

# **FLORIDA GUARDIAN ADVOCATE LAW AND INFORMATION**

*(Guardian Advocate of the Person only)*

*Eighteenth Judicial Circuit  
Brevard County, Florida*



**THIS GUIDE DOES NOT CONSTITUTE LEGAL ADVICE AND IS INTENDED MERELY TO SERVE AS A  
RESOURCE.**

*Please consult with your attorney for legal advice.  
Please be aware that the law may change, and you should consult with your attorney for  
assistance.*

*Updated December 2023*

# **GUIDE FOR THE PROCESS OF APPLYING TO BE A GUARDIAN ADVOCATE FOR A PERSON WITH A DEVELOPMENTAL DISABILITY**

## **What is a Guardian Advocate?**

“Guardian advocate” means a person appointed by a written order of the court to represent a person with developmental disabilities under section 393.12, Florida Statutes. Guardian advocate appointments are governed by section 393.12, Florida Statutes, as well as Chapter 744, Florida Statutes.

All Florida Statutes may be viewed online at: [www.leg.state.fl.us/statutes/](http://www.leg.state.fl.us/statutes/)

The Florida Probate Rules are available online at: <https://www.floridabar.org/rules-ethics/>

## **Who is developmentally disabled?**

Under section 393.063(11), Florida Statutes, a person with a developmental disability means, a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

## **Do I need an attorney to become a Guardian Advocate?**

Pursuant to section 393.12(2)(b), Florida Statutes, a person who is being considered for appointment or is appointed as a guardian advocate is not required to be represented by an attorney unless required by the court or if the guardian advocate is delegated any rights regarding property other than the right to be the representative payee for government benefits or to receive periodic payments for the support, care, maintenance, education, or other needs of the person with a developmental disability pursuant to s. 61.1255.

During the guardian advocacy proceedings, the court will appoint an attorney for the person with a developmental disability to ensure that his or her best interests are protected. The attorney will need to meet face-to-face with the person with a developmental disability. If the person with a developmental disability is deemed to be indigent, the attorney will be provided at no cost from the Office of Criminal Conflict & Civil Regional Counsel or, in the case of a conflict, from a registry of qualified attorneys. If the person with a developmental disability is not deemed to be indigent, a private attorney will be appointed from a rotating list of qualified attorneys. The attorney will charge customary fees that may be paid out of the assets of the person with a developmental disability.

## **Who may serve as a Guardian Advocate?**

Any resident of the State of Florida who is 18 years old and of sound mind is qualified to act as a guardian advocate. In addition, a non-resident may serve if he or she is qualified under section 744.309(2), Florida Statutes.

### **Who may NOT serve as a Guardian Advocate?**

Pursuant to section 744.309(3), Florida Statutes, no person who has been convicted of a felony or who, from any incapacity or illness, is incapable of discharging the duties of a guardian, or who is otherwise unsuitable to perform the duties of a guardian, shall be appointed to act as guardian. Further, no person who has been judicially determined to have committed abuse, abandonment, or neglect against a child as defined in s. 39.01 or s. 984.03(1), (2), and (37), or who has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.04 or similar statute of another jurisdiction, shall be appointed to act as a guardian. Except as provided in subsection (5) or subsection (6), a person who provides substantial services to the proposed ward in a professional or business capacity, or a creditor of the proposed ward, may not be appointed guardian and retain that previous professional or business relationship. A person may not be appointed a guardian if he or she is in the employ of any person, agency, government, or corporation that provides service to the proposed ward in a professional or business capacity, except that a person so employed may be appointed if he or she is the spouse, adult child, parent, or sibling of the proposed ward or the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the proposed ward's best interest. The court may not appoint a guardian in any other circumstance in which a conflict of interest may occur.

### **Do I have to submit to a criminal background and credit history investigation?**

Yes. Section 744.3135(1), Florida Statutes, requires all guardian advocates of the person to submit to a level 2 criminal background screening and credit history investigation at their own expense.

You will need to contact Brevard County Sheriff's Office to make arrangements for the level 2 criminal background screening. Fingerprinting services are provided at each precinct as well as the Criminal Investigation Building. The public fingerprinting is conducted on various days and times depending on the precinct. Please consult the Brevard County Sheriff's website for exact times and locations: <http://www.brevardsheriff.com> You will need to provide them with the ORI number assigned to Brevard County. As of November 2016, the ORI number for Brevard County is FL005064Z. Remember to bring a government issued photo ID at the time of fingerprinting.

After your fingerprints are scanned, the Sheriff's Office will give you instructions to log in to the Federal Department of Law Enforcement (FDLE) website. You will be prompted to submit an additional payment to the Federal Department of Law Enforcement (FDLE). Please contact the FDLE for the exact amount, it is approximately \$40.00. FDLE will send the results of the fingerprint scan to the Clerk of the Court in Brevard County.

To obtain the credit history investigation you will need to obtain a current credit report from one of the three credit bureaus (Equifax, Experian, Transunion). You may obtain a free

credit report from the following websites: <http://www.creditkarma.com> and <http://www.annualcreditreport.com>. Once you have obtained your credit report you must file it in your guardian advocate case.

### **Will I be required to receive instruction or training?**

Yes. Each person appointed to be a guardian advocate must complete the required number of hours (as of 2016, eight hours) of instruction and education within four months after his or her appointment. The training must be completed through a course approved by the chief judge of the circuit court and taught by a court-approved organization.

A.O. 22-17-B contains a list of approved courses for Brevard County on guardianship education:

<http://brevardclerk.us/administrative-orders?ID=d9258bca-3cd9-4330-9d91-860f722b23ae>

The court may, in its discretion, waive some or all the training requirements or impose additional requirements. The court will make its decision on a case-by-case basis considering the experience and education of the guardian advocate, the duty assigned to the guardian advocate, and the needs of the person with a developmental disability.

### **Will I be required to file reports to the court regarding the person with a developmental disability?**

A guardian advocate must file an Initial Report within 60 days of appointment, pursuant to section 744.362, Fla. Stat. The initial guardianship report usually consists of an initial guardianship plan and verified inventory. However, if the proposed ward has no property, or if the filing of an inventory and/or accountings are waived, the accounting/inventory portion of the initial report is not required. The initial report for a guardian of the person must include an initial guardianship plan.

Please refer to section 744.363, Fla. Stat. regarding the initial plan.

In addition, a guardian advocate must file an annual plan each year. The annual plan must be filed within 90 days after the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month.

Please refer to section 744.3675, Fla. Stat. regarding annual plans.

If a guardian advocate wishes to move the person with a developmental disability out of Brevard County, unless the move is to a county adjacent to Brevard County, he or she must get court approval for the change of residence pursuant to section 744.1098, Florida Statutes.

### **When do I file a petition to be appointed Guardian Advocate?**

The petition may be initiated when the person with developmental disabilities reaches the age of 17 years and 6 months or anytime thereafter. The order of appointment of a guardian advocate under this section shall issue upon the minor's 18th birthday or as soon thereafter as possible. The filing fee payable to the Clerk of the Court for the filing of the petition for appointment of guardian advocate of the person is \$235.

The court may waive the filing fees and payment of costs of attorney's fees upon an application for determination of indigent status. (**See Form G and instructions**). If the person with developmental disabilities is 18 years of age, the Clerk of Court will use their income and assets to determine indigent status. However, if the person with developmental disabilities is a minor, the Clerk of Court will use the petitioner's income and assets to determine indigent status.

### **Can the developmentally disabled person petition for restoration of his/her rights?**

Yes, the developmentally disabled person or any interested person may file a suggestion of restoration of rights and must also include the evidentiary support for the request. The suggestion must state that the person with developmental disabilities is currently capable of exercising some or all the rights given to the Guardian Advocate. See section 393.12(12), Fla. Stat., and FL Probate Rule 5.681 for further information.

### **How do you become a Guardian Advocate?**

**First:** Complete all paperwork to file with the probate clerk at any of the locations of the Brevard Clerk of Court. The paperwork is to be used for a person with a developmental disability who resides in Brevard County.

#### ➤ **Form A- Application for Appointment as Guardian Advocate**

- ❖ This form asks for basic information about the person requesting to be appointed guardian advocate including education, employment history, and other relevant information.
- ❖ An application for each proposed guardian advocate must be filled out.

#### ➤ **Form B- Notice of Petition for the Appointment of Guardian Advocate**

- ❖ This form will be given to the person with a developmental disability through the court appointed attorney to notify him or her that a petition has been filed to determine his or her capacity and seek appointment of a guardian advocate of his or her person.
- ❖ This notice must also be given to the next of kin of the person with a developmental disability, if any; a health care surrogate designated by the person with a developmental disability pursuant to an advance directive under Chapter 765, if any; an agent designated by the person with a developmental disability under a durable power of attorney, if any; and any other persons as the court may direct.

*Next of kin means those persons who would be heirs of the person with a developmental disability, including lineal descendants of the person with a developmental disability.*

#### ➤ **Form C -Petition for Appointment as Guardian Advocate of the person**

- ❖ This form requests information regarding your reason for becoming a guardian advocate.

- ❖ This form asks for information about the person with the developmental disability and his or her capacity to make decisions.
  - ❖ Attach the medical records, school records, individual support plan, individual education plan, and any other professional reports, documenting the condition and needs of the person with the developmental disability.
- **Form D- Order Appointing Attorney and Elisor**
- ❖ This form is necessary to the proceedings. The Court will appoint an attorney to represent the person with a developmental disability within 3 days after a petition has been filed.
  - ❖ The person with a developmental disability may substitute his or her own attorney for the one appointed by the court.
- **Form E- Oath of Guardian Advocate**
- ❖ This form is to ensure that the proposed guardian advocate will faithfully perform his or her duties, if selected, and confirms that all the information before the court in this proceeding is true.
- **Form F- Notice of Confidential Information Within Court Filing (one original)**
- ❖ This form is a required form to ensure confidential information of the person with a developmental disability is protected and kept private.
- **Form G- Application for Determination of Civil Indigent Status**
- ❖ According to Florida Statute §57.082, an applicant is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services. If the person with a developmental disability is found indigent, the filing fees will be waived.
  - ❖ There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.

**Second:** File the following paperwork at any of the Brevard County Clerk of Court's offices:

- Form A- Application for Appointment as Guardian Advocate
- Form C- Petition for Appointment as Guardian Advocate of the Person
- Form D- Order Appointing Attorney and Elisor
- Form E- Oath of Guardian Advocate
- Form F- Notice of Confidential Information Within Court Filing

- Form G - Application for Determination of Civil Indigent Status if the person with a developmental disability is indigent.

***Keep copies of all the documents you file.***

The following is contact information for the Brevard Clerk of Court, Probate Division:

The Brevard Clerk of the Court, Probate Division  
Moore Justice Center  
2825 Judge Fran Jamieson Way  
Viera, FL 32940-8006  
**Phone:** (321) 637-5413 extension 59390  
**E-mail:** [ProbateGuardianshipgroup@brevardclerk.us](mailto:ProbateGuardianshipgroup@brevardclerk.us)

The following is contact information for the Brevard County 18<sup>th</sup> Judicial Circuit Probate/Guardianship Staff:

Becky Reed  
Case Manager Supervisor  
**Phone:** (321) 637-5304  
**E-mail:** [becky.reed@flcourts18.org](mailto:becky.reed@flcourts18.org)

Angela Dion  
Case Manager  
**Phone:** (321) 637-5304  
**E-mail:** [angela.dion@flcourts18.org](mailto:angela.dion@flcourts18.org)

Ashley Beck  
Case Manager  
**Phone:** (321) 637-5304  
**E-mail:** [ashleybeck@flcourts18.org](mailto:ashleybeck@flcourts18.org)

How to file electronically: From the website <https://www.myflcourtaccess.com>, click on “File Now,” and from the registration menu at the bottom of the screen select “Self-Represented Litigant.” Follow the instructions for registration. Please note that each form must be scanned and uploaded separately. The court will not accept multiple forms in a single uploaded document. Make sure the e-mail address you provide is one that you check regularly, as correspondence from the court will be directed to that address. If you find the ePortal too difficult to use, you should file the forms at the courthouse as directed above.

**Third:** Fulfill the Level 2 Criminal Screening Requirements and Credit History Investigation. (See information provided on page 2)

**Fourth:** Contact the assigned judge’s judicial assistant to schedule a hearing.

- File Form B- Notice of Petition for the Appointment of Guardian Advocate once you have received a court date and time for the hearing to appoint a guardian advocate.

**Fifth:** Copies of the following documents need to be provided to the assigned attorney for the person with a developmental disability:

- Application for Appointment as Guardian Advocate (*Form A*)
- Notice of Petition for the Appointment of Guardian Advocate and Appointment of Standby Guardian Advocate (*Form B*) (this form will include the date and time of the hearing that was provided by the assigned judge’s judicial assistant)
- Petition for Appointment as Guardian Advocate of the Person (*Form C*)
- Order Appointing an Attorney and Elisor (*Form D*)
- Oath of Guardian Advocate (*Form E*)

And

- Provide a copy of the above documents to the following persons, if any:
  - The next of kin of the person with a developmental disability.
  - The health care surrogate designated by the person with a developmental disability pursuant to advance directives.
  - An agent designated by the person with a developmental disability under a durable power of attorney.

**Sixth:** Schedule an appointment as soon as possible with the attorney appointed to represent the person with a developmental disability to meet you and the person with the developmental disability.

**Seventh:** Attend the scheduled hearing.

Bring the following forms with you to the Hearing:

➤ **Form H- Order Appointing Guardian Advocate of the Person**

- ❖ Complete this form prior to the hearing. You will be asked to provide this form to the judge for his or her signature if you are appointed as guardian advocate.

➤ **Form I- Letters of Guardian Advocacy of the Person**

- ❖ Complete this form prior to the hearing. You will be asked to provide this form to the judge for his or her signature if you are appointed as guardian advocate.

At the hearing, the facts of the petition will be presented to the Judge. The judge will decide whether or not to appoint a guardian advocate. The person with a developmental disability should attend the hearing if he or she is able to travel.

**Eighth:** Fulfill the education requirements. See information provided on page 3.

**Ninth:** After you have been appointed a guardian advocate the following form is required to be filed with the court.

➤ **Form J- Initial guardian advocacy plan of the person**

- ❖ This form asks for information about how the guardian advocate plans to care for the person with a developmental disability. It must be filed with the court within 60 days of appointment as guardian advocate. Copies of the form must be sent to the person with a developmental disability and the attorney for the person with a developmental disability. See information provided on page 3 of this guide.

**Tenth:**

➤ **Form K- Order Approving Initial Guardian Advocacy Plan of the Person**

- ❖ You will receive a Report to Court issued by the Clerk’s office indicating a comply or non-comply with the Florida Statutes. If the Clerk’s office issues a comply, you will need to provide a proposed order approving the initial plan with the court. If the Clerk’s office issues a non-comply, you will be required to file an amended initial guardianship plan with the court.

**Eleventh:** File an annual plan each year.

**Form L- Annual Guardian Advocacy Plan (Including Physician Report)**

- ❖ **This form is mandatory and must be filed each year** within 90 days after the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. See information provided on page 3 of this guide.

➤ **Form M – Order approving Annual Guardian Advocacy Plan**

- ❖ You will receive a Report to Court issued by the Clerk’s office indicating a comply or non-comply with the Florida Statutes. If the Clerk’s office issues a comply, you will need to provide a proposed order approving the annual plan with the court. If the Clerk’s office issues a non-comply, you will be required to file an amended annual plan with the court.

## **List of Guardian Advocate Forms**

1. Form A - Application for Appointment as Guardian Advocate
2. Form B - Notice of Petition for the Appointment of Guardian Advocate
3. Form C - Petition for Appointment as Guardian Advocate of the Person

4. Form D - Order Appointing Attorney and Elisor
5. Form E - Oath of Guardian Advocate, Designation and Acceptance of Resident Agent
6. Form F - Notice of Confidential Information Within Court Filing
7. Form G - Application for Determination of Civil Indigent Status
8. Form H - Order Appointing Guardian Advocate of the Person
9. Form I - Letters of Guardian Advocacy of the Person
10. Form J - Initial Guardian Advocacy Plan of the Person
11. Form K - Order Approving Initial Guardian Advocacy Plan of the Person
12. Form L - Annual Guardian Advocacy Plan (Including Physician Report)
13. Form M - Order Approving Annual Guardian Advocacy Plan