GUARDIAN ADVOCATE

For Developmentally

Disabled Adult Cases

BEST PRACTICES

20th Judicial Circuit

CHARLOTTE COUNTY, FLORIDA

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



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**Best Practices - Guardian Advocate for Developmentally Disabled Adult Cases**

**In Charlotte County**

1. Introduction

a. Guardian Advocacy

Unless otherwise provided in Chapters 393 or 744, Florida Statutes, or in the applicable Florida Probate Rules, any proceeding on a petition for the appointment of a guardian advocate will be governed by these best practices. The term "guardian" as used herein also applies to a guardian advocate unless otherwise noted. “Guardian advocate” means a person appointed without an adjudication of incapacity by a written order of the court to represent a person with developmental disabilities. Sections 393.12 and 744.3085, F.S. The person with developmental disabilities must lack the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate. Alternatively, the person with developmental disabilities may voluntarily petition the Court to have a guardian advocate appointed.

b. Guardian Advocate’s Representation by Counsel

A person who is being considered for appointment or is appointed as a guardian advocate need not be represented by an attorney *unless required by law of the court* or if the guardian advocate is delegated any rights regarding property other than the right to be the representative payee for government benefits. Section 393.12(2)(b), F.S. and Fla. Prob. R. 5.030(a) Part III. **However, although not represented by an attorney, the guardian advocate will be held fully responsible and accountable for following the guardianship laws, rules and procedures.**

c. Appointment of Counsel to Alleged Person with Developmental Disabilities

Within 3 days after a petition has been filed, the court shall appoint an attorney to represent a person with a developmental disability who is the subject of a petition to appoint a guardian advocate. The person with a developmental disability may substitute his or her own attorney for the attorney appointed by the court. Section 393.12(5), F.S.

d. Notice Requirement

Notice of the filing of the petition must be given to the person with a developmental disability, verbally and in writing in the language of the person and in English. Notice must also be given to the next of kin of the person with a developmental disability as defined in Chapter 744, a health care surrogate designated pursuant to an advance directive under Chapter 765, an agent under a durable power of attorney, and such other persons as the court may direct. A copy of the petition to appoint a guardian advocate must be served with the notice.

The notice must state that a hearing will be held to inquire into the capacity of the person with a developmental disability to exercise the rights enumerated in the petition. The notice must also state the date of the hearing on the petition.

The notice shall state that the person with a developmental disability has the right to be represented by counsel of his or her own choice and the court shall initially appoint counsel. The notice required to be given to the person with a developmental disability may be satisfied by filing proof of service on counsel for the person with a developmental disability and that such counsel has waived notice on behalf of his or her client.

e. Initial Hearing on the Petition

Immediately after Petitioner E-files through the E-filing Portal a petition to appoint guardian advocate for person with developmental disabilities, the petitioner's counsel should send a copy of the petition to the Court's Judicial Assistant by E-mail to

[cha-guardianship@ca.cjis20.org](mailto:cha-guardianship@ca.cjis20.org) . When the Clerk receives the petition, the Clerk will promptly send an E-mail to the Court’s Judicial Assistant providing the case number of the case and the name of the next attorney/elisor on the court appointed attorney list. The Clerk’s E-mail should be sent to: cha-guardianship@ca.cjis20.org

Upon receipt of the Clerk’s E-mail, the Court will prepare and E-file the order

appointing attorney/elisor, and E-serve the Order to the attorneys of record. Immediately upon receipt of these orders the attorneys for the petitioner and alleged developmental disabled person (A.D.D.P.) will begin coordinating a date and time for the hearing within the time period required by applicable laws and rules, using as a guide to available hearing time designated “OPEN - Probate/Guardianship Hearings” on the [Court’s calendar](https://www.ca.cjis20.org/jacsattCharlotte/AvailableSlotFrame.asp) .

When the attorneys have agreed on a tentative date and time, the petitioner’s

counsel will contact the Court’s Judicial Assistant via E-mail to [patriciat@ca.cjis20.org](mailto:patriciat@ca.cjis20.org) , copying counsel for the A.D.D.P., to confirm the availability of the date and time. The Court’s Judicial Assistant will respond to the attorneys and/or unrepresented persons confirming or rejecting the proposed date and time. NOTE: Failure to confirm the date with the Court will result in the hearing not being docketed on the Court’s docket.

After determination of a date and time for the hearing “notice of the filing of the

petition must be given to the person with a developmental disability as set forth above.

f. Forms for use in guardian advocate cases may be found on the Court’s website in ‘Forms’ under the guardian advocate section.

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. In particular, notice must be provided of any related proceeding under Section 393.11, F.S. - Involuntary admission to residential services. 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 Guardian Advocate

Every proposed guardian advocate seeking appointment by the court must file an application for appointment as guardian advocate that is signed by the proposed guardian advocate under penalties of perjury.

4. Oath of Guardian Advocate, Designation of Resident Agent & Acceptance

Every proposed guardian advocate seeking appointment by the court must file an oath of Guardian Advocate, Designation of Resident Agent & Acceptance that is signed by the proposed guardian advocate under penalties of perjury.

5. Guardian Education Requirement (*See* Section 744.3145, F.S.)

A parent who is appointed the guardian of the property of a minor child is required receive a minimum of 4 hours of instruction and training that covers the legal duties and responsibilities of the guardian of the property; the preparation of the initial inventory and annual guardianship accountings for the ward's property; and use of guardianship assets. This instruction and training must be completed within 4 months after the guardian's appointment and must be filed with the clerk. The instruction and education 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. Setting of Hearings

Attorneys and unrepresented persons may obtain available hearing times and schedule hearings by E-mailing the judge's judicial assistant at [patriciat@ca.cjis20.org](mailto:patriciat@ca.cjis20.org.) If E-mail is unavailable to the unrepresented person, contact may be made via telephone to 941-505-4826. Leave a detailed message including the style of the case, the case number, the name of the caller, and his or her address and telephone number. Do not discuss the facts of the case. Judicial assistants may not discuss the facts of a case or give legal advice.

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.

6. Notice of Change of Guardian Advocate's Contact Information

A guardian advocate must promptly advise the court, via written notice filed with the Clerk in each case in which the guardian advocate 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.

7. Order of Appointment of Guardian Advocate

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

**The guardian advocate is directed to read and become familiar with the Policies and Procedures for Guardian Advocacy Cases in Charlotte County, Florida and, further, to comply with such Policies and Procedures. The failure to comply may result in contempt proceedings and/or other appropriate sanctions.**

8. Acknowledgment of Responsibilities

All guardian advocates shall review and sign the court's Acknowledgment of Responsibilities. The [Acknowledgment form](https://www.ca.cjis20.org/pdf/Charlotte/Checklist/Guardian%20Acknowledgement%20of%20Responsibilities.doc) can be found on the Court’s website in ‘Forms’ under the Guardian Advocate section. It shall be filed with the Clerk within five (5) days of the Guardian Advocate’s appointment.

9. Initial and Annual Guardianship Advocate Reports

a. Initial Reports

Every guardian advocate must file an initial guardianship report, as required by Sections 744.362, 744.363, and 744.365, Florida Statutes, within the statutory 60 day time frame, unless waived by the court. The reporting period for the initial plan will begin with the date that letters of guardian advocacy were signed by the court and end the following year, on the last day of the anniversary month in which the letters of guardian advocacy were signed. Upon approval of the initial guardian advocate report (plan and inventory, if applicable), counsel for the ward is no longer obligated to represent the ward pursuant to Section 744.362(2), Florida Statutes. After the clerk's report is viewable in the clerk's system, counsel for the guardian advocate, or if unrepresented, the guardian advocate, should 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 guardian advocacy report. The failure to file timely the initial guardianship report or to submit a proposed order granting same may result in the issuance of an order to show cause.

b. Annual Reports

A guardian advocate of the person must, thereafter, file the annual guardian advocacy plan as required by Sections 744.367 and 744.3675, Florida Statutes. Unless otherwise ordered, annual plans must be filed within 90 days after the last day of the anniversary month in which the letters of guardian advocacy 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 guardian advocacy were signed by the court and end the following year, on the last day of the anniversary month in which the letters of guardian advocacy 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 advocate wishes to use substantially the same plan as in previous years, then the guardian advocate must provide a reasonable basis for doing so.

A guardian advocate of the property must file the annual guardian advocacy accounting as required by Sections 744.367 and 744.3678, Florida Statutes, 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 guardian advocacy were signed. Therefore, the reporting period for the first annual accounting will begin with the date that letters of guardian advocacy were entered and end on the last day of the anniversary month in which the letters of guardian advocacy 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 guardian advocacy were signed by the court and end the following year, on the last day of the anniversary month in which the letters of guardian advocacy 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, Florida Statutes, and should be accompanied by copies of all bank statements for the ward's assets.

All reports must include the guardian advocate'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, if any, 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, or if unrepresented, the guardian advocate, should submit a proposed order approving the annual guardian advocacy 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, Florida Statutes.

Under the appropriate circumstances, the guardian advocate may use the simplified accounting procedures under Section 744.3679, Florida Statutes, 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 advocate must use the court's approved form.

10. Service of Initial and Annual Reports.

Service of annual reports shall be in compliance with Rule 5.695. However, if the only right retained by the ward is the right to vote, service on the ward of the initial and annual reports is not required.

11. Exception to Requirement to File Annual Accounting

A guardian advocate may not be required to file an annual accounting under Section 744.3678, F.S. if the court determines that the person with a developmental disability receives income only from Social Security benefits and the guardian advocate is the person's representative payee for the benefits. Sections 393.12(10).

12. Extensions of Time

Guardian advocates 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 should involve the filing of the petition requesting an extension at least ten (10) days prior to the actual running of any time period in question.

13. Court Reviews

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

Additionally, the court may select a number of guardian advocacy 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 other court designee.

14. Change of A.D.D.P.'s Residence (*See* Section 744.1098(1), Florida Statutes & Rule 5.050, Fla. Prob. R. Part III)

As the court has a keen interest in management of the A.D.D.P.'s care, the guardian advocate shall inform the court, in writing, if the A.D.D.P.'s residence changes to a new location within Charlotte County or to an adjacent county in accordance with Section 744.1098(2), Florida Statute, within fifteen (15) days of such change. **And, in accordance with Section 744.1098(1), Florida Statutes, a guardian advocate may not, without prior court approval, change the residence of the A.D.D.P. to another state or to a non-adjacent county. To change a A.D.D.P.'s permanent residence to a county other than Charlotte County, the guardian advocate and the guardian's attorney, if any, must file all appropriate pleadings and proposed orders and obtain written authorization of the court before venue of the guardian advocacy case (and the permanent residence of the A.D.D.P.) is transferred to the court in the appropriate county.** **In fact, Rule 5.050, Fla. Prob. R. Part III - TRANSFER OF PROCEEDINGS provides: “(b) Change of Residence of A.D.D.P.. When the residence of an A.D.D.P. 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), Rule 5.050, Fla. Prob. R. Part III**

**PERMISSION OF THE COURT MUST BE GRANTED IN ADVANCE OF THE PERMANENT RELOCATION OF THE A.D.D.P. OUTSIDE OF CHARLOTTE COUNTY AND ITS CONTIGUOUS COUNTIES. FAILURE OF THE GUARDIAN ADVOCATE TO COMPLY WITH THIS REQUIREMENT MAY SUBJECT THE GUARDIAN ADVOCATE TO PENALTIES FOR CONTEMPT OF COURT INCLUDING A FINE, INCARCERATION AND/OR REMOVAL AS GUARDIAN ADVOCATE.**

15. Court Guardianship Monitoring Program

An Order Appointing Guardianship Monitor 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 court guardianship monitor's normal course of duties requires court approval. The results of the court guardianship monitor's investigation will be reported directly to the court with service of the report on the parties.

16. Death of A.D.D.P.

Within 30 days after the death of the A.D.D.P., the guardian advocate must file a suggestion of death. A certified copy of the A.D.D.P.'s death certificate must be applied for within 15 days of the A.D.D.P.'s death and filed immediately upon receipt.

The guardian advocate of the property must file a final report in compliance with Section 744.527, Florida Statutes, and Florida Probate Rule 5.680, unless waived in writing by all necessary interested persons, and petition for discharge, unless extended by court order. Any objections to the final accounting or discharge are required to be filed in accordance with Florida Probate Rule 5.680.

In most cases, the guardian advocacy case should be closed within four (4) to five (5) months from the date of the A.D.D.P.'s death.

17. Motions to Withdraw by Attorney for Guardian Advocate

Any motion to withdraw as attorney for a guardian advocate that is based upon lack of client contact must be verified and include all diligent efforts made by the attorney to locate the guardian advocate. Any motion to withdraw as attorney for a guardian advocate must include the name, address, and telephone number of the financial institution where the guardian advocacy 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.

18. 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.

19. Effective Date

These policies and procedures are effective immediately upon approval by the Judge assigned to the Probate/Guardianship docket as set forth below.

Approved by:

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

Paul Alessandroni Date

Acting Circuit Judge

Probate/Guardianship

Charlotte County