

FLORIDA GUARDIAN ADVOCATE LAW AND INFORMATION

(Guardian Advocate of the Person Only)

*Eighteenth Judicial Circuit
Seminole County, Florida
Effective as of July 2017*



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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.*

Effective as of July 2017

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

What is a Guardian Advocate?

Parents no longer have the legal authority to make decisions for their children after they turn 18 years of age. Guardian Advocacy is a process for family members, caregivers, or friends of individuals with a developmental disability to obtain the legal authority to act on their behalf if the person lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property. This is accomplished without having to declare the person with a developmental disability incapacitated. Guardian Advocate appointments are governed by Florida Statute §393.12 as well as Florida Statute chapter 744. Selected Florida Statutes and Probate Rules governing Guardian Advocates are included in the Appendix to this guide. All Florida Statutes may be viewed online at <http://www.leg.state.fl.us/statutes/>. The Florida Probate Rules are available online at:

[http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/6C2FEF97C5969ACD85256B29004BFA12/\\$FILE/Probate.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/6C2FEF97C5969ACD85256B29004BFA12/$FILE/Probate.pdf)

Who is developmentally disabled?

Under Florida Statute §393.063(12), a person with a developmental disability must have an Intellectual Disability (IQ less than 70), Cerebral Palsy, Autism, Spina Bifida, Downs Syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome that manifested before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

What if the person with a developmental disability lacks the capacity to make any decisions?

Florida Statute §393.12(2)(a) states that a Guardian Advocate may be appointed if the person with a developmental disability lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property. If the person lacks the capacity to make any decisions about his or her care, it may be more appropriate for the court to appoint a plenary guardian who is authorized to act on the person's behalf in all matters. The process of appointing a plenary guardian requires the court to determine that the person is incapacitated, and the person petitioning to become a guardian must have an attorney.

What are the powers and duties of a Guardian Advocate?

A Guardian Advocate for a person with a developmental disability shall have the same powers, duties, and responsibilities required of a guardian under Florida Statute Chapter 744 and those defined by the judge. These powers and duties are listed in Florida Statute §744.361. They include but are not limited to: filing an initial plan and annual reports; making provisions for

medical, mental health, dental and personal care of the person with a developmental disability; making residential decisions on behalf of the person with a developmental disability; advocating on behalf of the person with a developmental disability in institutional and other settings; and making financial decisions on behalf of the person with a developmental disability. A Guardian Advocate need not be the caregiver of the person with a disability.

Do I need an attorney to become a Guardian Advocate?

The process of becoming a Guardian Advocate of a person with a developmental disability does not require the hiring of an attorney. 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.

If there is property involved, other than Social Security benefits or other government payee programs, the person seeking to become a Guardian Advocate of the person and the property *must* hire an attorney. These property rights include, but are not limited to: a pending lawsuit, estate matter, or other income or property right coming to the person with a developmental disability. The Court can expand the description of property rights by Petition and Order.

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 related to the person with a developmental disability by blood, adoption or law according to Florida Statute §744.309(2).

The court may appoint any person whom it considers fit, proper, and qualified to act as guardian whether or not that person is related to the person with a developmental disability. However, the court gives preference to a person who:

- Is related by blood or marriage to the person with a developmental disability;
- Has relevant educational, professional or business experience;
- Has the capacity to manage the finances involved; or
- Has the ability to meet the requirements of the law and the unique needs of the individual.

The court shall also consider the wishes expressed by a person with a developmental disability as to who shall be appointed guardian or the wishes of the next of kin (closest living relatives) of the person with a developmental disability if the person with a developmental disability cannot express a preference.

Who may NOT serve as a Guardian Advocate?

No person who has been convicted of a felony can be appointed to act as a Guardian Advocate. Furthermore, no person who has been judicially determined to have committed abuse, abandonment, or neglect against a child as defined in Florida Statutes §39.01 and §984.03(1), (2), and (37), or who has been found guilty of, regardless of adjudication, or entered a plea of no contest to any offense prohibited under Florida Statute §435.04 (level 2 screening standards) or under any similar statute of another jurisdiction can be appointed to act as a Guardian Advocate.

Additionally, a person who provides substantial services to the person with a developmental disability in a professional or business capacity, or is a creditor of the person with a developmental disability, may not be appointed Guardian Advocate and retain that previous professional or business relationship. A person may not be appointed as Guardian Advocate if he or she is an employee of any person, agency, government, or corporation that provides service to the person with a developmental disability 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 person with a developmental disability or the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interest of the person with a developmental disability.

A provider of health care services to the person with a developmental disability, whether direct or indirect, may not be appointed the Guardian of the person with a developmental disability, unless the court specifically finds there is no conflict of interest with the best interest of the person with a developmental disability.

Do I have to submit to a criminal background investigation?

Yes. Florida Statute §744.3135 requires all Guardian Advocates of the person to submit to a level 2 criminal background screening *at their own expense*. You will need to contact Seminole County Sheriff office at (407) 665 6600 to make arrangements for the level 2 criminal background screening. You will need to provide them with the ORI number assigned to Seminole County. As of November 2015, the ORI number for Seminole County is FL059054Z. The Sheriff's office is located at 100 Bush Boulevard in Sanford. The Sheriff's office only accepts cash or money orders. The current cost is \$5.35. The public fingerprinting is conducted on Thursdays between 9 a.m. and 4 p.m. Remember to bring your driver's license or identification card with you.

After your fingerprints are scanned, the sheriff's office will give you a *control number* and instructions to login to the Federal Department of Law Enforcement (FDLE) website. You need to follow the instructions listed in the "Civil Applicant Payment System" (CAPS). The instructions will tell you to enter your control number and submit a payment of approximately \$40 on the website. Once the payment is accepted, a CAPS authorization page will be displayed. This receipt should be printed as documentation of your payment. FDLE will send the results of the fingerprint scan to the Clerk of the Court in Seminole County.

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 2015, 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. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar.

A course on guardianship education is available through Seniors First. You can register for the course by contacting Seniors First at (407) 297-9980. Seniors First is located at 5393 McLeod Road, Orlando, Florida 32801.

The court may, in its discretion, waive some or all of 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 Florida Statutes §744.361 and §744.363. The initial report must include a statement of medical, mental, or personal care services of the person with a developmental disability, and a statement of the place and kind of residential setting best suited for the needs of the person with a developmental disability. In addition, the Initial Report includes all physical and mental examinations necessary to determine the medical and mental health treatment needs of the person with a developmental disability. Finally, the Initial Report must include a list of any preexisting orders not to resuscitate, executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive.

In addition, a Guardian Advocate *must* file a report *each year*. The Annual Report 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.

Example: Imagine that the month that you were appointed a guardian is July. Your annual guardianship plan would need be filed with the court no later than October 30 of each year. The annual report would cover the period of August 1, 20__ to July 31, 20__. Also remember that you need to include a physician report with the annual report which is dated within 90 days of the day that you file the annual report.

The Annual Report must include information concerning the residence of the person with a developmental disability, the medical and mental health conditions, treatment and rehabilitation needs of the person with a developmental disability, and the social condition of the person with a

developmental disability. The Annual Report must also include a list of any preexisting orders not to resuscitate, executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive. And finally, the Annual Report must contain a declaration of any and all payment or other benefit made directly or indirectly, overtly or covertly, or in cash or in kind to the guardian.

If a Guardian Advocate wishes to move the person with a developmental disability out of Seminole County, unless the move is to a county adjacent to Seminole County, he or she must get court approval for the change of residence.

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

In order to avoid the gap between the child's eighteenth birthday and the appointment of a Guardian Advocate, the petition may be initiated within 180 days of the child's 18th birthday. The filing fee payable to the Clerk of the Court for the filing of the petition for appointment of Guardian Advocate is \$235. The petitioner is also responsible for payment of the attorney's fees for the attorney appointed to represent the person with developmentally disabilities.

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 make a determination of 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 make a determination of indigent status.

Note about becoming a Guardian Advocate for a child in DCF care.

When a minor with a developmental disability is in the care of the Department of Children and Families (DCF) and under the jurisdiction of a dependency court, state law provides for special procedures in order to avoid a gap between the child's eighteenth birthday and the appointment of a Guardian Advocate. DCF is required to develop an updated case plan developed with the child and other appropriate persons when the child turns 17. If the judge finds that appointment of a Guardian Advocate is appropriate, DCF must complete a multidisciplinary report and identify individuals who are willing to serve as a Guardian Advocate. Jurisdiction over children who are 17 ½ years old may be transferred to a guardianship court for the purpose of appointment of a Guardian Advocate. Proceedings for the appointment of a Guardian Advocate may be initiated within 180 days of the child's 18th birthday.

If another interested party initiates proceedings for the appointment of a Guardian Advocate, DCF is required to provide all necessary documentation and information to complete the petition. The child's biological or adoptive family members, including the child's parents, may not be considered as Guardian Advocates unless the court enters a written order finding that such an appointment is in the child's best interests.

Can the Petitioner request the court to appoint a Standby Guardian?

Yes, the Petitioner can request the court for the appointment of a Standby Guardian to assume their duties immediately on their death, removal or resignation. Within 20 days after the assumption of duties, the Standby Guardian Advocate must petition for confirmation of the appointment, file their oath and submit to a criminal history record check. You can designate the Standby Guardian Advocate by including the name of the Standby Guardian Advocate in the Petition for Appointment of Guardian Advocate and Appointment of Standby Guardian Advocate. (See Form C) You will need to prepare and take to the hearing Form H-1 – Order Appointing Standby Guardian Advocate.

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 Rule 5.681 of the Florida Rules of Probate procedure for further information.

How do you become a Guardian Advocate?

First: Complete all paperwork to file with the probate clerk at the Seminole County Juvenile Justice Center, 190 Eslinger Way, Sanford, FL 32773. The paperwork is to be used for person with a developmental disability, who resides in Seminole 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.

- ❖ **Form B- Notice of Petition for the Appointment of Guardian Advocate and Appointment of Standby Guardian Advocate (one original)**
 - ❖ This form will be given to the person with the developmental disability in order 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 65, 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 and Appointment of Standby Guardian Advocate**
 - ❖ 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.
 - ❖ You can request the court to appoint a Standby Guardian Advocate on this form.

- ❖ **Form C-1 - Standby Guardian Advocate Joinder in Petition**
 - ❖ This form must be signed by the individual who you name as standby guardian for the individual.

- ❖ **Form D- Order Appointing Attorney and Elisor (four copies)**
 - ❖ 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, Designation and Acceptance of Resident Agent (one original)**
 - ❖ 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.
 - ❖ This form designates the Resident Agent, the person who shall receive service of process of notice of documents concerning the Guardian Advocate, if any. The Resident Agent must be a resident of the county where the court case is pending pursuant to Fla. Prob. R. 5.110.

- ❖ **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**
 - ❖ **This form is optional.** It is *only needed* if the proposed Guardian Advocate *cannot* afford the filing fees. 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 you are 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.

The 2017 Poverty Guidelines 200% Level	
Persons in family	Poverty guideline
1	\$24,120
2	\$32,480
3	\$40,840
4	\$49,200
5	\$57,560
6	\$65,920
7	\$74,280
8	\$82,640
For families with more than 8 persons, add \$4,180 for each additional person.	

Note: These guidelines change each year.

Second: File the following paperwork and envelope *with postage* at the Clerk of Court Probate Division, located at the **Seminole County Juvenile Justice Center, 190 Eslinger Way, Sanford, FL 32773.**

- Form A- Application for Appointment as Guardian Advocate
- Form B- Notice of Petition for the Appointment of Guardian Advocate and Appointment of Standby Guardian Advocate and 3 copies of the original Notice of Petition for the Appointment of Guardian Advocate and Appointment of Standby Guardian Advocate
- Form C- Petition for Appointment as Guardian Advocate of the person and Appointment of Standby Guardian Advocate and 3 copies of the original Petition for Appointment as Guardian Advocate of the person and Appointment of Standby Guardian Advocate
- Form C-1- Standby Guardian Advocate Joinder in Petition
- Form D- Order Appointing Attorney and Elisor and 3 copies of the original Order Appointing Attorney
- Form E- Oath of Guardian Advocate, Designation and Acceptance of Resident Agent
- Form F- Notice of Confidential Information Within Court Filing
- Form G- Application for Determination of Civil Indigent Status

- *The filing fee for Guardian Advocate is \$235.00 as of November 2015. If you cannot afford the fees, file an application for determination of civil indigent status (Form G)*
- One large self-addressed stamped envelope with *sufficient postage* for the return of copies of documents

Keep copies of all the documents you file.

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

The Clerk of the Court, Probate Division
 Seminole County Juvenile Justice Center
 190 Eslinger Way
 Sanford, Florida 32773
Phone: (407) 665-4328
Fax: (407) 330-7193

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 email 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.

See information provided on page 3 of this guide.

Fourth: After return of documents from the Probate Clerk.

If you have not received documents from the Probate Division within two weeks of the date the documents were filed, call the Probate Division. The phone number for the Seminole County Courthouse Probate Division is (407) 665-4328.

When documents are returned to you, mail two copies of the following documents 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 of the hearing)
- Petition for Appointment as Guardian Advocate of the person and Appointment of Standby Guardian Advocate (*Form C*)
- Standby Guardian Advocate Joinder in Petition (*Form C-1*)
- Order Appointing an Attorney and Elisor (*Form D*)
- Oath of Guardian Advocate, Designation and Acceptance of Resident Agent (*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.

Fifth: 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.

Sixth: 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 H-1 - Order Appointing Standby Guardian Advocate**
 - ❖ 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 desire the appointment of a Standby 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 make a decision 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.

Seventh: Fulfill the Education Requirements

See information provided on page 4 of this guide.

Eighth: After you have been appointed a Guardian Advocate

File the following form with a self-addressed, stamped envelope 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.

Ninth:

- **Form K- Order Approving Initial Guardian Advocacy Plan of the person**
 - ❖ Once the Initial Guardian Plan is reviewed, the clerk will send you a Clerk's Report and then you file this form (Form K) with the court.

Tenth: Submit an Annual Plan each year

File the following form with the court *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 with a self-addressed, stamped envelope.

- **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.
 - ❖ This report must include information concerning the residence of the person with a developmental disability, the medical and mental health conditions and the treatment and rehabilitation needs of the person with a developmental disability, and the social condition of the person with a developmental disability.
 - ❖ Each plan must also address the issue of restoration of rights to the person with a developmental disability.
 - ❖ *You must attach a report from the physician of the person with a developmental disability. The Physician's Report must have been issued within 90 days of the filing of the report.*
 - ❖ *Example: Imagine that the month that you were appointed a guardian is July. Your annual guardianship plan would need be filed with the court no later than October 30 of each year. The annual report would cover the period of August 1, 20__ to July 31, 20__. Also remember that you need to include a physician report with the annual report which is dated within 90 days of the day that you file the annual report.*

- **Form M – Order approving Annual Guardian Advocacy Plan**
 - ❖ You will receive a clerk's report indicating if the Annual Guardian Advocate Plan has been approved. If the annual plan has been approved by the clerk, you must file the proposed Order approving the annual plan with the court with a self-addressed stamped envelope. If the annual plan was not approved, you will be required to file an amended annual guardianship plan with the court.

List of Guardian Advocate Forms

1. Letter to Clerk
2. Form A - Application for Appointment as Guardian Advocate
3. Form B - Notice of Petition for the Appointment of Guardian Advocate and Appointment of Standby Guardian Advocate
4. Form C - Petition for Appointment as Guardian Advocate of the person and Appointment for Standby Guardian Advocate
5. Form C-1 - Standby Guardian Advocate Joinder in Petition
6. Form D - Order Appointing Attorney and Elisor
7. Form E - Oath of Guardian Advocate, Designation and Acceptance of Resident Agent
8. Form F - Notice of Confidential Information Within Court Filing
9. Form G - Application for Determination of Civil Indigent Status
10. Form H - Order Appointing Guardian Advocate of the person
11. Form H-1 - Order Appointing Standby Guardian Advocate
12. Form I - Letters of Guardian Advocacy of the person
13. Form J - Initial Guardian Advocacy Plan of the person
14. Form K - Order Approving Initial Guardian Advocacy Plan of the person
15. Form L - Annual Guardian Advocacy Plan (Including Physician Report)
16. Form M - Order Approving Annual Guardian Advocacy Plan