



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

Harry T. and Harriette V. Moore Justice Center  
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**MENTAL HEALTH INCAPACITY CHECKLIST**

<b>PETITIONS:</b>			
<b>ITEM</b>	<b>Petition to Determine Incapacity</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	Petition must be verified and must state:	§744.3201(2)	5.550(a)
2.	The name, age, and present address of the petitioner and the petitioner's relationship to the alleged incapacitated person.		5.550(a)(1)
3.	The name, age, county of residence, and present address of the alleged incapacitated person, and specify the primary language spoken by the alleged incapacitated person, if known.		5.550(a)(2)
4.	That the petitioner believes the alleged incapacitated person to be incapacitated, the facts on which such belief is based, and the names and addresses of all persons known to the petitioner who have knowledge of such facts through personal observation.		5.550(a)(3)
5.	The name and address of the alleged incapacitated person's attending or family physician, if known.		5.550(a)(4)
6.	Which rights the alleged incapacitated person is incapable of exercising to the best of the petitioner's knowledge; and, if the petitioner has insufficient experience to make that judgment, the petitioner shall so indicate.	§744.3215	5.550(a)(5)
7.	Whether plenary or limited guardianship is sought for the alleged incapacitated person.		5.550(a)(6)
8.	The names, relationships, and addresses of the next of kin of the alleged incapacitated person, specifying the dates of birth of any who are minors, to the extent known to the petitioner.	§744.102(14)	5.550(a)(7)
9.	whether there are possible alternatives to guardianship known to the petitioner, including, but not limited to, trust agreements, powers of attorney, designations of health care surrogates, or other advance directives, and if the petitioner is seeking a guardianship, an explanation as to why the alternatives are insufficient to meet the needs of the alleged incapacitated person.		5.550(a)(8)
10.	A copy of the any Petition for Appointment of Guardian or Emergency Temporary Guardian, if applicable, shall be filed with the Petition to Determine Incapacity.	§744.3201(3)	
<b>NOTICES:</b>			

ITEM	Notice of Filing Petition to Determine Incapacity and Petition for Appointment of Guardian or Emergency Temporary Guardian	Florida Statute	Probate Rule
1.	The Notice of Filing the Petition to Determine Incapacity shall state the time and place of the hearing to inquire into the capacity of the alleged incapacitated person, that an attorney has been appointed to represent such person and if the court determines that such person is incapable of exercising any of the rights enumerated in the petition a guardian may be appointed.	§744.331(1)	5.550(b)(1)
0. R D E R S	The notice and a copy of the petition to determine incapacity shall be personally served by an elisor appointed by the court, who may be the court appointed counsel for the alleged incapacitated person. The elisor shall read the notice to the alleged incapacitated person, but need not read the petition. A return of service shall be filed by the elisor certifying that the notice and petition have been served on and the notice read to the alleged incapacitated person.		5.550(b)(2)
3.	A copy of the petition and the notice shall also be served on counsel for the alleged incapacitated person, and on all next of kin.		5.550(b)(3)
ITEM	Order to Appoint Attorney	Florida Statute	Probate Rule
1.	When a court appoints an attorney for an alleged incapacitated person, the court must appoint the office of criminal conflict and civil regional counsel or a private attorney as prescribed in s. 27.511(6).	§744.331(2)(a)	
2.	The court shall appoint an attorney for each person alleged to be incapacitated in all cases involving a petition for adjudication of incapacity. The alleged incapacitated person may substitute her or his own attorney for the attorney appointed by the court.	§744.331(2)(b)	
3.	Any attorney representing an alleged incapacitated person may not serve as guardian of the alleged incapacitated person or as counsel for the guardian of the alleged incapacitated person or the petitioner.	§744.331(2)(c)	
ITEM	Procedural Tips		
1.	Please submit the Order Appointing Attorney and Elisor via <b>email</b> to the judicial assistant. <b><u>Please advise the judicial assistant if the alleged incapacitated person is indigent or is not indigent as this determine if private counsel or the office of criminal conflict and civil regional counsel will be appointed to represent the alleged incapacitated person.</u></b>		
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.		
3.	The proposed order should be submitted at the time of filing the Petition to Determine Incapacity, Petition for Appointment of Guardian, and Petition for Appointment of Emergency Temporary Guardian, if any.		
ITEM	Order to Appoint Examining Committee		
1.	Within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee consisting of three members. One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, a gerontologist, a psychiatrist, a physician, an advanced practice registered nurse, a registered nurse, a licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or any other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion.	§744.331(3)(a)	

ITEM	Procedural Tips		
1.	Please submit the Order Appoint Examining Committee via <b>email</b> to the judge's judicial assistant. Please leave blank spaces for the members' names and addresses to be inserted once the members have been selected. The examining committee members are selected by the court on a strict rotation basis.		
3.	The attorney for the petitioner should contact the examining committee liaison and provide the member with the following information: A cover with contact information including addresses and telephone numbers for the petitioner, ward and next of kin. With the stricter HIPPA regulations it is being requested by the examining committee members, if an ETG is appointed by the court, please have the ETG sign a medical release form on behalf of the alleged incapacitated person and submit this form to the examining committee liaison member.		
ITEM	Order to Determine Incapacity	Florida Statute	Probate Rule
1.	If, after making findings of fact on the basis of clear and convincing evidence, the court finds that a person is incapacitated with respect to the exercise of a particular right, or all rights, the court shall enter a written order determining such incapacity. In determining incapacity, the court shall consider the person's unique needs and abilities and may only remove those rights that the court finds the person does not have the capacity to exercise. A person is determined to be incapacitated only with respect to those rights specified in the order.	§744.331(6)	
ITEM	Procedural Tips		
1.	All proposed orders are required to be brought to the hearing. <b>(Please do not eFile.)</b>		
ITEM	Order to Compensate Examining Committee Members	Florida Statute	Probate Rule
1.	The examining committee and any attorney appointed under §744.331(2) are entitled to reasonable fees to be determined by the court.	§744.331(7)(a)	
2.	The fees awarded under §744.331(7)(a) shall be paid by the guardian from the property of the ward or, if the ward is indigent, by the state. The state shall have a creditor's claim against the guardianship property for any amounts paid under this section. The state may file its claim within 90 days after the entry of an order awarding attorney ad litem fees. If the state does not file its claim within the 90-day period, the state is thereafter barred from asserting the claim. Upon petition by the state for payment of the claim, the court shall enter an order authorizing immediate payment out of the property of the ward. The state shall keep a record of the payments.	§744.331(7)(b)	
3.	If the petition is dismissed or denied: The fees of the examining committee shall be paid upon court order as expert witness fees under s. <a href="#">29.004</a> (6).	§744.331(7)(c)(1)	
4.	Costs and attorney fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith. The petitioner shall also reimburse the state courts system for any amounts paid under §744.331(7)(c)(1) upon such a finding.	§744.331(7)(c)(2)	
ITEM	Procedural Tips		
1.	A Petition to Compensate Examining Committee Members is no longer required. Please file an order to compensate the examining committee within fifteen days from the filing of the examining committee reports. In addition, proof of payment to the examining committee members will need to be filed with the court no later than 60 days from the entry of the order to compensate. Proof of payment will		

	only pertain to private pay cases.		
2.	Please ensure each examining committee member receives a copy of the Order to Compensate Examining Committee Members for indigent wards. The examining committee members are required to submit a copy of the order to the State of Florida for payment. The order does not have to be certified but does need to include the judge's signature.		
<b>OTHER:</b>			
<b>ITEM</b>	<b>Examining Committee Report</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	Each member of the examining committee must file his or her report with the clerk of the court within 15 days after appointment.	§744.331(3)(e)	
2.	Within 3 days after receipt of each examining committee member's report, the clerk shall serve the report on the petitioner and the attorney for the alleged incapacitated person by electronic mail delivery or United States mail, and, upon service, shall file a certificate of service in the incapacity proceeding. The petitioner and the attorney for the alleged incapacitated person must be served with all reports at least 10 days before the hearing on the petition, unless the reports are not complete, in which case the petitioner and attorney for the alleged incapacitated person may waive the 10 day requirement and consent to the consideration of the report by the court at the adjudicatory hearing. If such service is not timely effectuated, the petitioner or the alleged incapacitated person may move for a continuance of the hearing.	§744.331(3)(h)	
<b>ITEM</b>	<b>Hearing</b>	<b>Florida Statute</b>	<b>Probate Rule</b>
1.	A hearing is required for the Petition to Determine Incapacity.	§744.331(5)	

REV 12.21.2023