

City, State, Zip Code

Phone Number (include area code)

PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE

IN THE MATTER OF _____

CASE NO. _____

ENTRY SETTING HEARING

The Application/Motion _____
filed by _____, by and through counsel,
is hereby set for hearing on _____,
at _____ M. before Magistrate _____, Hamilton
County Probate Court, Room _____, _____ Floor, 230 E. Ninth Street, Cincinnati, Ohio
45202. The Court orders that notice of the hearing be given, as provided by law and
the rules of civil procedure, to those persons entitled to notice who have not waived
notice.

Ralph Winkler, Probate Judge

Attorney

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

GUARDIANSHIP OF _____

CASE NO. _____

**AUTHORIZATION TO RELEASE
CONFIDENTIAL INFORMATION**

Name _____
Last First Middle

Date of Birth _____ Social Security Number _____

I hereby authorize the release of all confidential records and information concerning me to any officer or agent of the Hamilton County Probate Court for the purpose of an investigation pertaining to a proposed Guardianship.

Witness Date

Applicant

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

GUARDIANSHIP OF _____

CASE NO. _____

STATE OF OHIO)
)
COUNTY OF HAMILTON) **SS:**

AFFIDAVIT OF GUARDIAN APPLICANT

I, _____ affirm the following:
(Name)

☐ I have no pending misdemeanor or felony cases and have not been convicted of or pleaded guilty to any misdemeanor or felony offense: **OR**

☐ I have pending misdemeanor or felony cases or have been convicted of or pleaded guilty TO A MISDEMEANOR OR FELONY OFFENSE. (List below any pending cases or convictions that have not been sealed pursuant to R.C. 2953.31-2953.62.)

<u>DATE</u>	<u>TYPE OF CHARGE</u>	<u>COURT NAME</u>	<u>PENDING/CONVICTED/PLEADED GUILTY</u>
_____	_____	_____	<input type="checkbox"/> Pending <input type="checkbox"/> Convicted <input type="checkbox"/> Pleaded Guilty
_____	_____	_____	<input type="checkbox"/> Pending <input type="checkbox"/> Convicted <input type="checkbox"/> Pleaded Guilty
_____	_____	_____	<input type="checkbox"/> Pending <input type="checkbox"/> Convicted <input type="checkbox"/> Pleaded Guilty
_____	_____	_____	<input type="checkbox"/> Pending <input type="checkbox"/> Convicted <input type="checkbox"/> Pleaded Guilty

I understand that I have a duty to notify the Hamilton County Probate Court within seventy-two hours if the information contained in this affidavit should change.

Signature of Applicant

SWORN TO, BEFORE ME, and subscribed in my presence, on this _____ day of _____, _____.

Notary Public / Deputy Clerk

Printed Name of Notary Public

Commission Expiration Date: _____
(Affix seal here)

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

GUARDIANSHIP OF _____

CASE NO. _____

**NEXT OF KIN OF PROPOSED WARD
(R.C. 2111.04)**

(NOTE: Specify age and birthdate of each minor under 16 on the line containing the minor's name. List the name and address of the minor's parent, guardian or custodian on the name and address lines following the minor's address.)

Service Waived		Relationship	Birthdate Of Minor
1. <input type="checkbox"/>	Name _____ Address _____	_____	_____ Zip _____
2. <input type="checkbox"/>	Name _____ Address _____	_____	_____ Zip _____
3. <input type="checkbox"/>	Name _____ Address _____	_____	_____ Zip _____
4. <input type="checkbox"/>	Name _____ Address _____	_____	_____ Zip _____
5. <input type="checkbox"/>	Name _____ Address _____	_____	_____ Zip _____
6. <input type="checkbox"/>	Name _____ Address _____	_____	_____ Zip _____
7. <input type="checkbox"/>	Name _____ Address _____	_____	_____ Zip _____
8. <input type="checkbox"/>	Name _____ Address _____	_____	_____ Zip _____
9. <input type="checkbox"/>	Name _____ Address _____	_____	_____ Zip _____
10. <input type="checkbox"/>	Name _____ Address _____	_____	_____ Zip _____

Date

Applicant

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

GUARDIANSHIP OF _____ INCOMPETENT

CASE NO. _____

**JUDGMENT ENTRY APPOINTING EMERGENCY GUARDIAN
AND SETTING HEARING ON CONTINUATION OF
EMERGENCY GUARDIANSHIP FOR INCOMPETENT PERSON**

This matter came on for hearing on the _____ day of _____, _____,
on an application for appointment of an emergency guardianship.

Based upon the medical testimony of _____
the Court finds that the ward is an incompetent person in need of an emergency
guardianship and that immediate action is required to prevent significant injury or harm to
the person (and estate) of the incompetent.

The Court hereby appoints _____,
as the emergency guardian of the person (and estate) of the ward with the authority to make
decisions for the best interests of the ward regarding medical care and treatment.

This order shall remain in effect for a period of seventy-two hours. The Court hereby
sets this matter for hearing whether to extend the emergency order on the _____ day of
_____, _____, at _____ o'clock _____. M. before _____.

It is further ordered that a copy of this order be served upon the ward and interested parties
forthwith.

This order has been granted ex parte for the reasons that a medical emergency
exists, that the ward is unable to make his / her own decisions regarding medical care
and treatment, and that immediate action is required at this time to prevent significant
injury or harm to the ward.

- ☐ Notice was given to ward's next of kin by telephone, fax, or other means.
- ☐ Notice was not given to ward's next of kin because next of kin could not be reached.
- ☐ The next of kin were unknown or could not be ascertained prior to the hearing.
- ☐ Other: _____

Ralph Winkler, Probate Judge

PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE

GUARDIANSHIP OF _____ INCOMPETENT

CASE NO. _____

**JUDGMENT ENTRY CONTINUING APPOINTMENT OF
EMERGENCY GUARDIAN FOR INCOMPETENT PERSON**

This matter came for hearing on the _____ day of _____, _____ on a motion to extend the emergency guardianship order for _____ an incompetent person, pursuant to Ohio Revised Code Section 2111.02 (C) (3).

A copy of the judgment Entry Appointing Emergency Guardian for Incompetent Person and Setting Hearing on Continuation of Emergency Guardianship was served upon the ward and interested parties on the _____ day of _____, _____ as set forth in the Affidavit of Service.

The ward continues to suffer from mental impairment and requires an emergency guardianship for the purpose of medical decisions to prevent significant injury or harm to the person of the ward.

For good cause shown, the Court hereby grants the motion to extend the emergency guardianship until _____ subject to further order of the Court.

It is further ordered that a copy of this entry shall be served on the ward and interested parties forthwith.

Ralph Winkler, Probate Judge