EMERGENCY TEMPORARY

GUARDIANSHIP

**BEST PRACTICES**

**20th Judicial Circuit**

**CHARLOTTE COUNTY, FLORIDA**

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

**Updated January 21, 2019**

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**BEST PRACTICES FOR EMERGENCY TEMPORARY GUARDIANSHIP CASES IN CHARLOTTE COUNTY, FLORIDA**

1. Applicability

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 nor 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.

2. 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.

3. Application for Appointment as Emergency Temporary Guardian (*See* Rules 5.590 & 5.648, Fla. Prob. R. Part III & Sections 744.3125 & 744.3031, 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.

4. Appointment of Emergency Temporary Guardian (*See* Rules 5.590 & 5.648, Fla. Prob. R. Part III & Sections 744.3125 & 744.3031, F.S.)

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 the [Florida Department of Law Enforcement's (FDLE)](http://www.fdle.state.fl.us/Criminal-History-Records/Documents/ApplicantLivescanService-ProvidersVendors.aspx) website 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.

5. Referral to General Magistrate

Due to the time sensitive nature of hearings and rulings in emergency temporary guardianship cases ETG petitions will not usually be referred to the General Magistrate for hearing.

6. Setting of Hearings for ETG Petitions

[Procedures](https://www.ca.cjis20.org/home/charlotte/checklists.asp?list=guardianship_incapacity) for setting hearings on ETG Petitions may be found on the Court’s website in ‘Procedures’ under the Guardian Advocate Section.

Hearings

a. 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.

b. 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 notify promptly 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.

c. Notice Requirement of Section 744.3031(2), F.S. and Rule 5.648(b), Fla. Prob. R. Part III

“(2) Notice of filing of the petition for appointment of an emergency temporary guardian and a hearing on the petition must be served on the alleged incapacitated person and on the alleged incapacitated person’s attorney at least 24 hours before the hearing on the petition is commenced, unless the petitioner demonstrates that substantial harm to the alleged incapacitated person would occur if the 24-hour notice is given.”

8. 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, and a list of approved transcriptionists are available on the Court's website, www.ca.cjis20.org, or by calling the Court's Electronic Court Reporting Department at 239-533-8207.

9. Proposed Orders

a. Electronic Submission

Proposed Orders related to Petitions for ETG must be submitted electronically in Microsoft Word format to the Court with copies via E-mail to counsel for the A.I.P. at least 24 hours prior to the ETG hearing. Full [instructions](https://www.ca.cjis20.org/pdf/Charlotte/ElectronicSubmissionOrders_GeneralProbateGuardianshipProcedures.pdf) may be found on the Court’s website in ‘Procedures’ under the Emergency Temporary Guardianship section.

b. Description of the E-mail

Counsel shall ensure that the subject line of the E-mail is flagged so that the

Court's Judicial Assistant can bring the proposed order(s) to the Court's attention prior to the hearing. Use all caps language and include the date and time of the upcoming hearing such as "\*\*\*UPCOMING EMERGENCY HEARING ON XX/XX/XXXX at YYYY a.m./p.m.\*\*\*". Also include the normal case description that must be placed in the subject line of the E-mail.

The proposed orders should be sent to both of the following E-mail addresses:

cha-guardianship@ca.cjis20.org

***AND***

patriciat@ca.cjis20.org

Following the hearing the Court will promptly E-sign and E-file the orders after making any edits required as a result of the hearing.

c. 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".

d. 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 office via E-mail (preferably) or telephone. If the objection notification is made by E-mail, the opposing attorney or party must be copied on the E-mail message. The objecting attorney or party must submit an alternative proposed order or report at least one hour prior to the hearing on the ETG.

10. Notice of Change of Emergency Temporary Guardian's Contact Information

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

11. Order of Appointment of Emergency Temporary Guardian

Every order appointing an emergency temporary 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.**

12. 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 can be found on the Court’s website and shall be filed with the clerk within 5 days of the guardian’s appointment.

13. Emergency Temporary Guardian Reports

Every ETG must file an initial guardianship report (initial plan and verified inventory), as required by Sections 744.362, 744.363, and 744.365, F.S.s, within the statutory time frame, unless waived by the court.

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. 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 should submit a proposed order approving the annual guardianship plan and/or accounting in accordance with the e-mail submission requirements outlined in E-Mail Submission Guidelines for Certain Proposed Orders in Incapacity/Guardianship, Emergency Temporary Guardianship and Guardian Advocate Cases. Audit fees must be paid to the clerk in accordance with Sections 744.365 and 744.3678, F.S.

14. 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 Section 744.362, F.S. The Court will only require an initial guardianship report (initial plan and/or verified inventory) for the ETG reporting period plus the permanent guardian's annual reporting period, due within sixty (60) days from the issuance of the permanent Letters of Guardianship.

15. Effective Date

These Best Practices are effective immediately upon approval by the Judge assigned to the Charlotte County Probate/Guardianship Division as set forth below.

Approved by:

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Paul Alessandroni Date

Acting Circuit Judge

Probate/Guardianship

Charlotte County