INCAPACITY/

GUARDIANSHIP

**BEST PRACTICES**

**20th Judicial Circuit**

**CHARLOTTE COUNTY, FLORIDA**

**Charlotte County Justice Center, 350 East Marion Avenue, Punta Gorda, Florida 33950**

**Updated May 2, 2022**

**(changes in blue)**

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**BEST PRACTICES FOR INCAPACITY/GUARDIANSHIP CASES IN**

**CHARLOTTE COUNTY, FLORIDA**

**Updated May 2, 2022**

**(changes in blue)**

1. Applicability

a. Guardianship

All guardianship proceedings will be governed by Chapter 744, F.S., and Florida Probate Rules, Parts I and III, but primarily Part III, many of which are summarized in this document. The included "best practices" are neither exclusive or exhaustive but will hopefully provide some useful guidance to practitioners. However, each decision by the Court will be based upon the unique facts and circumstances of each case and upon the application of Florida Laws and Rules of Court. This document is not an Administrative Order.

b. Conservatorship

All proceedings on a conservatorship will be governed by Chapter 747, F.S., and Florida Probate Rules, Parts I and III, but primarily Part III, many of which are summarized in this document. The term "guardian" as used herein also applies to a conservator unless otherwise noted.

2. Dismissal of Petition for Incapacity

See the opinions in Jasser v. Saadeh, 97 So. 3d 241 (Fla. 4th DCA 2012) and Gort v. Gort, 185 So. 3d 607 (Fla. 4th DCA 2016).

3. Case Management and Notice of Related Cases (*See* Rule 2.545, Fla. R. Jud. Admin.)

In its implementation of the broad case management authority conferred by Rule 2.545, Fla. R. Jud. Admin, the Court will require that in each case, attorneys and parties must notify the Court, by filing a notice of related cases, upon becoming aware of the existence of any other court proceedings in any jurisdiction that may be relevant to the subject matter before the Court. This includes cases pending in other divisions, such as civil, dependency or family. A copy of any relevant orders from the related cases should be provided to the Court promptly. This obligation is ongoing, and applies throughout the proceeding.

4. Application for Appointment as Guardian (*See* Rule 5.590, Fla. Prob. R. Part III & Section 744.3125, F.S.)

Every proposed guardian seeking appointment by the court must file an application for appointment as guardian that is signed by the proposed guardian under penalties of perjury. Professional guardians must include with their initial application a list of current wards served by the guardian, denoting any *pro bono* cases. The court may request that the guardian update the list at any given time in the court file.

5. Appointment of Guardian

a. Professional Guardians

Professional guardians seeking appointment must establish a professional guardian file with the Clerk of the Circuit Court ("Clerk") and submit documentation that the requirements of Sections 744.2002, 744.2003, and 744.3135, F.S., have been satisfied.

In addition to the credit and criminal history investigation documentation contained within a professional guardian's file maintained by the Clerk under Section 744.3135, F.S., professional guardians must submit the following items, which the Clerk will maintain in the professional guardian's file:

i. Application for appointment as guardian and annual updates, or quarterly disclosure statements for nonprofit corporate guardians, in accordance with Section 744.3125, F.S.;

ii. Proof of blanket fiduciary bond required by Section 744.2003, F.S.; and

iii. Proof of registration and good standing with the Statewide Public Guardianship Office under Section 744.2002, F.S.

The above items should be updated at least annually, unless otherwise required by Chapter 744, F.S. Prior to the hearing on the appointment of a guardian, all proposed professional guardians shall ensure that all of the above documents have been filed in their file maintained by the Clerk.

Additionally, each professional guardian is responsible for maintaining individual records of attendance at continuing education programs. The records must include the date, hours, title, location, and sponsor of the course and the certificate of attendance if provided. At least 8 of the 16 hours of continuing education required by Section 744.2003, F.S., every two years, must be directly related to ethics, guardianship duties, or care of the ward.

b. Nonprofessional Guardians

Prior to the hearing on the appointment of a guardian, all proposed nonprofessional guardians must file a level 2 criminal background investigation and all proposed nonprofessional guardians of the property must file a full credit report taken within the last year in accordance with Section 744.3135, F.S. A copy of the entire free annual credit report from Equifax, Experian, or TransUnion is acceptable. At any other time, the court may require a nonprofessional guardian to submit to a level 1 or level 2 background screening and credit check under section 744.3135, F.S. In accordance with Section 744.3135, F.S., the Clerk will maintain a separate file on each guardian appointed by the court and retain in the guardian file documentation of the results of any investigation conducted under the section.

In order to obtain a level 2 criminal background screening, please visit [Florida Department of Law Enforcement- Livescan Device Vendors](https://www.fdle.state.fl.us/Criminal-History-Records/Documents/InternetDoc_DeviceVendors) for a list of live scan vendors. The proposed guardian must make an appointment with a vendor to get fingerprints completed for a national background screening. The results will be sent electronically from the FDLE and Federal Bureau of Investigation (FBI) to the Clerk's office (using ORI# FL036023Z). Once received, the Clerk will file the results in the subject case as a confidential document. The results must be received by the Clerk directly from the FDLE and FBI.

Occasionally and infrequently the Court may waive the credit and background check.

6. Constructive Service-Affidavit of Diligent Search and Inquiry

To obtain constructive service in a guardianship case, all counsel and interested persons (if unrepresented) must complete and file an affidavit of diligent search and inquiry substantially similar to the affidavit designated as Florida Rule of Civil Procedure Form 1.924.

7. Referral to General Magistrate

Upon request of the presiding judge, a general magistrate or the Court Guardianship Monitor will review guardianship inventories, accountings, and plans without an order of referral. See Fla. Prob. R. 5.697. This review is a case management function. No request for a referral to the general magistrate to hear a petition may be initiated without the specific permission of the Court via E-mail to the Court’s Judicial Assistant in advance of contacting the general magistrate’s office for hearing time. Currently, due to the general magistrate’s family law caseload, referrals of probate and guardianship matters, if any, will be very limited in number.

8. Setting of Hearings

Initial hearings on petitions to determine incapacity and petitions to appoint a guardian, can be scheduled by viewing open times in the Judicial Automated Calendaring System [(JACS)](https://www.ca.cjis20.org/Services/jacs.aspx) and must be set and noticed by attorney for petitioner by statute within 30 to 45 days from the filing of the last examining committee report. It is recommended this hearing be set when the orders appointing the attorney and elisor and order appointing examining committee members are received by petitioning counsel to be set timely.

For all other hearings, attorneys may view available hearing times by accessing the Judicial Automated Calendaring System [(JACS)](https://www.ca.cjis20.org/Services/jacs.aspx) and then contacting the judge’s judicial assistant to determine if that day/time are still available and to obtain the Zoom information to include in the notice. A copy of the court notice must be e-mailed to the Judge’s assistant at [patriciat@ca.cjis20.org](mailto:patriciat@ca.cjis20.org) in order for the hearing to be added to the Judge’s docket. Hearings that are not cleared with our office and noticed correctly will not be heard.

Unrepresented persons may obtain available hearing times and schedule hearings by sending an E-mail to the judge's judicial assistant at [patriciat@ca.cjis20.org](mailto:patriciat@ca.cjis20.org.?subject=Guardianship%20Best%20Practices-%20Question) If an unrepresented person has no access to E-mail, a phone call may be made to the judicial assistant. Leave a detailed message (without discussing the facts of the case) and the style of the case including case number and the caller’s name and telephone number. If any hearing is cancelled or rescheduled, the attorney or unrepresented interested person setting the hearing is responsible for notifying the judge's judicial assistant and the opposing counselor(s) or interested person(s) of the cancellation as soon as possible. All notices of hearing must state the length of the time reserved on the judge's calendar for the hearing and specify the matters to be heard. A notice indicating the hearing will be on "all pending motions" is not authorized. The matter to be heard must be set out with particularity. There will be no cross-noticing on hearing times unless the opposing counsel or opposing interested person contacts the judge's office and determines whether the docket will accommodate hearing additional matters at the same time. ***Be aware that hearings that are set by the Court may not be cancelled without the permission of the Court.***

9. Hearings

a. Non-Emergency Hearings

Any petition, pleading, motion, or other document that is the subject of a hearing or a conference set before the court must be filed with the clerk no later than five business days before the matter is to be considered. A hearing on any such petition, pleading, motion, or other document not so filed may be postponed until another hearing is scheduled. Memoranda of law and courtesy copies of any case law to be presented at the hearing must be delivered to the judge's or magistrate's chambers at least 48 hours prior to the hearing, unless otherwise specified in the judge's or magistrate's guidelines.

b. Emergency Hearings (excluding petitions to appoint emergency temporary guardian)

Application for emergency relief in a case must be made to the presiding judge. Matters scheduled for hearing as an emergency shall be noticed and heard as the circumstances permit based upon judicial discretion.

c. Hearings on Petitions to Appoint an Emergency Temporary Guardian

Hearings on petitions to appoint an emergency temporary guardian shall be noticed and heard in accordance with Section 744.3031, F.S., and filed according to the court's procedural instructions that are set forth on the Court’s website.

d. General

In the interest of the efficient administration of justice and in consideration of the court's docket, as well as opposing parties' or their counsel's time and expense, it is incumbent upon the parties and their counsel to promptly notify the court and all interested parties of an objection or substantial dispute which will affect the court's ability to proceed with a scheduled hearing.

10. Court Reporters

The court will not provide court reporters for hearings. If an attorney or unrepresented interested person wishes to have a court reporter present during any hearing, it is that attorney's or unrepresented interested person's responsibility to contact a court reporter to arrange for the presence of such reporter. However, all guardianship hearings are electronically recorded by the Court. A party may request an electronic certified copy of the proceeding on CD, at that party's expense, and may then have the recording transcribed, at that party's expense. Media request forms, procedures, and fees are available at the 20th Judicial Circuit Website under the [Electronic Court Reporting Link](https://www.ca.cjis20.org/pdf/DCR_Charlotte.pdf). A list of approved transcriptionists can be obtained by calling the Court's Electronic Court Reporting Department at 239-533-8207.

11. Adversary Proceedings

In an adversary proceeding as defined by Florida Probate Rule 5.025, the following provisions apply:

a. Case Management Conference

All petitioners must schedule a case management conference within 60 days of commencing an adversary proceeding. All trials or final hearings of adversary proceedings must be set by the court entering a Uniform Order Setting Adversary Proceeding for Trial and Pretrial Conference (Nonjury). Once scheduled, a hearing may not be cancelled unilaterally by counsel.

b. Military Service - Memorandum for Certificate of Military Service

If a petitioner does not know whether the respondent is on active duty in a branch of the military service of the United States, the petitioner must complete a memorandum for certificate of military service substantially similar to the memorandum designated as Florida Family Law Rule of Procedure Form 12.912(a).

c. Default Judgment -Affidavit of Military Service

If a petitioner seeks a default judgment and the respondent has been properly served and has not responded to the petition, the petitioner must complete and file an affidavit of military service substantially similar to the affidavit designated as Florida Family Law Rule of Procedure Form 12.912(b).

d. Motions to Compel-Order Without Hearing

When a motion to compel complying with Florida Rule of Civil Procedure l.380(a)(2) alleges the absence of a response or objection to discovery and there has been no request for an extension of time to respond, the court, without a hearing, may enter an order requiring compliance with the original discovery request within 10 days of the signing of the

order, provided no written showing of good cause has been filed by the non-movant. The movant or movant's attorney must submit to the presiding judge the proposed order by E-mail using the procedures set forth on the Court’s website.

e. Motions to Set Case for Trial-Certificate by Attorney

All motions to set a case for trial must contain a certificate by the attorney or party filing such motion that the attorney or party has discussed the subject matter of the motion with all other attorneys or parties and has been unable to reach agreement concerning the setting of the case for trial, or that the opposing attorneys or parties have failed to respond.

12. Orders and Reports and Recommendations

a. Consultation with Opposing Counselor Party

Unless the presiding judge or magistrate directs otherwise, prior to submitting a proposed order or report and recommendation ("report") for the court's consideration after a hearing, the counsel submitting the proposed order or report must consult with opposing counsel or unrepresented party within five days after the court's or magistrate's decision and make a genuine effort to agree on the language of the proposed order or report.

b. Timely Submission

All proposed orders and reports must be submitted to the court by the attorney directed to prepare the order or report within 5 business days after the court's decision or magistrate's recommendation unless the time for filing exceptions has not yet expired.

c. Submission of Proposed Orders

Unless the presiding judge or magistrate directs otherwise, the party or attorney who is requested to submit a proposed order or report will do so by submitting it to the presiding judge or magistrate electronically using the current procedures of the judge or magistrate. Prior to submitting a proposed order or report, the attorney must review the presiding judge's or magistrate's guidelines to determine that judge's or magistrate's format preference. Generally, for judge's orders the proposed order must be submitted in Microsoft Word format and e-mailed to [cha-guardianship@ca.cjis20.org](mailto:cha-guardianship@ca.cjis20.org) . Other requirements for electronic submission of proposed orders may be found on the Court’s website.

d. Title

The title of every proposed order submitted must contain the subject matter of the pleading or motion upon which the ruling is made and must fairly apprise the reader of the action being ordered. Phrasing such as "order granting ... " or "order denying ... " is preferred over "order on".

e. Required Statement

An order must not be submitted to a judge unless the order contains one of the

following: (1) a statement of the hearing date during which the subject matter of the order was argued before the court; (2) a statement that the matter was submitted ex parte; or (3) a statement that the matter was presented by stipulation. All proposed orders based on a stipulation must be submitted as a separate electronic document apart from the stipulation which clearly identifies the stipulation upon which it is based. A report submitted to a magistrate must contain a statement of the hearing date during which the subject matter of the report was argued before the court.

f. Objections

Any attorney or party who objects to the entry of a proposed order or report which has been submitted to the presiding judge or magistrate must immediately notify the judge's or magistrate's office via E-mail with the opposing attorney or party copied on the E-mail message (unless a pro se party has not provided an E-mail address). The objecting attorney or party must submit an alternative proposed order or report within five days of communicating the objection and provide a copy to all parties and interested persons. If an alternative proposed order or report has not been received by the court via E-mail within five days, the court will consider the objection withdrawn.

13. Notice of Change of Guardian's Contact Information

In each case in which the guardian has been appointed and is serving the guardian must promptly advise the court of any change of his or her name, address, telephone number, or E-mail address, via written notice filed with the Clerk with a copy to all parties and interested persons. Notice should be filed with the Clerk within ten (10) days of such change and must list the case number.

14. Substitution of Counsel and Resident Agent

Any stipulation for the substitution of counsel for a guardian must be signed by the attorneys involved and by the guardian. If the former attorney is the designated resident agent for the guardian, then the former attorney should resign, and a new resident agent should be designated. This rule will not affect the right of a guardian to change attorneys, so long as notice is given to the former attorney.

15. Mediation

The court may on its own motion or on the motion of the guardian, a party, or other interested person refer adversary proceedings or other adversarial matters to mediation. If the mediation order is entered on the motion of the guardian or other party or interested person, the moving party, guardian or interested person will submit a mediation order to the court electronically. If there are parties or interested persons who cannot be served electronically, the moving party shall furnish the court with sufficient stamped, addressed envelopes for the service of the copies of the mediation order. If the court orders mediation on its own motion it will address how the parties and interested persons will be served in its mediation order.

16. Mandatory Depository

Unless waived or otherwise ordered by the court, in every guardianship of the property, except a minor guardianship, the guardian must file a bond with surety in accordance with Section 744.351, F.S., or place in a restricted depository in accordance with Section 69.031, F.S., all cash assets or cash-equivalent assets of the ward. A one-time sum of $3,000, or any other amount specified by the court, may be maintained outside of the depository for payment of the ward's initial expenses, including costs included with the establishment of the guardianship proceeding and payment of the examining committee. The ward's income need not be placed in the restricted depository, unless otherwise ordered by the court.

17. Order of Appointment of Guardian

Every order appointing a guardian submitted to the court for entry must include the following language:

**The guardian is directed to read and become familiar with the Best Practices for Guardianship Cases in Charlotte County, Florida and, further, to comply with such Best Practices. A failure to comply may result in contempt proceedings and/or other appropriate sanctions.**

18. Acknowledgment of Responsibilities of Guardian

All non-professional guardians and guardian advocates shall review and sign the court's Acknowledgment of Responsibilities of Guardian. The Acknowledgment form can be found on the Court’s website in [Forms](https://www.ca.cjis20.org/pdf/Charlotte/Checklist/Acknowledgment%20of%20Responsibilities%20-%20Guardian.docx) under the Incapacity/Guardianship section. It shall be filed with the clerk within 5 days of the guardian’s appointment.

19. Initial and Annual Guardianship Reports

Every guardian must file an initial guardianship report, as required by Sections 744.362, 744.363, and 744.365, F.S., within the statutory time frame, unless waived by the court. The reporting period for the initial plan will begin with the date that letters of guardianship were signed by the court and end the following year, on the last day of the anniversary month in which the letters of guardianship were signed. Upon approval of the initial guardianship report (plan and inventory, if applicable), counsel for the ward is no longer obligated to represent the ward pursuant to Section 744.362(2), F.S. After the clerk's report is viewable in the clerk's system, counsel for the guardian shall electronically submit a proposed order approving the initial guardianship report. Such proposed order should state that counsel for the ward is discharged upon approval of the initial guardianship report. The failure to timely file the initial guardianship report or to submit a proposed order granting same may result in the issuance of an order to show cause.

Guardian of the Person

A guardian of the person must, thereafter, file the annual guardianship plan as required by Sections 744.367 and 744.3675, F.S. Unless otherwise ordered, annual plans must be filed within 90 days after the last day of the anniversary month in which the letters of guardianship were signed by the court, and must cover the coming fiscal year, ending on the last day in such anniversary month. The reporting period for the annual plan will begin on the first day of the first month following the month in which letters of guardianship were signed by the court and end the following year, on the last day of the anniversary month in which the letters of guardianship were signed. The plan must accurately indicate the time period covered so that there is no lapse between annual reporting periods, and the plan must be prospective to cover the upcoming year. If a ward is in a persistent vegetative condition and the guardian wishes to use substantially the same plan as in previous years, then the guardian must provide a reasonable basis for doing so.

Guardian of the Property

A guardian of the property must file the annual guardianship accounting as required by Sections 744.367 and 744.3678, F.S., on a fiscal-year basis unless otherwise ordered. Annual accountings must be filed on or before the first day of the fourth month after the end of the fiscal year, and must cover the preceding fiscal year. The fiscal year will be deemed to end on the last day of the anniversary month in which the letters of guardianship were signed. Therefore, the reporting period for the first annual accounting will begin with the date that letters of guardianship were entered and end on the last day of the anniversary month in which the letters of guardianship were signed. Thereafter, the reporting period for all future accountings will begin on the first day of the first month following the month in which letters of guardianship were signed by the court and end the following year, on the last day of the anniversary month in which the letters of guardianship were signed. Annual accountings must include all property interests of the ward regardless of how the property is titled unless specifically exempted under Section 744.3678, F.S., and should be accompanied by copies of all bank statements for the ward's cash assets.

All reports must include the guardian's signature, current address, current telephone number with area code, and E-mail address. Additionally, all reports must include the signature of the attorney of record, the attorney's current address, current telephone number with area code, E-mail address, and Florida Bar number. All reports must be signed under penalties of perjury. If the reports cannot be filed in the time required by law, a motion for extension of time must be filed within the respective time period with sufficient time to permit the Court to enter an order extending time for filing prior to the expiration of the period. ***Reports must not be filed prior to the end of the applicable reporting period.*** After the clerk's report is viewable in the clerk's system, counsel for the guardian shall submit a proposed order approving the annual guardianship plan and/or accounting in accordance with the E-mail submission requirements outlined on the Court’s website. Audit fees must be paid to the clerk in accordance with Sections 744.365 and 744.3678, F.S. Under the appropriate circumstances, the guardian may use the simplified accounting procedures under Section 744.3679, F.S., or file a verified petition clearly indicating the justification for the court to allow simplified plans or waive the

requirement of annual accountings. If the court grants a petition to allow simplified plans, the guardian must use the court's approved form.

Although there is no prescribed form for guardianship accountings, Fla. Prob. R. 5.696 sets forth the mandatory contents and standards for the preparation of the accounting. The court encourages the use of the model accounting format found in Appendix A of Rule 5.696, Fla. Prob. R. and the grouping of the expense transactions by type, i.e. medical expenses, guardian fees, facility fees, etc.

20. Burial Bank Accounts

Burial bank accounts established on behalf of the ward with a Payable on Death (POD) designation are disfavored by the court. Any request to establish such an account must be requested in writing and be set for a hearing before the court.

21. Trust Reporting and Authority upon Court Approval

a. Verified Inventory

Where the ward is the beneficiary of a trust, the guardian must file the page(s) of the trust listing the amount in the trust, the identity of the trustee, and the identity of the ward as a beneficiary. A copy of the entire trust is required if the guardian also serves as a trustee. If the guardian is not a trustee, the inventory should reflect the ward's beneficial interest in the trust at a $1.00 carrying value. If the guardian serves as trustee, the trust assets should be itemized and listed as the value on hand at the time of appointment. The court will require copies of statements, as of the date of appointment so that the beginning values can be verified before any monies are expended. The audit fee is based on the corpus of inventory, which includes trust assets so listed. All other requirements stated in Section 19 above apply.

b. Annual Accounting

The annual accounting need not include "any property or any trust of which the ward is a beneficiary but which is not under the control or administration of the guardian." If the trust is controlled or administered by the guardian, then it must be included in the annual accounting. If the guardian is the trustee, then a separate accounting on the trust property must be filed at the same time as the guardianship accounting. The annual accounting shall include any income received from the trust. All other requirements stated in Section 19 above apply. The

proposed order approving the annual accounting shall include language approving the trust accounting as well as the guardianship accounting if it is filed with the accounting.

c. Powers of Guardian Regarding Trusts upon Court Approval

With court approval, the guardian has the power to create or amend a revocable trust or create an irrevocable trust with the ward's property for tax/estate/gift/income planning purposes. The court will then retain "oversight" of the property transferred to the trust, unless the court orders otherwise. This court has interpreted this to mean the court has oversight when it reviews the trust property per the annual accounting. By court order, the court can relieve the guardian of the court's oversight.

d. Bond

If the guardian is also the trustee of a trust, the bond amount shall include all trust assets unless otherwise waived and approved by the court. If the guardian is not the trustee of the trust, the bond amount need not include all trust assets.

e. Guardian Fees and Expenses

A guardian shall not request the trustee to pay guardian fees or reimburse the guardian's expenses without prior court approval per Section 744.108, F.S. However, upon the filing of a petition for guardian fees, reimbursement of the guardian's expenses, or payment of funeral expenses, a guardian may request the trustee to pay the amount requested in such petition to the guardian's attorney, to be held in the attorney's trust account pending court approval. The order on the petition may direct the guardian's attorney to release the funds, or a portion thereof, to the guardian or to return the funds, or a portion thereof, to the trust.

f. Pooled Trusts and Qualified Income Trusts

Pooled trusts and qualified income trusts shall be treated the same as any other trust for reporting and all other purposes.

22. Service of Initial and Annual Reports

Service of annual reports shall be in compliance with Rule 5.695, Fla. Prob. R. Part III. However, if the only right retained by the ward is the non-delegable right to vote, service on the ward of the initial and annual reports will not be required.

23. Reports when ETG and Permanent Guardian are the Same

When the ETG is appointed successor guardian of person and/or property, Section 744.3031(9)(c) and (d), F.S. provide that the report must satisfy the requirements of the initial report for a guardian of the person and/or property as stated in §744.362, F.S. The Court will only require an initial guardianship report (initial plan and/or verified inventory) for the ETG period plus the permanent guardian's period, due within sixty (60) days from the issuance of the permanent Letters of Guardianship.

24. Extensions of Time

Counsel and guardians shall allow for sufficient time for the court to grant an extension before the time period has actually run – when it has already become a *fait accompli*. This entails the filing of the petition at least ten (10) days prior to the actual running of any time period in question.

25. Medicaid Planning

a. Petitions for Authorization

Petitioning the Court for authorization to effectuate Medicaid planning allows the guardian to enter into such agreements as become necessary except those matters requiring approval of the court under §744.441, F.S. Prepaid funeral expenses and personal services contracts require separate authorization from the court.

b. Personal Services Contracts

Some attorneys have been employing a lifetime contract for personal services as a mechanism to shift excess Medicaid disqualifying resources to family members to adequately compensate family members for the ward's care in order to maintain the ward's eligibility for Medicaid. The petition for authority to act in this manner must have complete integrity and will be considered on a case-by-case basis. Counsel should be thoroughly conversant with the Medicaid eligibility requirements of the State of Florida to insure that this mechanism is appropriately employed. Florida’s appellate courts have upheld transfers of funds and relied upon the Policy Manual of the Department of Children and Families in deciding whether agency action was appropriate. *See* Brister v. Dep't of Children & Families, 906 So. 2d 1187 (Fla. 4th DCA 2005); Thomas v. Fla. Dep't of Children & Families, 707 So.2d 954 (Fla. 4th DCA 1998); Kurnik v. Dep't of Health & Rehabilitative Servs., 661 So.2d 914 (Fla. 1st DCA 1995); see also § 409.919, Fla. Stat. (2005) (“The agency shall adopt any rules necessary to comply with or administer ss. 409.901–409.920 and all rules necessary to comply with federal requirements.”). *But see* Thompson v. Dep't of Children & Families, 835 So. 2d 357 (Fla. 5th DCA 2003) where the 5th D.C.A. agreed with DCF that “the transfer of assets from the medically disabled applicant to her sister in return for the right to a life estate in a condominium owned by and occupied by the sister was a sham to gain eligibility for ICP benefits in the absence of any competent evidence to support a reasonable purpose and a market value for the transfer.”

26. Setting Aside Future Funds in Attorney Trust Account

Absent specific authorizing authority from a court or relevant agency, the court will not authorize any guardian to set aside funds for future guardianship fees and/or costs in an attorney's trust account to qualify the ward for government assistance.

27. Guardian Fees (also see Appendix A)

All petitions to the court for approval of compensation to a guardian must be accompanied by an itemized description of the services provided for which fees are sought. This itemization of services must be provided in chronological date order and in line-item format, with each line-item entry containing a specific description of the services rendered, the date listed with the amount of time expended on each service in one-tenth (0.10) of an hour increments. This information must also state the rate charged and amount sought to be approved. Notices to, or the signed consent of, the guardian of the property or the Veterans Administration or both must be submitted with the petition for guardian's fees, if applicable. Fees will be awarded by the court after applying the analysis specified in Section 744.108, F.S. Payment of guardian fees and/or expenses that have been made prior to the entry of a court order approving the fees and/or costs shall be deducted from the total approved by the Court. Only the remainder of the approved amount, if any, shall be transferred from the ward's account.

All petitions for guardian's fees must reference all prior fees paid and the billing time period included. A petition must not exceed a billing time period of one year without prior court approval, and must not be filed more frequently than quarterly. The first petition for guardian's fees may be filed as early as three months after letters of guardianship are signed; however, the first fee petition will not be approved until the inventory is filed by the guardian and approved by the court. Thereafter, a petition for guardian's fees will not be approved if statutorily-required reports are delinquent, without a court-ordered extension. Instances of non-compliance with statutory, administrative, or court-ordered requirements may result in a reduction of a guardian's fees. Any reductions imposed by the court for such non-compliance will not become final until the guardian has had an opportunity to be heard on the matter.

The fee structure for professional guardians will vary and be based primarily upon a guardian's years of experience as a professional guardian. Please see Appendix A, Professional Guardian Fee Guidelines, which includes a schedule of customary rates charged in Charlotte County by guardians for similar services. These rates are non-binding guidelines, and are subject to review given the criteria set forth in Section 744.108(2), F.S., based upon the facts and circumstances of each particular case. If the guardian's requested fees exceed these guidelines, the factual basis justifying deviation from the guidelines should be stated in the petition for fees and should be verified by the guardian.

All petitions for guardian's fees must include the following certification immediately before the guardian's signature:

**I certify that all reports currently due, including, but not limited to the initial plan, initial inventory, annual plan, annual accounting, and/or final accounting, and the educational requirements, if applicable, have been filed. I further certify that I am familiar with the Policies and Procedures for Guardianship Cases in Charlotte County, Florida and affirm that I am in compliance with such Policies and Procedures.**

Professional guardians must add the following sentence:

**I further certify that my professional guardian file is current and complies with all statutory and administrative requirements.**

Any guardian fees and/or expenses paid without prior court approval are subject to review by the Court in conjunction with the annual accounting. The guardian may be ordered to disgorge any fees and/or expenses found to be unnecessary, unreasonable, or otherwise inappropriate. If guardian fees and/or expenses are paid to the guardian without prior court approval, the guardian must attach an itemized billing statement for the fees, in accordance with the provision of Section 744.108, F.S., to the annual accounting in which the disbursement for the guardian's fees and/or expenses are documented.

28. Attorney's Fees and Costs (Revised April 25, 2022, as to hourly rates)

After a recent brief suspension of the requirement, in all cases going forward from the date of these Revised Best Practices, the Court will require that guardians obtain authorization of the Court in advance of paying attorney fees and costs. Each attorney fee petition shall be accompanied by an Affidavit of Attorney Fees and Expenses and a billing statement(s) with an itemization of services provided in chronological date order and in line-item format. Each line-item entry shall contain a specific description of the task, the date listed with the amount of time expended on each task in no more than one-tenth (0.10) of hour increments, the rate charged, the extended dollar amount, and an indication of who performed the task. A petition for fees or expenses will not be approved without formal notice being provided to the guardian, all interested persons, and to the ward, unless the ward is totally incapacitated or a minor.

The Court will consider the statutory factors enumerated in Section 744.108(2)(a)-(i), F.S., applicable case law, and the standards for guardianship cases in this circuit when determining the reasonableness of the fees sought. Furthermore, the Court will continue to carefully scrutinize and determine the reasonableness of hourly rates for attorneys and paralegals, as well the types of compensable work performed by paralegals. Consistent with the standards in this circuit, rates in guardianship matters shall not exceed ~~$350~~ $400 per hour for attorneys and ~~$90~~ $125 per hour for paralegals, unless the moving party establishes that the particulars of the case or the training, education and experience of the provider of services are such that a rate in excess of these hourly rates is justified. The Court will also consider what costs described by the attorney are reasonable and compensable for expenses actually incurred.

*Revised as to hourly rates on April 25, 2022:*

Effective immediately, fee hearings will not be required to establish the reasonableness of attorney and paralegal hourly rates in guardianship cases as follows:

Attorneys: Not in excess of $400 per hour

Paralegals (for non-clerical work only): Not in excess of $125 per hour

These changes put Charlotte County in relative parody with surrounding counties of similar size. These changes are also, in part, a response to recent increases in the Consumer Price Index. Fees requested in excess of the above amounts (unless previously approved) will require an evidentiary hearing and a finding of reasonableness.

When there are legal or factual issues regarding billing entries, the Court may be unable to find that some of the fees or costs sought are reasonable for the services or costs described and must reduce the fees or costs accordingly. The Court will operate under the premise that the description provided represents all of the work completed for the time billed and that no further explanation exists (except that which may be supplemented by testimony and evidence adduced at a later fee hearing).

The Court believes it is prudent to again remind all attorneys and paralegals that secretarial and clerical work cannot be billed at a paralegal rate, and in fact, cannot be billed at all as it is considered in the attorney’s hourly rate. The Court remains open to and welcomes counsel to provide persuasive authority to the contrary. None has been provided to the Court during the now extended period of time that this legal principle has been applied by the Court, including up to the date of these Revised Best Practices.

Non-compensable clerical duties may be documented; however, paralegal duties should be separated from clerical duties (separate line items). Furthermore, time spent performing paralegal duties that comingle clerical duties will be subject to the total time allotted for that event being excluded by the Court; therefore, it is incumbent upon counsel to clearly differentiate compensable paralegal work from non-compensable paralegal work or risk the entire entry being excluded from payment.

A fee order entered without a hearing will not be final for twenty (20) days from the date of the Order. To pursue any excluded or reduced time, costs or rate reductions as determined by the Court, the moving party must within that time period file an objection and schedule a hearing or file a memorandum to demonstrate to the Court that the particulars of the case are such that the excluded items are justified. Any memorandum or objection and request for hearing must be filed within twenty (20) days from the date of the Order. Notice of an evidentiary hearing shall be filed and served upon any party who had not waived objections.

Effective immediately, attorney fee petition proposed orders must be submitted to the Court through the [cha-guardianship@ca.cjis20.org](mailto:cha-guardianship@ca.cjis20.org) . Additionally, all other proposed orders must continue to be sent the [cha-guardianship@ca.cjis20.org](mailto:cha-guardianship@ca.cjis20.org) folder for processing by the Court’s Judicial Assistant. All inquiries, for example, a request to set a hearing, should be sent to the Court’s Judicial Assistant at [patriciat@ca.cjis20.org](mailto:patriciat@ca.cjis20.org) .

29. Court Reviews

The Guardianship Audit Program, under the auspices of the Charlotte County Clerk of Court & Comptroller's Inspector General and Probate Departments, per F.S. and internal Policies and Procedures, is utilized by the court to review filings and documentation related to guardianship cases and report to the court based upon its reviews. The Clerk's Guardianship Audit Program staff will review: (a) professional guardian files for annual statutory compliance; (b) guardians' petitions for fees and compensation; (c) initial reports; (d) annual plans; and (e) accountings as requested by the court. The above persons will be authorized to participate in guardianship hearings, as requested by the court, to address issues related to their reviews.

Additionally, the court may select a number of guardianship files for a comprehensive audit of all transactions. The audit may be conducted by a court monitor, the Clerk, the Clerk's Guardianship Audit Program staff, a general magistrate, or another court designee.

30. Requests for Notices and Copies of Pleadings

In accordance with Florida Probate Rule 5.060, any interested person who desires notice may file a written request for notice of further proceedings. Such persons must indicate a current residence, post office address, and E-mail address. A new address designation must be filed within ten (10) days by the requesting person when any address changes occur. Any person filing a request for notice must also provide a copy of the request to the clerk for forwarding to the guardian's attorney or the guardian, if not represented by counsel and to all other interested persons. Thereafter, the interested person must receive notice of further proceedings and must receive copies of subsequent pleadings and papers, with the exception of guardianship reports, that are filed as long as such person remains an interested person.

31. Change of Ward's Residence

As the court has a keen interest in management of the ward's care, the guardian shall inform the court, in writing, if the ward's residence changes to a new location within Charlotte County or to an adjacent county in accordance with Section 744.1098(2), F.S., within fifteen (15) days of such change. In accordance with Section 744.1098(1), F.S., a guardian may not, without prior court approval, change the residence of the ward to another state or to a non-adjacent county. Before a ward's permanent residence is changed to a county other than Charlotte County, the guardian and the guardian's attorney must have filed all appropriate pleadings and proposed orders to have venue of the guardianship case transferred to the court in the appropriate county and must have received a favorable written order of the court. In the past, there have been significant compliance issues with this requirement. *In the future, the Court and the Court Guardianship Monitor will closely monitor compliance with this requirement and may pursue sanctions against any guardian who fails to comply with this procedure.*

Additionally, Rule 5.050(b), Fla. Prob. R. Part III mandates that “when the residence of a ward is changed to another county, the guardian of the person or the guardian advocate

*shall* have the venue of the guardianship changed to the county of the acquired residence” (emphasis added).

32. Court Guardianship Monitoring Program

An Order Appointing Guardianship Monitor (“CGM”) may be entered by the court on its own motion, or following an attorney request for referral to guardianship monitoring. Any specific investigation request outside the scope of the CGM's normal course of duties requires court approval. The results of the CGM's investigation will be reported directly to the Court with service of the report on the parties. The individual who, when appointed, performs duties as a CGM is an employee of the Administrative Office of the Court. The majority of the CGM’s work will be in the nature of case manager and judicial assistant and may include support of other divisions such as Family and Civil. In those matters the Court Guardianship Monitor is acting as a member of the staff of the Administrative Office of the Court and communications between the CGM and the Court are not subject to disclosure pursuant to the rules governing the confidentiality of communications within the Judicial Branch.

33. Death of the Ward

Within 30 days after the death of the ward, the guardian must file a suggestion of death. A certified copy of the ward's death certificate must be applied for within 15 days of the ward's death and filed immediately upon receipt. The guardian of the property must file a final report in compliance with Section 744.527, F.S., and Rule 5.680, Fla. R. Prob. Part III, unless waived in writing by all necessary interested persons, as well as a petition for discharge, unless extended by court order. Any objections to the final accounting or discharge are required to be filed in accordance with Rule 5.680, Fla. R. Prob. Part III. In most cases, the guardianship case should be closed within four (4) to five (5) months from the date of the ward's death.

34. Deposit into Clerk Registry

When there are no known beneficiaries of the ward's estate, or known beneficiaries, after notice of death have not opened an estate on behalf of the ward, the final accounting shall be

submitted and approved prior to submitting a request to transfer funds of the ward to the court registry.

35. Motions to Withdraw

Any motion to withdraw as attorney for a guardian that is based upon lack of client contact must be verified and include all diligent efforts made by the attorney to locate the guardian. Any motion to withdraw as attorney for a guardian must include the name, address, and telephone number of the financial institution where the guardianship funds are located; the account number(s); and the current balance on all accounts, together with verifying account documentation, if available. If this information is not obtainable by counsel, the motion to withdraw as attorney for guardian must detail all diligent efforts made to secure this information and documentation for the court. Termination of representation must comply with Rule 4-1.16 of the Rules Regulating The Florida Bar.

36. Resignation of Guardian

Procedures upon the resignation of the guardian are set forth in Rule 5.650, Fla. Prob. R. Part III, Resignation or Disqualification of Guardian; Appointment of Successor. Discharge of the resigning guardian will not be granted unless the guardian has complied with the notice and service requirement of his/her resignation, petition for discharge and final report (including the final accounting).

37. Clerk Preparations of Order to Show Cause Docket

The clerk may prepare an order to show cause docket in accordance with the applicable Florida Rules of Civil Procedure and the applicable Florida Probate Rules to address the failure to file (or the non-compliant filing of) an inventory, plan, accounting, or any other required paper or backup documentation, to pay any required fee or cost, or to comply with any order of the court, statute, rule of procedure, or other requirement of law. Appearance at the hearing by all persons named in the order is mandatory unless compliance is obtained sufficiently in advance of the hearing to permit the hearing to be cancelled by the court.

38. Professional Conduct and Courtroom Decorum

Counsel must adhere to the Oath of Admission to The Florida Bar, The Florida Bar's Creed of Professionalism, The Florida Bar's Professionalism Expectations, the Guidelines for Professional Conduct, and the Rules Regulating The Florida Bar (www.floridabar.org), all decisions and opinions of the Florida Supreme Court and the Standards of Professional Courtesy and Conduct for Lawyers Practicing in the Twentieth Judicial Circuit [Admin. Order 2.20](https://www.ca.cjis20.org/pdf/ao/ao_2_20.pdf)

Each judge or magistrate may announce and enforce additional requirements, or may excuse compliance with any provision(s) of the Guidelines or Standards as that judge or magistrate deems appropriate. Non-attorney parties and interested persons who properly appear before the Court without counsel shall familiarize themselves with and be bound by [Admin. Order 2.13](https://www.ca.cjis20.org/pdf/ao/ao_2_13.pdf) and [Admin. Order 2.20](https://www.ca.cjis20.org/pdf/ao/ao_2_20.pdf), and which requires, among other things, that in presentations before the Court “unrepresented parties shall observe the same rules of decorum which apply to attorneys.”

39. Hourly Rates for Non-Professional Guardians.

Rates charged in Charlotte County by non-professional guardians are set at $30 per hour for non-relatives and $15 per hour for relatives. An exception would be if written consents are provided from all potential beneficiaries. The consent must include language reflecting that the beneficiary is aware that the guardian is charging more than the usual court approved rate of either $30 or $15 per hour, as appropriate. Each time a petition for fees for a guardian is submitted reflecting an increased hourly rate, the attorney should attach a copy of the original consent(s) to allow that determination to be made without reviewing the court file. (The consent only needs to be obtained once at the time of the filing of the first petition for fees.) The amount of the increased fee is subject to approval of the Court. A ward's child cannot recover for services beyond the duties of a professional guardian or for normal family duties. *See* In re Guardianship of Sapp, 868 So. 2d 687 (Fla. 2d DCA 2004).

40. Priority

The procedures and time standards set forth herein are intended to facilitate the timely, fair and effective resolution of guardianship cases while ensuring the efficient use of court resources. The procedures and time standards do not supplant any existing rule, statute, or law. These best practices shall not be construed as granting any rights not already provided for by rule, statute, or law. To the extent that any provision of these best practices may be construed as being in conflict with any applicable rule, statute, or law, the rule, statute, or law shall prevail.

41. Effective Date

The final version of these Best Practices will become effective immediately upon approval by the judge assigned to the Charlotte County probate/guardianship docket on the date set forth below.

Approved by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Paul Alessandroni Date

Acting Circuit Judge

Probate/Guardianship

Charlotte County

APPENDIX A

**PROFESSIONAL GUARDIAN FEE GUIDELINES FOR GUARDIANSHIP CASES IN CHARLOTTE COUNTY, FLORIDA**

I. Purpose and Application.

These Guidelines are advisory only. The taxation of guardian fees and costs in any particular proceeding is guided by Section 744.108, F.S., and within the broad discretion of the trial court. The trial court will exercise that discretion in a manner that is consistent with the policy goal of reducing the overall costs of guardianship and of keeping such costs as low as justice will permit while also acknowledging the need to attract and retain qualified attorneys and guardians. With this goal in mind, the trial court will consider and reward utilization of innovative technologies which minimizes costs and may reduce the award when the failure to use innovative technologies would have resulted in lowering higher costs or fees. These guidelines are not intended to limit the amount of fees or costs recoverable under a contract or statute or to prejudice the rights of any person objecting to an assessment of costs on the basis that the assessment is contrary to applicable substantive law.

II. Burden of Proof.

Under these guidelines, it is the burden of the moving party to show that all requested fees and costs were reasonably necessary at the time the action precipitating the fee or cost was taken.

III. Customary Hourly Rates for Professional Guardians.

Below is a fee schedule of customary rates charged in Charlotte County by professional guardians for similar services. These rates are non-binding guidelines, and are subject to review given the criteria set forth in Section 744.108(2), F.S., based upon the facts and circumstances of each particular case. Once a guardian's fee request has been approved at a particular rate in a particular case, future requests at the same rate in the same case are likely to be granted. Unilateral raises without leave of court are not permitted. Any increase to a prior-approved rate should be sought by motion supported with evidence based upon the facts and circumstances of each particular case and the criteria set forth in Section 744.108(2), F.S.

**Years of Experience Customary Hourly Rate**

0-3 years (through third anniversary) $75-80

4-5 years (after third anniversary through fifth anniversary) $80-85

6+ years (after fifth anniversary) $85-95

IV. General Guidelines and Recordkeeping.

Each guardian shall maintain contemporaneous records of the time spent on behalf of each ward. Itemization of services and costs shall be listed in chronological order. Sufficient detail shall be provided to permit the Court to determine a.) that the services were rendered on behalf of the ward and b.) the reasonableness and necessity of the services provided. See In re Guardianship of Sapp, 868 So. 2d 687,695 (Fla. 2d DCA 2004) ("The strict enforcement of the mandate of Section 744.108(5) will promote the efficient and inexpensive administration of guardianship estates."). Whenever a guardian seeks fees or costs which exceed these guidelines, a justification shall be provided in the time records. Time shall be billed in increments no larger than tenths (0.1 - 6 minutes) of an hour. The petition and proposed order for fees and costs shall state the amount of fees and costs awarded to date, as well as the time periods covered for each award and the current request. Petitions for fees shall include an itemized statement of services, expenses, and the rate charged for services. Notices to, or the signature/consent of, all interested persons and persons entitled to notice including the ward, where applicable, should be submitted with the petition for fees. Block billing should only be used when similar or related matters are performed at or around the same time. For example, block billing is appropriate to group together a number of small time entries, which would aggregate to more time than the actual time necessary to complete the task (e.g., billing several 0.1 and 0.2 entries for multiple phone calls to make arrangements for an appointment totaling 0.6 hours, when the cumulative time actually spent to complete the whole task was only 0.3 hours). The Court is obligated to act in the best interest of the ward and having guardians group related items most often works out to be in the best interest of the ward. Unrelated matters should be itemized separately with a corresponding time entry. Fee petitions should be filed no less than annually and no more than quarterly. Fee petitions should not be submitted, and will not be approved, if the guardian is delinquent on any filing requirement. The fee petition shall prominently note this and the Court may deny the request or reduce or delay the award accordingly. If the guardian is unable to comply with any filing requirement for reasons beyond his/her control, the guardian should petition for and obtain an extension of time to comply prior to the deadline.

V. Guardian Versus Clerical Fee Distinction.

The below guidelines assume the elimination of the guardian versus clerical rate distinction because the review of petitions using the distinction can be unduly burdensome. Reasonable steps have been taken in order to avoid potential fee inequities that would likely result from the elimination of the guardian/clerical distinction. Accordingly, the below written guidelines incorporate safeguards in the form of fee caps for particular matters involving traditionally clerical matters such as bill paying, shopping, and copying/faxing/filing. Additionally, as noted more particularly below, whenever possible guardians should use clerical staff, companions, and/or caregivers to perform work that does not require the guardian's fiduciary expertise.

VI. Guardian Fees and Costs That Should Be Awarded.

This is a non-exhaustive list of services customarily provided by professional guardians for a ward, and is not intended to limit a request for compensation for services provided by a professional guardian on behalf of a ward.

A. Paying the Ward's Bills.

Paying the ward's bills, including reviewing and paying the bills, is compensable. Generally, the bill should be paid at the same time it is reviewed so that there are not separate or duplicative time entries for each. The payment of most ordinary and regular bills should be limited to 0.1 hours per bill, but the Court understands there may be times when the payment of a bill may justify a higher amount of billed time. By way of example, where the payment of a medical bill that was partially covered by insurance requires the guardian to review the Explanation of Benefits ("EOB") provided by the insurance company to make sure the amount being paid is appropriate and there was some problem or confusion regarding the amount billed that required additional time to resolve, more than 0.1 hours may be appropriate if clearly documented in the billing records. However, the review of an EOB when paying a bill alone would not, by itself, warrant more than 0.1 hours per bill. Bill paying should not exceed two (2) hours per month without detailed explanation.

B. Visiting with the Ward.

In general, professional guardians should visit the ward monthly, and those visits are compensable. If more frequent visits are required, the professional guardian should explain in the billing description why the extra visit was necessary and describe how the visit benefitted the ward. In certain circumstances, it might be beneficial for the guardian to pay for a companion, at a much lower hourly rate than the guardian, to visit the ward. If a guardian chooses to use a companion service for social visits to the ward, the guardian should check to see if the agency requires a minimum time, and if the hourly charge is less than the guardian's rate of pay. Separate time entries should be made for the visit with the ward and the travel time to the ward's residence.

C. Banking for the Ward/Direct Deposit.

Generally, time spent attending to the banking needs of the ward are compensable; however, professional guardians are strongly encouraged to have all of a ward's income directly deposited. If direct deposit is not possible, the guardian should explain why direct deposit was not available in the billing record. If the guardian otherwise is required to conduct banking business in person, the guardian should provide a detailed description of the duties performed to show that the visit was necessary and in the ward's best interest.

D. Arranging Transportation, Appointments & Services for the Ward and Attendance

at Appointments.

Attending appointments with the ward where the guardian's presence is required, such as visits to new doctors or specialists or appointments requiring decisive action by the guardian, is compensable. The guardian should provide detail in the billing entry to explain the guardian's need to attend the appointment. It is usually not necessary for a guardian to attend routine appointments with an established physician or where no fiduciary expertise is required. Guardians are encouraged to have a companion or caregiver accompany the ward to any appointments or activities where the guardian's presence is not required (such as dental cleanings, eye exams, and family functions) and the cost of a companion or caregiver would be less (taking into consideration any minimum amount charged by the companion or caregiver). In general, the ward should not be paying for both a companion/caregiver and the guardian to attend an appointment. Because arranging transportation and appointments could be done by clerical staff and does not require the fiduciary expertise of a professional guardian, fees for such services should be kept to a minimum and if substantial time is spent in this regard, a detailed explanation should be provided. Additionally, whenever the ward's living facility can assist with these matters, such as setting up transportation, the guardian should utilize such services, which the ward is already paying for as part of their residential care, and not unnecessarily charge for same.

E. Shopping with or for the Ward.

Shopping for the ward is compensable, but, generally, should not exceed two-and-a-half (2.5) hours per month if a ward is at home and one (1) hour per month if the ward is in a facility, absent detailed explanation. If the guardian exceeds these guidelines, the guardian should explain in detail in the billing entry why the additional time was necessary. Guardians are encouraged to have a companion or caregiver perform these services, when possible to reduce costs. Companions or caregivers may be allotted a small amount of cash each month for this purpose, with the requirement that they provide receipts to the guardian to account for that cash.

F. Traveling.

Travel time is compensable, but should be limited to traveling within Charlotte County the county of residence of the ward, unless otherwise justified by an explanation in the time records. Frequent travel by guardians from outside of the ward's county of residence to visit the ward may be a factor in considering a change of guardians.

G. Billing and Paying Guardian Fees.

Time spent reviewing the detailed billing for the standard six-month reporting period, sending it to his or her attorney to prepare the petition, and for the guardian's payment upon receipt of the order approving fees is compensable; however, such time generally should not exceed 0.3 in any given six-month period. If extraordinary circumstances exist, the guardian should provide a written explanation justifying any additional amount. Professional guardians should be utilizing a billing system that compiles billing entries for them, which are noted at the time that the service if performed. Such programs are readily available and are a reasonable cost of doing business as a professional guardian. Fees associated for using such programs are not an expense reimbursable to the guardian by the ward's estate.

H. Copying/Faxing/Filing.

Clerical work such as copying, faxing, and filing may be awarded, but should not exceed one (1) hour per month without detailed explanation.

VII. Guardian Fees and Costs That Should Not Be Awarded.

This is a non-exhaustive list of items which generally may not be appropriate to award; however, each item is subject to the guardian providing detailed justification for the item and should be considered in the context of the facts of the particular case.

A. Guardian Fees Prior to Initiation of Case.

Only in rare circumstances will a guardian be compensated for expenses and fees incurred prior to the initiation of an incapacity/guardianship case (date of filing of a Petition to Determine Capacity/Appointment of Guardian or Petition for Appointment of ETG).

B. Guardian Error or Non-Compliance.

At the Court's direction and after the guardian has been given an opportunity to be heard, the Court may reduce a guardian's fees due to a guardian's individual failures to meet his or her statutory or court-ordered responsibilities. The Court may decide not to award compensation for time spent reviewing orders/instruction from the Court resulting from the Guardian's failure to file documents on a timely basis or otherwise meet court-ordered or statutory obligations, as well as work to produce amended documents due to non- compliance. Additionally, calls to and from the clerk, the administrative staff of the Court, judicial assistants or the general magistrate's assistant for issues relating to guardian error may not be awarded. Individual instances of non- compliance may be appropriate for one-time reductions in fees, but a history of repeated non-compliance may result in a reduction of the guardian's fee rate, and, in an appropriate case, the removal of the guardian. Examples of such non-compliance include, but are not limited to, the following: late filings, failure to notify the Court of the ward's relocation, failure to notify the court of the current address and telephone number of the guardian, failure to provide required copies of documents/pleadings to all interested parties, including the ward, when applicable, failure to timely close the guardianship, failure to properly transfer the guardianship to the appropriate jurisdiction.

C. Cover Letters.

Time for and expense of creation of standard and non-substantive cover letters to the clerk or Court may not be awarded.

D. Mileage.

Mileage associated with travel time which may be deducted for income tax purposes should not be awarded.

E. Billing Conferences with the Guardian's Own Staff.

Conferences between the guardian and the guardian's support staff should normally not be awarded. Exceptional circumstances may be addressed with the Court.

F. Requesting Extensions of Time to File Reports.

Time spent requesting an extension of time to file a required report should not be awarded unless the guardian provides a detailed explanation showing that the reason for the extension is beyond the guardian's control.

VIII. Miscellaneous Billing Issues.

A. Billing to leave or receive phone messages.

Reductions may be made if there are a significant number of such billing entries. If a guardian believes that certain messages should be billed, the guardian should, whenever possible, group such messages with the time billed for when they actually connect with the other party. Most phone messages are less than a minute long and, in general, it would be inappropriate to bill the minimum billing increment (0.1, representing 6 minutes) for something that only took less than one minute. Instead of billing for playing "phone tag," the guardian could round a billing up, when appropriate, for a conversation that lasted for an amount of time that falls between two billing increments. By rounding up in such instances, the guardian will be reasonably compensated for those brief messages.

B. Multiple Wards (e.g., Husband and Wife or Sibling Groups).

When a guardian conducts one billable activity that is for the benefit of more than one related ward, the guardian should divide the billing equally between all related fee petitions. However, when that is not possible, such as when the billing entry is not divisible for billing purposes, the guardian should bill only one ward and keep track of such billing so that the similar billing may be billed to the other ward(s) in the future (i.e., taking turns billing each ward so as to be as equitable as possible).

C. Fees for Fees.

If the Court requires additional information from a guardian, which the guardian was not obligated to include in the detailed billing statement in the first place (as determined by the Court), then the guardian would likely be permitted to bill time spend responding to the Court's request. If a hearing is necessary to resolve a fee petition issue and the guardian prevails and the information provided at the hearing was information that would not normally be required to be included in a fee petition in the first place, then the guardian's time and their attorney's time in connection with that hearing would be considered part of the administration of the guardianship and would be payable from guardianship assets. However, if the guardian does not prevail at the fee hearing or the guardian prevails but the information provided at the hearing was information that would normally be required to be included in a fee petition in the first place, the Court may decide to not allow the guardian to bill any time or costs or reduce the time and costs in connection with the preparation for and attendance at that hearing. Such determinations will be made on a case-by-case basis. Additionally, while the attorney for the guardian is entitled to compensation for services rendered at such hearing, the Court may not authorize that compensation to come from guardianship assets, if it is not clear that the services benefitted the ward. Such services in instances where the guardian did not prevail may be deemed to be services that benefitted the guardian, and the attorney for the guardian may need to look to the guardian for payment in that regard.

D. Hand-Delivery of Documents.

Time spent by a guardian to personally deliver or pick up documents or items should not be billed when a less-expensive manner of delivery could be used. Reductions will depend on whether the personal delivery or pick up is the result of guardian error or is required to meet a time-sensitive need. For example, if a guardian hand-delivered documents to his or her attorney's office because the documents were due to be filed the next day, then it would likely be subject to reduction absent a reasonable explanation. However, no reduction would be needed if the guardian personally picked up the letters of guardianship from the Court because they were needed to address an immediate need.

E. Successor Guardians.

Although a guardian is entitled to bill for all time related to filing the final report and getting discharged, the guardian should not bill for ongoing, routine guardian services after the appointment of a successor guardian who would be responsible for providing such guardian services.

F. Non-Registered Guardian.

If the guardian is removed as a registered guardian from the Statewide Public Guardianship Office, the guardian's hourly rate for the time periods in which he or she is not registered will be reduced to the non-professional hourly rate then in effect.

IX. Court’s Fees Order and Due Process

Upon reviewing a guardian's fee petition, the Court may issue an order reducing guardian

fees, award the amount of fees and costs with which the Court does not take issue, and direct the guardian to file an objection to the reductions set forth therein and to request a hearing. Please note that the order reducing guardian fees is not intended in any way, shape or form, to deny a guardian due process in being heard on his or her fee petition. A guardian is always entitled to a court hearing on the fee petition and the order reducing gives the guardian twenty (20) days to file an objection to the reductions set forth in the order and to request a hearing. An order is issued first to authorize the guardian to take the amount of fees with which the Court does not take issue. If this were done in a letter format, the guardian may needlessly wait a long time (until after a hearing could be held) to take fees to which he or she is entitled and with which the Court does not take issue. More often than not, hearings are not necessary on guardian fee petitions and the additional expense of an unnecessary hearing would not be in the best interest of the ward. Unnecessary hearings may ultimately cost the guardian money, because the guardian is not entitled to be compensated for those hearings in all instances and the guardian may be responsible for the attorney's fees for attendance at the hearings in certain instances.

Approved by:

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Paul Alessandroni Date

Acting Circuit Judge

Probate/Guardianship

Charlotte County