GUARDIANSHIP

of MINORS

**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 GUARDIANSHIP OF MINOR 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 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.

2. Guardianship of Minor Cases (*See* Section 744.3021, F.S.)

 Florida law requires the court to appoint a guardian for minors in circumstances where the parents die or become incapacitated, or if a child receives an inheritance or proceeds of a lawsuit or insurance policy exceeding the amount allowed by statute which is currently any amount that exceeds $15,000. Sections 744.3021 & 744.301(2), F.S. A parent, brother, sister, next of kin, or other person interested in the welfare of a minor, may be appointed by the court as guardian of a minor without the necessity of adjudication. In its discretion, the court may appoint an attorney to represent the interests of a minor at the hearing on the petition for appointment of a guardian.

 A petition for a custody arrangement in a guardianship of the person for a minor child under Section 744.3021, Florida Statutes, requires the voluntary consent of all living parents, and must be accompanied by a UCCJEA Affidavit, Family Law Form 12.902(d). If the location of a living parent is unknown, sworn testimony must be elicited to establish same, including all efforts of diligent search and inquiry.

 If a guardianship of the person for a minor child is established and a parent later withdraws the consent, the parent must file a notarized notice of withdrawal of consent with the Clerk and serve the notice on all interested parties and the Court. The parent, guardian, or any interested person may afterwards file a petition for discharge of the guardian and termination of the guardianship. A hearing must be scheduled with the Court prior to the termination of guardianship.

 If the minor is the subject of a petition for adoption, counsel for the adoption petitioner must present to the adoption court an order terminating the guardianship of the person of the minor at the same time the final judgment of adoption is presented. The original of this order must be promptly filed with the Clerk, and a copy must be filed in the guardianship case. If the adoption is finalized in another circuit, a notice of adoption must be filed with the guardianship court within thirty (30) days following the adoption of the minor child along with a petition to terminate the guardianship of the person of the minor.

 A petition for guardianship of the property of a minor must be accompanied by an [Acknowledgment of Proposed Guardian of a Minor's Property](https://www.ca.cjis20.org/pdf/Charlotte/Checklist/Acknowledgment%20of%20Counsel%20of%20Proposed%20Guardian%20of%20Minor%27s%20Property.docx) and [Acknowledgment of Counsel for Proposed Guardian of a Minor's Property](https://www.ca.cjis20.org/pdf/Charlotte/Checklist/Acknowledgment%20of%20Counsel%20of%20Proposed%20Guardian%20of%20Minor%27s%20Property.docx), which are also available on the Court’s website of the 20th Judicial Circuit.

3. Petition for Appointment of Minor Guardian; Contents

 Every petition for the appointment of a guardian shall be verified by the petitioner and shall contain statements, to the best of petitioner’s knowledge and belief, showing the name, age, residence, and post office address of the alleged incapacitated person or minor; the nature of her or his incapacity, if any; the extent of guardianship desired, either plenary or limited; the residence and post office address of the petitioner; the names and addresses of the next of kin of the incapacitated person or minor, if known to the petitioner; the name of the proposed guardian; the relationship and previous relationship of the proposed guardian to the ward; the nature and value of property subject to the guardianship; and the reasons why this person should be appointed guardian. If a willing and qualified guardian cannot be located, the petition must so state.

4. 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.

5. Appointment of Guardian Ad Litem (*See* Section 744.3025, F.S.)

 The court may appoint a guardian ad litem to represent the minor’s interest before approving a settlement of the minor’s portion of the claim in a case in which a minor has a claim for personal injury, property damage, wrongful death, or other cause of action in which the gross settlement of the claim equals or exceeds $15,000 if the court believes a guardian ad litem is necessary to protect the minor’s interest. If the gross settlement of the claim exceeds $50,000 the Court is required by the statute to appoint a guardian ad litem to represent the minor’s interest before approving the settlement.

6. 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 update their application annually by filing either a list of current wards served by the guardian or a complete application for appointment as guardian. Professional guardians must denote any *pro bono* cases in the initial application and annual updates to their application. Nonprofit corporate guardians must file quarterly disclosure statements, in lieu of an application for appointment as guardian, denoting any *pro bono* cases.

7. 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 proof of completion 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.

8. Guardian Background and Credit Investigations (*See* Section 744.3135, F.S.)

 The law requires that, 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. However, on petition by any interested person or on the court’s own motion, the court may waive the requirement of a credit history investigation or a level 2 background screening, or both and in *most* guardianship of minor cases the court will waive both. The petition to waive must be filed and should be heard at the time of the hearing to appoint the guardian of minor. If the amount of the settlement proceeds exceeds $50,000.00 or if the guardian is not a natural parent, the court will be more likely to require the credit history investigation and level 2 background screening.

 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. 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.

9. Approval of Settlement of Minor and Incompetent Claims (*See* Section 744.3025, F.S. and Rules 5.120 & 5.636 Fla. Prob. R. Part III)

 A petition seeking court approval of the settlement of a claim on behalf of a minor or incompetent must comply with Florida Probate Rule 5.636 and Sections 744.301, .3025, and .387, Florida Statutes.

 All settlements arising out of an action filed in civil court must be approved by the civil court judge having jurisdiction over the action. With respect to settlements reached prior to the filing of an action in civil court, the guardianship court will conduct a hearing to determine if the settlement is in the best interest of the minor and if the attorney's fees and costs are fair and reasonable. The parent, next friend or guardian, unless excused by the court must attend but the minor is not required to attend the hearing unless otherwise directed by the court. The attorney must have available for the court the most recent medical report of the treating physician in tort claims.

 In situations where approval of a settlement for less than the actual value of the claim is requested because of policy limits, evidence indicating the amount of insurance coverage must be produced at the hearing. If a guardian ad litem report is required based on the amount of the settlement or otherwise ordered by the court, a courtesy copy of the report must be provided to the court at least 48 hours prior to the hearing.

 As noted above, in accordance with Section 744.3025, F.S. and Rule 5.636(d) Fla. Prob. R. Part III, in cases involving a minor in which the gross settlement exceeds $15,000, the Court may appoint a guardian ad litem to represent the minor's interests if the Court believes a guardian ad litem is necessary to protect the minor's interest. In cases involving a minor in which the gross settlement equals or exceeds $50,000, the Court is required to appoint a guardian ad litem to represent the minor's interest. In cases requiring the appointment of a guardian ad litem or where a guardian ad litem is otherwise requested, a petition for appointment of guardian ad litem must be filed and a proposed order granting same may be submitted to the Court for entry without a hearing.

10. Mandatory Depository

 Unless waived or otherwise ordered by the court, in every guardianship of the property of a minor ward, a depository must be designated in accordance with Section 69.031, Florida Statutes, for deposit of all cash owned by or owed to the ward, wherever located. For good cause shown, the court may waive the necessity of a depository, in which case a bond will be required.

11. Referral to General Magistrate

 Guardianship of Minor petitions will not usually be referred to the General Magistrate for hearing.

12. Setting of Hearings for Guardianship of Minor Petitions

 Procedures for setting hearings on Guardianship of Minor Petitions may be found on the Court’s website in [Procedures](https://www.ca.cjis20.org/pdf/Charlotte/Checklist/Instructions%20For%20Filing%20Guardianship%20Of%20Minor%20Cases.pdf) under the Guardianship of Minors section.

13. 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.

14. Proposed Orders

 a. Electronic Submission

 Proposed Orders related to Guardianship of Minor petitions must be submitted electronically in Microsoft Word format to the Court with copies via E-mail to opposing counsel, if any, at least 24 hours prior to the Guardianship of Minor hearing as provided for in the following instructions and on the Court's website in [Procedures](https://www.ca.cjis20.org/pdf/Charlotte/Checklist/Instructions%20For%20Proposed%20Orders%20Following%20Various%20Hearings.pdf) under the Guardianship of Minors 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 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 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.

15. Notice of Change of Guardian's Contact Information

 A guardian must promptly advise the court, via written notice filed with the Clerk with copies to all parties in each case in which the guardian 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.

16. Order of Appointment of Guardian of Minor

 Every order appointing a guardian of minor 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 of Minor 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.**

17. Acknowledgment of Responsibilities of Guardian

 All guardians of minor shall review and sign the court's Acknowledgment of Responsibilities of Guardian. The Acknowledgment can be found on the Court’s website under “forms” and shall be filed with the clerk within 5 days of the guardian’s appointment.

18. Initial and Annual Guardianship Reports

 Every guardian must file an initial guardianship report, as required by Sections 744.362, 744.363, and 744.365, Florida Statutes, within the sixty day 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), Florida Statutes. After the clerk's report is viewable in the clerk's system, counsel for the guardian 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 guardianship 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.

 A guardian of the person must, thereafter, file the annual guardianship 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 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.

 A guardian of the property must file the annual guardianship 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 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, Florida Statutes, and should be accompanied by copies of all bank statements for the ward's 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. 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, Florida Statutes.

Under the appropriate circumstances, the guardian 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 must use the court's approved form.

19. Change of Ward's Residence

 As the court has an interest in management of the ward's care, the guardian should 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), Florida Statute, within 15 days of such change. In accordance with Section 744.1098(1), Florida Statutes, a guardian may not, without prior court approval, change the residence of the ward to another state or to a non-adjacent county. If a ward's permanent residence is changed to a county other than Charlotte County, the guardian and the guardian's attorney must file all appropriate pleadings and proposed orders to have venue of the guardianship case transferred to the court in the appropriate county.

20. 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 should involve the filing of the petition at least ten (10) days prior to the actual running of any time period in question.

21. 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 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 other court designee.

22. 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