

Understanding Ohio Law on Mental Capacity Standards

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Ohio courts use different legal standards to determine whether someone is fit to take certain actions, including appointment of a guardian, creating a will and testifying in court. Applying these standards can be difficult. However, focusing on the statutory language and its application makes these standards clearer and easier to apply.

Ohio statutory law provides the standard for determining when a person shall have a guardian appointed. Ohio Revised Code 2111.02(A) reads: "If found necessary, the probate court on its own motion or on application by any interested party shall appoint . . . a guardian . . . of a minor or incompetent." Ohio Revised Code 2111.01(D) defines "incompetent" as:

Any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide or any person confined to a correctional institution within this state."

The mental impairment causing a person to be judged incompetent can be the result of a physical disability, but physical disability alone is not enough to impose a guardianship. For example, a blind woman without any impairment in intellectual functioning does not require a guardian. However, the following factors, when combined with mental illness, weigh in favor of a court appointing a guardian: inability to care for oneself, inability to manage one's finances, inability to make decisions concerning daily living, inability to think clearly (impulsive or bizarre actions) and inability or refusal to take required medications.

Interestingly, an adjudication of incompetency does not automatically eliminate the validity of a will for a proposed testator (one who creates a will), though it does create a rebuttable presumption of incapacity. The applicable statute for determining whether someone has the necessary capacity to create a will requires a

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“sound mind.” Ohio Revised Code 2107.02 reads, “A person who is eighteen years of age or older, of sound mind and memory, and not under restraint may make a will.” To meet this requirement, a person must:

- understand the nature of the business engaged in;
- comprehend the nature and extent of his or her property;
- know the names and identity of those with natural claims on his or her bounty and
- appreciate his or her relation to family members.

These elements are presumed and a party contesting the validity of a will has the burden of proving the person’s incapacity.

Similarly, the statutory standard for determining whether a person is competent to testify as a witness in court also requires a sound mind. Ohio Revised Code 2317.01 reads, “All persons are competent witnesses except those of unsound mind and children under ten years of age who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly.” Witnesses are presumed competent to testify, unless proven otherwise. Even a person of unsound mind (including those adjudicated insane and those in mental facilities) may still be ruled competent to testify if he or she can correctly and truthfully state matters which have come within his or her perception and can appreciate and understand the nature of the oath.

Expert evaluation may be advisable to ensure the validity of a person’s will, the ability to provide testimony in court or to seek or oppose a potential guardianship. Eastman & Smith Ltd. can provide you the legal representation and access to expert services critical in such matters.

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