

**CHARLOTTE PROBATE & GUARDIANSHIP BEST PRACTICES**  
**October 17, 2017**

**PROBATE & GUARDIANSHIP CHECKLISTS**

The Court requires the submission of completed Probate and Guardianship Checklists when submitting most proposed orders in Probate and Guardianship cases in Charlotte County. The checklists are available at: <http://www.ca.cjis20.org/home/charlotte/charChecklist.asp>. Please **E-File the completed checklist** as the final page(s) of the motion, petition or other document in question. If there is no checklist listed on the above web page that relates to your Petition/Motion, none is required.

**GENERAL RULES**

1. **VERY IMPORTANT:** Before sending proposed orders to Judge Alessandroni that will require his review of online documents, before entering the orders **check the Clerk's website to make sure that all required supporting documents are viewable online.**
2. Probating a Will: Before asking Judge Alessandroni to sign an order that requires that the Judge view the will, make certain that the will is viewable on the Clerk's website. This may require that your office contact the probate clerk to request that a will previously deposited in the "WD" (will deposit) file be transferred from the will deposit file to the probate file. This is the attorney's responsibility.
3. A proposed order or other document that requires Judge Alessandroni's signature should be sent directly to the Judge. **Do not route it through the Clerk.** Currently proposed orders cannot be E-Filed or electronically transmitted to Judge Alessandroni but this limitation may be removed by the end of 2017.
4. If Clerk action is needed, send the document/request to the Clerk.
5. Do not send the few original documents that must be filed with the Clerk to Judge Alessandroni. Instead, send them directly to the Clerk for filing (e.g., wills).
6. A cover letter should accompany all proposed orders sent to Judge Alessandroni.
7. A sufficient number of copies and stamped envelopes must accompany proposed orders (if you wish to receive a conformed copy). Judge Alessandroni's judicial assistant will conform and mail out copies. **If no copies/stamped envelopes or an insufficient number of copies/stamped envelopes are submitted, no additional copies/stamped envelopes will be furnished by the Court.**
8. **SETTING PROBATE HEARINGS:** Please contact Magistrate Robert Koch's Assistant Kristy Sandroek, at 941-637-2213 or email to [ksandroek@ca.cjis20.org](mailto:ksandroek@ca.cjis20.org) to request hearing time. It is your responsibility to schedule sufficient time for a hearing and to properly notice the petition/motion for hearing.
9. **SETTING GUARDIANSHIP HEARINGS:** Please contact Judge Alessandroni's Judicial Assistant Patricia Twardzik by email to [patriciat@ca.cjis20.org](mailto:patriciat@ca.cjis20.org). Email is preferred over a phone call to 941-505-4826. Likewise, it is your responsibility to schedule sufficient time for a hearing and to properly notice the petition/motion for hearing.

## THE E-FILING PROCESS AND CLERK ACCEPTANCE OF E-FILED DOCUMENTS

Remember, when you E-File a document through the E-Filing Portal the document is not viewable to a user of the system (including attorneys, judges and judicial assistants) until several things happen. The attorney's receipt acknowledgment by the E-Filing Portal only confirms that the Portal has received the document and that it is located on their file server. The Portal must transmit the document to the Clerk, and the Clerk must then transfer the file to the internal Clerk case maintenance system and formally accept the document into the clerk's system to make the document viewable to users. The E-Filing rules give clerks three days to complete those steps. Additional days may be required if the document does not comply with the E-Filing rules.

**So, keep in mind that when the E-Filing Portal acknowledges receipt of your E-Filed document, it is not immediately viewable on the Clerk's website.** Consequently, if you E-File a document and simultaneously deliver a proposed order to the judge's office, the judge and judicial assistant will likely not be able to view the document that you just filed. This will prevent the judge from immediately signing your proposed order and will only waste the time of the judge and judicial assistant as they try in vain to review the pleading on which the proposed order is based. This discourages the Court from quickly reviewing proposed orders (very bad). Instead, wait until **YOU can view the recently filed document(s) on the Clerk's website** before you send the proposed order to the judge's office. This way if there is a problem with the filing of the document, your office will learn about it sooner, and the judge and his judicial assistant will not waste time looking for documents that are not yet viewable. Following this procedure will serve to enhance the overall efficiency of the process (very good).

### WHOM TO CONTACT WITH QUESTIONS:

Clerk's Office Civil Courts Manager Marie Hicks will respond to questions regarding the Clerk's E-Filing processes at [marie.hicks@co.charlotte.fl.us](mailto:marie.hicks@co.charlotte.fl.us)

Questions regarding Judge Alessandroni's procedures will be answered by Judge Alessandroni's Judicial Assistant, Patty, at [patriciat@ca.cjis20.org](mailto:patriciat@ca.cjis20.org) **Email is the MUCH PREFERRED METHOD OF COMMUNICATION.....**

### COMMON ISSUES FOR PROBATE AND GUARDIANSHIP CASES

The following lists are taken from the templates used by the Court to notify attorneys of issues that commonly arise. These lists are not the checklists that must be E-filed by the attorneys. If your submission is deficient in some fashion, you will receive an abbreviated version of one of the following two lists.

#### PROBATE CASES – COMMON PROBLEMS

**General Admonition: Do not submit proposed orders unless/until ALL the documents upon which the order is based are viewable in the clerk's system.**

- Required completed checklist not submitted ( go to: <http://www.ca.cjis20.org/home/charlotte/charChecklist.asp> )

- Decedent's death certificate is not filed.
- Personal Representative named in will or codicil is not included in the proposed Order.
- Assets are not adequately described.
- Will has not been imaged and/or is not viewable in the clerk's electronic file.
- No Statement Regarding Creditors filed
- Failing to file Inventories with the Department of Revenue. Any inventory filed by a fiduciary in an estate proceeding with the Court, must be sent to the Department of Revenue at: Florida Department of Revenue, General Tax Administration Center, Tallahassee Central Service Center, P.O. Box 6417, Tallahassee, Florida 32314-6417
- No proof of service of Notice to Creditors served on AHCA. §733.2121(d), F.S. provides: "If a decedent at the time of death was 55 years of age or older, the personal representative shall promptly serve a copy of the notice to creditors and provide a copy of the death certificate on the Agency for Health Care Administration within 3 months after the first publication of the notice to creditors, unless the agency has already filed a statement of claim in the estate proceedings." The website for the Florida Estate Recovery Program specifies the following address for notices: Florida Medicaid Estate Recovery Program, P.O. Box 12188, Tallahassee, FL 32317.
- Will is not self-proved pursuant to F.S. 732.503. Procedure in F.S. 733.201(2) or (3) should be followed. The affidavits submitted do not comply with the requirements of Chapter 733.201(2), F.S.
- Missing affidavit of no estate taxes due or a missing federal tax closing letter.
- Missing or deficient verified petition setting forth the reasons for the sale of real property, a description of the real property sold or proposed to be sold, or the price or terms of the sale. Rule 5.370, Fla. Prob. R.
- Insufficient or missing statement under oath establishing that the attesting witnesses cannot be found or that they have become incapacitated after the execution of the will or their testimony cannot be obtained within a reasonable time. §733.201(3), F.S.
- Order cannot be entered without proper notice to interested parties or without scheduling the appropriate hearing.
- The supporting petition/motion does not set forth sufficient allegations on which the court can grant the requested relief.
- Unless a stipulation signed by all parties is filed, a hearing is required. Please contact Magistrate Robert Koch's Assistant Kristy Sandrock, at 941-637-2213 or email to ksandrock@ca.cjis20.org to request hearing time. It is your responsibility to schedule sufficient time for a hearing and to properly notice the petition/motion for hearing.
- Omitting the attorney's Florida Bar Number
- Omitting the date of death on Petition for Administration
- Omitting consents from both parents if they are not petitioning to be appointed guardian(s) in minor guardianships
- Requesting to waive the investigatory cost in cases where the ward is indigent (the investigatory cost is to be borne by the guardian)
- Incorrect filing fees
- Omission of attorney or personal representative's signature on pleadings
- Filing the incorrect proposed orders for entry by the Court
- Submitting paperwork with the incorrect case numbers
- Failing to redact all but the last four digits of social security numbers on pleadings or

- papers to be contained in the publicly available file.
- Failure to submit a copy of the relevant foreign law (if in order to probate the will the Court must find that the will is valid under the laws of the state or country where the testator was at the time of execution.

Note in contested cases all pleadings and other matters to be considered by the Court must be filed with the clerk with notice to interested persons. Accordingly, any response in a contested case should be made by a properly filed pleading and not by *ex parte correspondence* to the Court.

## **GUARDIANSHIP CASES – COMMON PROBLEMS**

**General Admonition: Do not submit proposed orders unless/until ALL the documents upon which the order is based are viewable in the clerk's system.**

- Required completed checklist not submitted ( go to: <http://www.ca.cjis20.org/home/charlotte/charChecklist.asp> )
- Annual Report not viewable in clerk's system.
- Annual Accounting not viewable in clerk's system.
- Clerk's report on the annual report is not viewable.
- Clerk's report on the annual accounting is not viewable.
- Improper Venue
- Do not sending original pleadings to the Judge's office. All original pleadings must be sent to the Clerk. Send only original proposed orders to the Judge's office. Proposed orders cannot be E-Filed or electronically transmitted to Judge Alessandrone, but this limitation may be removed by the end of 2017.
- Annual Guardianship Plan of the Guardian of the Person not timely filed:  
§744.367 Duty to file annual guardianship report.—  
(1) Unless the court requires filing on a calendar-year basis, each guardian of the person shall file with the court an annual guardianship plan within 90 days after the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. If the court requires calendar-year filing, the guardianship plan must be filed on or before April 1 of each year. The latest annual guardianship plan approved by the court will remain in effect until the court approves a subsequent plan.
- Annual Guardianship Accounting not timely filed:  
§744.367 Duty to file annual guardianship report.—  
(2) Unless the court requires or authorizes filing on a fiscal-year basis, each guardian of the property shall file with the court an annual accounting on or before April 1 of each year. The annual accounting must cover the preceding calendar year. If the court authorizes or directs filing on a fiscal-year basis, the annual accounting must be filed on or before the first day of the fourth month after the end of the fiscal year.
- Initial Guardianship Report insufficient or not timely filed (RULE 5.690. INITIAL GUARDIANSHIP REPORT (a) Contents and Filing. An initial guardianship report shall be filed within 60 days after the issuance of letters of guardianship. The guardian of the property shall file the initial guardianship report consisting of the verified inventory. The

- guardian of the person shall file the initial guardianship report consisting of the guardianship plan.)
- Inventory insufficient or not timely filed (RULE 5.620. INVENTORY (a) Inventory Within 60 days after issuance of letters, the guardian of the property shall file a verified inventory as required by law. All property not in the guardian's possession as of the date the inventory is filed shall be so identified.... (e) Guardian Advocates. This rule shall apply to a guardian advocate to the extent that the guardian advocate was granted authority over the property of the person with a developmental disability.
  - The Physician's Report was not submitted. "Physician" is defined as "a person who is licensed to practice medicine in this state." §458.305(4), F.S. §765.101(13), F.S. defines a physician as "a person licensed pursuant to Chapter 458 or Chapter 459. Chapter 458 addressed M.D.s and Chapter 459 addresses D.O.s.
  - The physician's examination was not conducted within 90 days prior to the beginning of the report period. §744.3675(1)(b)(2), F.S.: "The report of a physician who examined the ward no more than 90 days before the beginning of the applicable reporting period"
  - The supporting petition/motion does not set forth sufficient allegations on which the court can grant the requested relief.
  - Unless a stipulation signed by all parties is filed, a hearing is required. Please contact Judge Alessandroni's Judicial Assistant Patricia Twardzik by email to [patriciat@ca.cjis20.org](mailto:patriciat@ca.cjis20.org). Email is preferred over a phone call to 941-505-4826. It is your responsibility to schedule sufficient time for a hearing and to properly notice the petition/motion for hearing.
  - A hearing on the petition/motion is required *unless written consents from all interested persons are filed*, or all interested persons are noticed by formal notice and no objections are filed within the required time. In the future, for orders submitted for entry in chambers without a hearing, please advise this in a cover memo to the Court (with a copy to the interested persons) who the interested persons are and why you contend a hearing is *not* required.
  - The written consent of the client is required for consideration by the Court of a Motion to Continue, Motion to Substitute Counsel, or a Motion to Withdraw. See Florida Rule of Judicial Administration 2.060.

Note that in contested cases all pleadings and other matters to be considered by the Court must be filed with the clerk with notice to interested persons. Accordingly, any response in a contested case should be made by a properly filed pleading and not by *ex parte correspondence* to the Court.

The Court appreciates your compliance with the above requirements.

Paul Alessandroni  
Administrative Judge  
Charlotte County  
October 17, 2017  
Email: [patriciat@ca.cjis20.org](mailto:patriciat@ca.cjis20.org)