

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
OF FLORIDA

ADMINISTRATIVE ORDER NO.:
17-37

IN RE: MENTAL HEALTH – CONFIDENTIALITY OF EXAMINING COMMITTEE REPORTS

F.S. 744.331(3)(a) requires that, within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee of three members consisting of a psychiatrist or other physician, and two other members who must be either a psychologist, gerontologists, 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.

F.S. 744.331(3) (g) requires that each committee member's report must include *inter alia*:

1. To the extent possible, a diagnosis, prognosis and recommended course of treatment.
2. An evaluation of the alleged incapacitated person's ability to retain her or his rights, including, without limitation, the rights to marry; vote; contract; manage or dispose of property; have a driver license; determine her or his residence; consent to medical treatment; and make decisions affecting her or his social environment.
3. The results of the comprehensive examination and the committee member's assessment of information provided by the attending or family physician, if any.
4. A description of any matters with respect to the which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity.

In sum, an examining committee's report contains intimately sensitive information regarding an alleged incapacitated person.

Effective July 1, 2017, the Florida Legislature amended section 744.331(3)(e), Florida Statutes, regarding the filing of examining committee reports in relation to a Petition to Determination of Incapacity. Section 744.331(3)(e), Florida Statutes provides in part "Each member of the examining committee must file his or her report with the clerk of court within 15 days after appointment."

As a consequence of this amendment, an examining committee report filed with the Clerk becomes a public record in accordance with Florida Rule of Judicial Administration 2.420(a) and (b)(1)(A) since the examining committee report is not specifically exempted from the right of public access by statute or Rule.

In accordance with the authority vested in the Chief Judge by the Florida Rule Judicial Administration 2.215, to exercise administrative supervision over the courts within the circuit and to control dockets; and in order to protect the confidentiality of the mental and physical health assessment of alleged incapacitated persons, it is ORDERED:

Examining committee reports filed in mental health cases in conjunction with a Petition to Determine Incapacity are deemed confidential and are subject to inspection only by the court, the clerk or the clerk's representative, the petitioner, the petitioner's attorney, the alleged incapacitated person and the alleged incapacitated person's attorney. Access to the examining committee's reports may be granted to other individuals upon the filing of a Motion to Unseal Examining Committee's Reports based upon good cause, in the mental health case.

DONE AND ORDERED this 25th day of September, 2017.

JOHN M. HARRIS
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CHIEF JUDGE

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