



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

Harry T. and Harriette V. Moore Justice Center
 2825 Judge Fran Jamieson Way
 Viera, Florida 32940-8006
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MENTAL HEALTH INCAPACITY CHECKLIST

PETITIONS:			
ITEM	Petition to Determine Incapacity	Florida Statute	Probate Rule
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.	§744.3201(2)(a)	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.	§744.3201(2)(b),(c)	5.550(a)(2)
4.	The petitioner believes the alleged incapacitated person to be incapacitated and specify the factual information 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 observations.	§744.3201(2)(d)	5.550(a)(3)
5.	State the name and address of the alleged incapacitated person's attending or family physician, if known.	§744.3201(2)(e)	5.550(a)(4)
6.	Which rights, enumerated in §744.3215 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.	§744.3201(2)(f) §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.	§744.3201(2)(g)	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)	

NOTICES:			
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 will be appointed.	§744.331(1)	5.550(b)(1)
ORDER	Notice and copy of petition to determine incapacity shall be personally served by the court appointed Elisor. The Elisor must read the notice to the alleged incapacitated person. A return of service shall be filed by the Elisor certifying that the notice and petitions have been served on and the notice read to the alleged incapacitated person	§744.331(1)	5.550(b)(2)
S:	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.	The court will appoint a private attorney from a registry compiled pursuant to §27.40. Appointments of private attorneys must be made on a rotating basis, taking into consideration conflicts arising under this chapter.	§744.331(2)(a)	
2.	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 leave the attorney and elisor information blank to allow the information to be completed by the Judicial Assistant.		
2.	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.		
3.	Please submit the Order Appointing Attorney and Elisor via email to the Judicial Assistant.		
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, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or 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. The Clerk of the Court shall send notice of the appointment to each person appointed no later than 3 days after the court's appointment.	§744.331(3)(a)	
2.	Each year, the Chief Judge of the circuit must prepare a list of persons qualified to be members of an examining committee.	§744.331(3)(c)	

ITEM	Procedural Tips		
1.	Please submit the Order Appointing Elisor and Order Appoint Examining Committee via email 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.		
2.	The court approved list of examining committee members is located on the Eighteenth Judicial Circuit's website.		
3.	The Clerk of the Court sends a copy of the order appointing examining committee to each member pursuant to §744.331(3)(a).		
4.	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)	
2.	The Court shall make the following findings: The exact nature and scope of the person's incapacities;	§744.331(6)(a)1	
3.	The exact areas in which the person lacks capacity to make informed decisions about care and treatment services or to meet the essential requirements for her or his physical or mental health or safety;	§744.331(6)(a)2	
4.	The specific legal disabilities to which the person is subject; and specific rights that the person is incapable of exercising.	§744.331(6)(a)3,4	
5.	The order must state whether there is an alternative to guardianship that will sufficiently address the problems of the incapacitated person.	§744.331(6)(b)	5.550(d)
6.	The order must contain findings of fact demonstrating that the individual is totally without capacity to care for herself or himself or her or his property.	§744.331(6)(c)	
7.	Once the order is signed and filed with the Clerk it must be served on the incapacitated person.	§744.331(6)(e)	
ITEM	Procedural Tips		
1.	All proposed orders shall be brought to the hearing. (Please do not eFile.)		
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.	§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. 29.004(6) .	§744.331(7)(c)(1)	
ITEM	Procedural Tips		
1.	A Petition to Compensate Examining Committee Members is no longer required. Please eFile the proposed Order to Compensate Examining Committee Members once the Examining Committee Reports and members' invoices are filed.		
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.		
OTHER:			
ITEM	Examining Committee Report	Florida Statute	Probate Rule
1.	Each member of the examining committee must submit a report within 15 days after appointment.	§744.331(3)(e)	
2.	A copy of each committee member's report must be served on the petitioner and the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 10 days before the hearing on the petition.	§744.331(3)(h)	
ITEM	Hearing	Florida Statute	Probate Rule
1.	A hearing is required for the Petition to Determine Incapacity.	§744.331(5)	

REV 10.13.2020