



State of Florida
 Counties of Brevard and Seminole
 Circuit Court Eighteenth Judicial Circuit

2825 Judge Fran Jamieson Way
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GUARDIAN ADVOCATE CHECKLIST

PETITION:			
ITEM	Petition to Appoint Guardian Advocate	Florida Statute	Probate Rule
1.	A petition to appoint a guardian advocate for a person with a developmental disability may be executed by an adult person who is a resident of this state. The petition must be verified by the petitioner and must state:	§744.3085 §393.12(3)	5.649(a), 5.905(a)
2.	The name, age, and present address of the petitioner and the petitioner's relationship to the person with a developmental disability;		5.649(a)(1)
3.	The name, age, county of residence, and present address of the person with a developmental disability;		5.649(a)(2)
4.	That the petitioner believes that the person needs a guardian advocate and the factual information on which such belief is based;		5.649(a)(3)
5.	The exact areas in which the person lacks the ability to make informed decisions about the person's care and treatment services or to meet the essential requirements for the person's physical health or safety;		5.649(a)(4)
6.	The legal disabilities to which the person is subject;		5.649(a)(5)
7.	If authority is sought over any property of the person, a description of that property and the reason why management or control of that property should be placed with a guardian advocate;		5.649(a)(6)
8.	The name of the proposed guardian advocate, the relationship of that person to the person with a developmental disability; the relationship that the proposed guardian advocate had or has with a provider of health care services, residential services, or other services to the person with a developmental disability; and the reason why this person should be appointed. If a willing and qualified guardian advocate cannot be located, the petition must so state;		5.649(a)(7)
9.	Whether the petitioner has knowledge, information, or belief that the person with a developmental disability has executed an advance directive under chapter 765, Florida Statutes, or a durable power of attorney under chapter 709, Florida Statutes, and if the person with a developmental disability has executed any of the foregoing documents, an explanation as to why the documents are insufficient to meet the needs of the individual;		5.649(a)(8)
10.	Whether petitioner has knowledge, information, or believe that the person with a developmental disability has a preneed guardian designation;		5.649(a)(9)
11.	Whether authority is sought to seek periodic support of the person with a developmental disability; and		5.649(a)(10)
12.	whether the person with a developmental disability uses assistance to exercise the rights of the person, including, but not limited to, supported decision making agreements, and if so, why the assistance is inappropriate or insufficient to allow the person to independently exercise the person's rights.		5.649(a)(11)

NOTICE:			
ITEM	Notice of Filing Petition to Appoint Guardian Advocate	Florida Statute	Probate Rule
1.	Notice of the filing of the petition must be given to the person with a developmental disability, both verbally and in writing, in the language of the person and in English. Notice must also be given to the person with a developmental disability's next of kin, any designated health care surrogate, an agent designated in a durable power of attorney, and any other persons as the court may direct. The petition to appoint a guardian advocate must be served with the notice.	§393.12(4)	5.649(b)(1), 5.905(b)
2.	The notice must state that a hearing will be held to inquire into the capacity of the person with a developmental disability to exercise the rights enumerated in the petition. The notice must also state the date of the hearing on the petition.		5.649(b)(2)
3.	The notice must state that the person with a developmental disability has the right to be represented by counsel of the person's own choice and, the court must initially appoint counsel.		5.649(b)(3)
ITEM	Notice of Filing all relevant reports to the persons disability	Florida Statute	Probate Rule
1.	At the hearing, the court shall receive and consider all reports relevant to the person's disability, including, but not limited to, the person's current individual family or individual support plan, the individual education plan, and other professional reports documenting the condition and needs of the person.	§393.12(6)(d)	
2.	The Florida Evidence Code, chapter 90, applies at the hearing. The burden of proof must be by clear and convincing evidence.	§393.12(6)(e)	

ORDERS:			
ITEM	Order Appointing Attorney	Florida Statute	Probate Rule
1.	Within 3 days after a petition has been filed, the court shall appoint an attorney to represent a person with a developmental disability who is the subject of a petition to appoint a guardian advocate. The alleged incapacitated person may substitute her or his own attorney for the attorney appointed by the court.	§393.12(5)	5.649(c)
2.	The court shall initially appoint a private attorney who shall be selected from the attorney registry compiled pursuant to s. 27.40 .	§393.12(5)(a)	
3.	If the person with a developmental disability is found to be indigent, the court shall appoint the office of criminal conflict and civil regional counsel.		
4.	An attorney representing a person with a developmental disability may not also serve as the guardian advocate of the person, as counsel for the guardian advocate, or as counsel for the person petitioning for the appointment of a guardian advocate	§393.12(5)(b)	
ITEM	Procedural Tips		
1.	Please submit the Order Appointing Attorney and Elisor via email to the judicial assistant. Please advise the judicial assistant if the person with a developmental disability is indigent or is not indigent as this determines if private counsel or the office of criminal conflict and civil regional counsel will be appointed to represent the person with a developmental disability.		
2.	Please leave the attorney information blank on the Order Appointing Attorney to allow the information to be completed by the judicial assistant once the attorney is selected.		
ITEM	Order to Appoint Guardian Advocate	Florida Statute	Probate Rule
1.	If the court finds the person with a developmental disability requires the	§393.12(8)	5.649(d), 5.905(c)

	appointment of a guardian advocate, the court shall enter a written order appointing the guardian advocate and containing the findings of facts and conclusions of law on which the court made its decision.		
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ITEM	Letters of Guardian Advocate	Florida Statute	Probate Rule
1.	Upon compliance with all of the foregoing, letters of guardian advocacy must be issued to the guardian advocate.		5.649(e), 5.906

ITEM	Procedural Tips		
1.	All proposed hearing orders are required to be emailed to the judicial assistance. (Please do not eFile hearing orders.)		
2.	Please refer to Fla. Prob. Rule 5.905 and 5.906 which include a petition, notice, order for appointment of guardian advocate of the person and Letters of Guardian Advocacy		5.905, 5.906

OTHER:

ITEM	Application	Florida Statute	Probate Rule
1.	Individual Applicants: Every prospective guardian must complete an application for appointment as guardian.	§744.3125	5.590(a)

ITEM	Oaths	Florida Statute	Probate Rule
1.	Every guardian shall take an oath that he or she will faithfully perform his or her duties as guardian.	§744.347	5.600

ITEM	Bond	Florida Statute	Probate Rule
1.	Before exercising his or her authority as guardian, every person appointed a guardian of the property of a ward in this state shall file a bond with surety as prescribed in s. 45.011 to be approved by the clerk. The bond shall be payable to the Governor of the state and the Governor's successors in office, conditioned on the faithful performance of all duties by the guardian. In form the bond shall be joint and several. When the petitioner or guardian presents compelling reasons, the court may waive a bond or require the use of a designated financial institution as defined in s. 655.005(1).	§744.351(1)	
2.	Financial institutions as defined in s. 744.309(4), other than a trust company operating under chapter 662 which is not a licensed family trust company or foreign licensed family trust company, and public guardians authorized by law to be guardians are not required to file bonds.	§744.351(5)	

ITEM	Background Check	Florida Statute	Probate Rule
1.	The Court requires that all guardians who are seeking appointment by the court, other than a corporate guardian as described in s. 744.309(4), and all employees of a professional guardian, other than a corporate guardian as described in s. 744.309(4), who have a fiduciary responsibility to a ward, to submit, at their own expense, to a credit history investigation and to undergo level 2 background screening as required under s. 435.04.	§744.3135(1)	

ITEM	Representation and Hearing	Florida Statute	Probate Rule
1.	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	§393.12(2)(b)	5.030(a)

	receive periodic payments for the support, care, maintenance, education, or other needs of the person with a developmental disability pursuant to s. <u>61.1255</u> .		
2.	A hearing is required for the Petition to Appoint Guardian Advocate.	§393.12(6)	

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