

House Bill 49

E-Mailed Testimony of Harris T. Capps,
Parent and Guardian of Matt, my son with IDD
Ohio House of Representatives Finance and Appropriations Committee
Transportation Subcommittee

Chairman Robert McColley, Ranking Member Alicia Reece, and members of the Committee:

I want to thank you for this opportunity to present testimony on the proposed 2018-2019 biennium budget for the Court. I am Harris T. Capps, Major USAF, Retired. More importantly, I am the parent and guardian of my 41 year old son, Matthew Capps.

I am here to address an issue that affects the Ohio Budget, Ohio policy (Superintendence Regulations), the valuable time of Ohio guardians, and the safety of the wards for whom guardians apply their best efforts to ensure they act in their best interests. I am using this venue because it is a direct conduit to policy as it relates to budget. The following paragraphs (inside the text box) are provided as a quick refresher.

In Accordance With (IAW)

Superintendence Rule 66.06. “Guardian Pre-Appointment *Education*.

(A) Requirement.

Except as provided in division (B) of this rule, the probate division of a court of common pleas shall not appoint an individual as a guardian unless, at the time of appointment or within six months thereafter, the individual has successfully completed, at a minimum, a **six-hour** guardian fundamentals course provided by the Supreme Court or, with the prior approval of the appointing court, another entity

(B) Exception. An individual serving as a guardian on June 1, 2015, or who served as a guardian during the five years immediately preceding that date shall have until June 1, 2016, to complete the training required under division (A) of this rule **unless the appointing court waives or extends the requirement for good cause.**

Superintendence Rule 66.07. Guardian *Continuing Education*.

(A) Requirement.

In each succeeding year following completion of the requirement of Sup.R. 66.06, a guardian appointed by the probate division of a court of common pleas shall successfully complete a continuing education course that meets all of the following requirements: (1) Is at least **three hours** in length...etc.

(C) **Failure to comply.** If a guardian fails to comply with the continuing education requirement of division (A) of this rule, the guardian shall not be eligible for new appointments to serve as a guardian until the requirement is satisfied.

The following are facts, assumptions, and recommendations as they pertain to this mandatory “education”:

- I assume there are as many Ohio probate courts as Ohio counties (88) having the authority to approve the assignment of guardians.
- More than a few of these courts/counties do not require guardians to take either the basic 6-hour fundamentals course, or the 3-hour continuing education course each year following the basic course. This decision appears to not be made on a case-by-case approach.
- There does not appear to be tracking of these requirements above the probate court level to ensure accountability, that is to say, to ensure the spirit and intent of the rules are maintained.
- Current requirements might as well be saying that guardians in a county requiring the education are less responsible than guardians in a county that has no requirement for annual education.

- As of January through April, 2016, the process for taking the on-line course was arduous and consumed significantly more time to complete than the advertised 6-hour requirement. Problems with the 6-hour course were reported to the Ohio Judicial College.
- Having had significant course design experience, and having discussed the course with representatives of the Ohio Judicial College, It was obvious that at least one cardinal rule-of-the-road for course designers was violated. The Subject Matter Experts (SME) presumed to be an attorney was asked how long the course should be. This is never the responsibility of the SME. The course designer is responsible for taking material furnished by the SME, developing the course, and through the development process, a course duration is determined. Then a decision can be made to add or subtract subject material with the goal of changing course duration. This tells me the course duration was largely subjective.
- Given knowledge of course design and extensive time as a guardian, this course did not appear efficient. The two courses (initial 6-hour course followed by a 3 hr course annually) create an unreasonable time burden on a subjectively picked group of guardians. This is especially true for guardians who are also parents of the ward; most understand, “in the best interest of the ward”. My son, Matt is 41 years old today, 3/21/2017, that how long we have been his advocates.
- Many wards who have no close relative to act as guardian, often find themselves in a system of guardians, often attorneys, who may oversee numerous wards. In Ohio, since 1978, this has been handled by private agencies. As of 1983, this has been **Advocacy & Protective Services, Inc.** (APSI). To the best of my knowledge, these contractors are **not required to track** guardianship training, deferring to each probate court. Sup.R. 66.05 (B) specifies training for guardians with 10 or more wards. What about these contract guardians with fewer than 10 wards, but in **multiple** counties?
 I am not aware of a study that concludes that attorneys make better guardians than parents. Possibly a causative factor for required training is described here: An Ohio newspaper account of the misdeeds of one subcontracted guardian (possibly through a different company) demonstrates that, even attorneys with an extensive knowledge of guardianship law can be among the worst offenders to court bestowed trust. **October 5th, 2015 Columbus Dispatch article: “Convicted guardianship lawyer died of suicide, attorney says”**
 “Paul S. Kormanik, a lawyer who was convicted for bilking people he was paid to protect, died this morning... As late as last year, Kormanik had served as a guardian for about 400 wards and boasted that he had the most wards of any guardianship attorney in the nation.... His sentencing had been set for Oct. 20 and he faced multiple years in prison”.
The conclusion regarding ASPI-type guardians: Will “required education” reduce risk?

I ask that this Subcommittee to strongly consider forming a committee **external** to the Judicial College to:

- 1) Assess **each** issue surfaced in the above paragraphs for necessary action.
- 2) As a function of refined course objectives, reconsider course duration and frequency. It is entirely possible that fewer, more pertinent objectives **could** lead to a 4-5 hr basic course, followed by a 90 minute refresher every 5 years.

This testimony should lead to changes in Ohio’s *Superintendence Rules*. These changes could easily improve the processes while mitigating risk which could potentially have budget consequences for Ohio taxpayers.

Thank You, Harris T. Capps,
 Major USAF, Retired... and Matt’s dad