

## **Notice & Service Requirements (Guardianship and Probate Summary)**

*Below is a list of statutory required service and notice requirements for guardianships. However, please note that these requirements are not always fully comprehensive. For example, in addition to the statutory requirements, the Sixth Judicial Circuit may declare other entities as interested persons who are entitled to service and notice of all documents filed by the Guardian. Therefore, it is suggested that you review the list below and determine if they may be an interested party/person who is entitled to notice or service.*

- Guardian (Person & Property or Person or Property only)
- Successor Guardian (Person & Property or Person or Property only)
- Ward – if emergency temporary guardian
- Ward - if limited guardian
- Ward – if voluntary guardian
- Court Appointed Attorney
- Veteran’s Administration – If the ward receives more than \$90.00/month in VA benefits
- Natural parents – if minor guardianship and parent(s) is not the guardian
- Trustee if the ward is the beneficiary of the trust
- Surrogate Guardian
- Any person who has filed a notice of pleadings or been determined to be an interested person by the court.

**Example:** The statute requires that the annual report be served on the ward, unless the ward is a minor or is totally incapacitated, and on the attorney for the ward, if any. The guardian shall provide a copy to any other person as the court may direct. West’s F.S.A. §744.367(3)

Nevertheless, if the ward is incapacitated and is receiving more than \$90 dollars of income each month in VA benefits, then the VA, though not listed in the statute, is also required to receive notice and service.

As a result, it is important that each guardian and attorney review the statutory requirements and other possible interested persons when providing notice and service requirements.

### **Interested Persons Analysis:**

The concept of “interested person” in a guardianship case can be complex. The Supreme Court in *Hayes v. Guardianship of Thompspon*, No. SC05-675, held a similar opinion when it acknowledged that the factual determination of who is an interested person in a guardianship proceeding can vary from case to case. Nevertheless, there are three elements courts find relevant when determining who is an interested party in a guardianship case: (1) the person has right to receive notice under 5.060, (2) the person has right to object to a particular proceeding in the case, or (3) the person falls under the definition of an interested person<sup>1</sup> found in §731.102 (21).<sup>2</sup>

### **Notice Provisions:**

Chapter 744 provides a list of who is entitled to receive notice during a guardianship proceeding. Notice requirements can vary depending on the circumstances and sections of the law. Please note that “next of kin” is defined as “those persons who would be heirs at law of the ward or alleged incapacitated person if the person were deceased and includes the lineal descendants of the ward or alleged incapacitated person”. §744.102(14).

### **Model Code of Ethics for Guardians and Guardianship Standard of Practice:**

#### NGA 4: The Guardian’s relationship with family and friends of a ward:

- Maintain and establish relationship with ward’s family and friends, except when doing so would not benefit ward.
- Take reasonable efforts to preserve property designated in the ward’s will and other estate planning devices
- When disposing of property that has sentimental value, may notify family or friends and give them opportunity, with court approval, to obtain assets
- Recognize the value of friends and family to the quality of life of the ward
- May keep immediate family and friends advised to all pertinent medical issues when doing so benefits the ward. Note that Standard of Confidentiality may prevent certain information to be released.

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<sup>1</sup> “Interested person” means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent's estate, or any claims described in s. 733.702(1), the trustee of a trust described in 733.707(3) is an interested person in the administration of the grantor's estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.  
Florida Probate Code Sec. 731.102(21)

<sup>2</sup> Karen P. Campbell, J.D., Florida Legal Education Association, The Guardianship Team 2007, Ethics and “the Interested Persons”, March 16-17, 2007.

NGA 11 Confidentiality:

- Guardian shall keep affairs of ward confidential
- Respect the ward's privacy and dignity
- Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed
- May disclose sensitive information to the ward's family when the disclosure would benefit the ward
- Guardian may refuse to disclose information if it would be detrimental to the well-being of the court. Such a refusal must be reported to the court.

## **General Provision: Notice & Service Requirements**

### **Court Monitors:**

The order of appointment shall be served upon the guardian, the ward, and such other persons as the court may determine.

The report shall be verified and shall be served on the guardian, the ward, and such other persons as the court may determine.

West's F.S.A. § 744.107

### **Emergency Court Order:**

At any time prior to the hearing to show cause, the court may issue a temporary injunction, a restraining order, or an order freezing assets. . . A copy of such orders or injunctions shall be transmitted by the court or under its discretion to all parties at the time of entry of the order or injunction

West's F.S.A. § 744.1075 (b)

### **Guardian and Attorney Fee Petitions:**

A petition for fees or expenses may not be approved without prior notice to the guardian and to the ward, unless the ward is a minor or is totally incapacitated.

West's F.S.A. § 744.108(6)

## **Types of Guardianships: Notice & Service Requirements**

### **Emergency Temporary Guardianship**

A copy of the final report of the emergency temporary guardianship shall be served on the successor guardian and the ward.

West's F.S.A. § 744.304(d)

### **Petition for Appointment of Standby Guardian:**

Notice of a hearing on the petition must be served on the parents, natural or adoptive, and on any guardian currently serving unless the notice is waived in writing by them or waived by the court for good cause shown.

West's F.S.A. § 744.304(1)

Upon petition of a currently serving guardian, a standby guardian of the person or property of an incapacitated person may be appointed by the court. Notice of the hearing shall be served on the ward's next of kin.

West's F.S.A. § 744.304(2)

### **Resident Guardian of the Property of Nonresident Ward:**

When the ground for the appointment of a guardian is incapacity for which the person has been adjudicated in another state, territory, or country, notice of the hearing shall be served personally or by registered mail on the ward and the ward's next of kin and legal custodian, if any, at least 20 days before the hearing.

West's F.S.A. §744.308(5)

## Adjudication of Incapacity & Appointment of Guardian: Notice & Service Requirements

### **Petition to Determine Incapacity and Petition for the Appointment of a Guardian:**

Notice of the filing of a petition to determine incapacity and a petition for the appointment of a guardian if any and copies of the petitions must be served on and read to the alleged incapacitated person. The notice and copies of the petitions must also be given to the attorney for the alleged incapacitated person, and served upon all next of kin identified in the petition.

West's F.S.A. § 744.331 (1)

#### *Examining Committee:*

A copy of each committee member's report must be served on the petitioner and on the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 5 days before the hearing on the petition

West's F.S.A. § 744.331 (3) (h)

#### *Order Determining Capacity:*

After the order determining that a person is incapacitated is filed, it must be served on the incapacitated person.

West's F.S.A. § 744.331 (6) (d)

#### Probate Rule 5.550

5.550(2): The notice and copy of the petition to determine capacity shall be personally served by an elisor appointed by the court, who may be the court appointed counsel for the alleged incapacitated person.

5.550(3): A copy of the petition and notice shall also be served on counsel for the alleged incapacitated person, and on all next of kin.

### **Petition for Appointment of Guardian:**

When the petition for appointment of a guardian for an incapacitated person is heard upon the conclusion of the hearing in which the person is determined to be incapacitated, the court shall hear the petition without further notice. If the petition is heard on a later date, reasonable notice of the hearing must be served on the incapacitated person, the person's attorney, if any, any guardian then serving, the person's next of kin, and such other interested persons as the court may direct.

West's F.S.A. § 744.3371(1)

When a petition for appointment of a guardian for a minor is filed, formal notice must be served on the minor's parents. If the petitioner has custody of the minor and the petition alleges that, after diligent search, the parents cannot be found, the

parents may be served by informal notice, delivered to their last known address or addresses. When a parent petitions for appointment as guardian for his or her minor child, no notice is necessary unless the other parent is living and does not consent to the appointment.

West's F.S.A. § 744.3371(2)

**Notice of Hearing on Petition for Appointment of Voluntary Guardianship:**

Notice of hearing on any petition for appointment and for authority to act shall be given to the petitioner and to any person to whom the petitioner requests that notice be given.

West's F.S.A. § 744.341(1)

*Termination of Voluntary Guardianship:*

A voluntary guardianship may be terminated by the ward by filing a notice with the court that the voluntary guardianship is terminated. A copy of the notice must be served on all interested persons.

West's F.S.A. § 744.341(5)

## **Power & Duties: Notice & Service Requirements**

### **Initial Guardianship Report:**

The initial report shall be served on the ward, unless the ward is a minor under the age of 14 years or is totally incapacitated, and the attorney for the ward.

West's F.S.A. § 744.362(1)

### **Petition to Modify the Guardianship Plan**

An initial guardianship plan continues in effect until it is amended or replaced by approval of a guardianship plan . . . If there are significant changes in capacity of the ward to meet the essential requirements for his or her safety, the guardian may file petition to modify guardianship plan and shall serve notice on all persons who received notice of the plan.

West's F.S.A § 744.363 (5)

### **Verified Inventory**

*Safety Deposit Box:* The guardian shall provide the ward with a copy of each signed safety deposit box inventory unless the ward is a minor or has been adjudicated totally incapacitated or unless the order appointing the guardian states otherwise.

West's F.S.A § 744.365 (4)

Probate Rule 5.620:

If a ward has a safety deposit box, a copy of the safe-deposit box inventory shall be filed as part of the verified inventory.

### **Duty to file annual guardianship report**

The annual guardianship report of a guardian of the property must consist of an annual accounting, and the annual report of a guardian of the person must consist of an annual guardianship plan. The annual report shall be served on the ward, unless the ward is a minor or is totally incapacitated, and on the attorney or the ward, if any. The guardian shall provide a copy to any other person as the court may direct.

Unless the ward is a minor or has been determined to be totally incapacitated, the guardian shall review a copy of the annual report with the ward, to the extent possible. Within 30 days after the annual report has been filed, any interested person, including the ward, may file written objections to any element of the report, specifying the nature of the objection.

West's F.S.A. § 744.367(3)-(4)

### **Judicial review of guardianship reports**

(5) Upon examining the initial or annual guardianship report, the court shall enter an order approving or disapproving the report. If the court disapproves the report, the court shall order the guardian to provide a revised report or proof of any item in the report to the court. The guardian shall do so within a reasonable

amount of time set by court.

(6) If the guardian fails to comply with the court order entered pursuant to subsection (5), the court shall take immediate action to compel compliance or to sanction the guardian after a hearing with appropriate notice to the ward, the ward's counsel, if any, the guardian, and the ward's next of kin.

West's F.S.A. § 744.369(5)-(6)

### **Inspection of report**

(1) Unless otherwise ordered by the court, any initial, annual, or final guardianship report or amendment thereto is subject to inspection only by the court, the clerk or the clerk's representative, the guardian and the guardian's attorney, and the ward, unless he or she is a minor or has been determined to be totally incapacitated, and the ward's attorney.

(2) The court may direct disclosure and recording of parts of an initial, annual, or final report in connection with any real property transaction or for such other purpose as the court allows, in its discretion

West's F.S.A. § 744.3701

### **Petition for interim judicial review**

At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and the guardian is not acting in the best interest of the ward. The petition for review must state the nature of the objection to the guardian's action or proposed action. Upon the filing of any such petition, the court shall review the petition and act upon it expeditiously

West's F.S.A. § 744.3715(1)

### **Subsequently discovered or acquired property:**

If a limited guardian of the property of the ward learns of any property that was not known to the court at the time of his or her appointment, he or she shall file a report of such property with the court. Upon petition by the guardian, ward, or other interested person, the court, after hearing with appropriate notice, may direct the guardian to take custody and control of such property, without further adjudicatory proceeding under s. 744.331.

West's F.S.A. §744.384

### **Annual Report:**

The annual report shall be served on the ward, unless the ward is a minor or is totally incapacitated, and on the attorney for the ward, if any. The guardian shall provide a copy to any other person as the court may direct.

Unless the ward is a minor or has been determined to be totally incapacitated, the guardian shall review a copy of the annual report with the ward, to the extent possible. Within 30 days after the annual report has been filed, any interested `

person, including the ward, may file written objections to any element of the report, specifying the nature of the objection.

West's F.S.A. §744.367(3)-(4)

Probate Rule 5.690:

Copies of the initial guardianship report shall be served on the ward, unless the ward is a minor under the age of 14 or is totally incapacitated, and the attorney for the ward, if any. With approval of the court, service of the ward may be accomplished by serving the attorney for the ward.

**Order to Show Cause for failure to file response to Order Disapproving:**

If the guardian fails to comply with the court order disapproving the report entered pursuant to subsection (5), the court shall take immediate action to compel compliance or to sanction the guardian after a hearing with appropriate notice to the ward, the ward's counsel, if any, the guardian, and the ward's next of kin.

West's F.S.A. §744.369(6)

**Petition for Support of Ward's Dependents:**

If the property of the ward is derived in whole or in part from payments of compensation, adjusted compensation, pension, insurance, or other benefits made directly to the guardian by the United States Department of Veterans Affairs, notice of the petition for support shall be given by the petitioner to the office of the United States Department of Veterans Affairs having jurisdiction over the area in which the court is located and the chief attorney for the Department of Veterans' Affairs in this state at least 15 days before the hearing on the petition.

West's F.S.A. § 744.421

**Petition for Authorization to Act:**

No notice of a petition to authorize a sale of perishable personal property or of property rapidly deteriorating shall be required. Notice of a petition to perform any other acts under s. 744.441 or s. 744.446 shall be given to the ward, to the next of kin, if any, and to those interested persons who have filed requests for notices and copies of pleadings, as provided in the Florida Probate Rules, unless waived by the court. Notice need not be given to a ward who is under 14 years of age or who has been determined to be totally incapacitated.

West's F.S.A. § 744.447(2)

Probate Rule 5.630

No notice of a petition to authorize sale of perishable personal property or of property rapidly deteriorating shall be required. Notice of petition to perform any other act requiring a court order shall be given to the ward, to the next of kin, if any, and to those persons who have filed requests for notices and copies of pleadings.

## **Termination: Notice & Service Requirements**

### **Suggestion of Capacity:**

The court shall immediately send notice of the filing of the suggestion of capacity to the ward, the guardian, the attorney for the ward, if any, and any other interested persons designated by the court. Formal notice must be served on the guardian. Informal notice may be served on other persons. Notice need not be served on the person who filed the suggestion of capacity.

West's F.S.A. § 744.464(c)

Notice of the hearing and copies of the objections and medical examination reports shall be served upon the ward, the ward's attorney, the guardian, the ward's next of kin, and any other interested persons as directed by the court.

West's F.S.A. § 744.464(f)

### **Resignation of guardian**

A guardian of the person must to the successor guardian copies of all records of medical or personal care, prior to being discharged.

West's F.S.A. § 744.467

Probate Rule 5.650

Service: A copy of the resignation, petition for discharge, final report, and notice of resignation and petition for discharge shall be served on the ward, any surety on the guardian's bond, any successor guardian, and such other person's as the court may direct.

### **Reasons for removal of guardian**

Failing to provide notice to the required person can result in removal of a guardian upon a showing by a person who did not receive notice of the petition for adjudication of incapacity, when such notice is required, or who is related to the ward within the relationships specified for nonresident relatives in s. 744.309(2) and 744.312(2) and who has not previously been rejected by the court as a guardian that the current guardian is not a family member and subsection (20) applies.

West's F.S.A §744.474 (19)

### **Proceedings for removal of a guardian:**

Reasonable notice shall be given to the guardian

West's F.S.A §744.477

Probate Rule 5.650

Service: A copy of the resignation, petition for discharge, final report, and notice of resignation and petition for discharge shall be served on the ward, any surety

on the guardian's bond, any successor guardian, and such other person's as the court may direct.

Probate Rule 5.660

A copy of all accounting shall be served on the successor guardian and the ward.

**Accounting Upon Removal:**

A removed guardian shall file with the court a true, complete, and final report of his or her guardianship within 20 days after removal and shall serve a copy on the successor guardian and the ward, unless the ward is a minor or has been determined to be totally incapacitated.

West's F.S.A. § 744.511

Probate Rule 5.660

A copy of all accounting shall be served on the successor guardian and the ward.

Probate Rule 5.150

A copy of the order requiring accounting shall be served on the personal representative or guardian and the personal representative's or guardian's attorney.

**Proceedings for contempt**

If a removed guardian of the property fails to file a true, complete, and final accounting of his or her guardianship; to turn over to his or her successor or to the ward all the property of his or her ward and copies of all records that are in his or her control and that concern the ward; or to pay over to the successor guardian of the property or to the ward all money due the ward by him or her, the court shall issue a show cause order. If cause is shown for the default, the court shall set a reasonable time within which to comply, and, on failure to comply with this or any subsequent order, the removed guardian may be held in contempt.

Proceedings for contempt may be instituted by the court, by any interested person, including the ward, or by a successor guardian.

West's F.S.A. § 744.517

**Termination of guardianship on change of domicile of resident ward**

When the domicile of a resident ward has changed as provided in s. 744.2025, and the foreign court having jurisdiction over the ward at the ward's new domicile has appointed a guardian and that guardian has qualified and posted a bond in an amount required by the foreign court, the guardian in this state may file her or his final report and close the guardianship in this state. The guardian of the property in this state shall cause a notice to be published once a week for 2 consecutive weeks, in a newspaper of general circulation published in the county, that she or he has filed her or his accounting and will apply for discharge on a day certain and that jurisdiction of the ward will be transferred to the state of foreign

jurisdiction. If an objection is filed to the termination of the guardianship in this state, the court shall hear the objection and enter an order either sustaining or overruling the objection. Upon the disposition of all objections filed, or if no objection is filed, final settlement shall be made by the Florida guardian. On proof that the remaining property in the guardianship has been received by the foreign guardian, the guardian of the property in this state shall be discharged. The entry of the order terminating the guardianship in this state shall not exonerate the guardian or the guardian's surety from any liability previously incurred.  
West's F.S.A. § 744.524

**Discharge of Guardian named as PR:**

A guardian authorized to manage property, who is subsequently appointed personal representative, must serve a copy of the guardian's final report and petition for discharge upon the beneficiaries of the ward's estate who will be affected by the report.

West's F.S.A. § 744.528(1)

Any interested person may file a notice of a hearing on any objections filed by the beneficiaries. Notice of the hearing must be served upon the guardian, beneficiaries of the ward's estate, and any other person to whom the court directs service.

West's F.S.A. § 744.528(3)

**Disposition of unclaimed funds held by guardian**

(1) In all cases in which it is appropriate for the guardianship to terminate due to the ward's death and in which property in the hands of the guardian cannot be distributed because no estate proceeding has been instituted, the guardian of the property shall be considered an interested person pursuant to s. 733.202 and may, after a reasonable time, institute such a proceeding. In the alternative, the guardian may follow the procedures set forth in subsection (2).

(2) (a) In those cases in which it is appropriate for the guardianship to terminate pursuant to s. 744.521 and in which property in the hands of a guardian cannot be distributed to the ward or the ward's estate solely because the guardian is unable to locate the ward through diligent search, the court shall order the guardian of the property to sell the property of the ward and deposit the proceeds and cash already on hand after retaining those amounts provided for in paragraph (e) with the clerk of the court exercising jurisdiction over the guardianship and receive a receipt.

West's F.S.A. § 744.534

## **Veteran's Guardianship: Notice & Service Requirements**

### **VA Interested Party:**

The Secretary of Veterans Affairs shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the United States Department of Veterans Affairs. Not less than 15 days prior to hearing in such matter, notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the United States Department of Veterans Affairs having jurisdiction over the area in which any such suit or any such proceeding is pending.

West's F.S.A. § 744.607

### **Notice by court of petition filed for appointment of guardian (Veterans):**

(1) when a petition for the appointment of a guardian has been filed pursuant to 744.616, the court shall cause such notice to be given as provided by the general guardianship law. In addition, notice of the petition shall be given to the office of the United States Department of Veterans Affairs having jurisdiction over the area in which the court is located.

West's F.S.A. §744.617

### **Petition for support, or support and education, of ward's dependents (veterans):**

Any person who is dependent on a ward for support may petition a court of competent jurisdiction for an order directing the guardian of the ward's estate to contribute from the estate of the ward to the support, or support and education, of the dependent person, when the estate of the ward is derived in whole or in part from payments of compensation, adjusted compensation, pension, insurance, or other benefits made directly to the guardian of the ward by the United States Department of Veterans Affairs. A notice of the application for support, or support and education, shall be given by the applicant to the office of the United States Department of Veterans Affairs having jurisdiction over the area in which the court is located at least 15 days before the hearing on the application.

West's F.S.A. § 744.625(1)

### **Guardian's Accounts (Veterans):**

A certified copy of each of such accounts filed with the court shall be sent by the guardian to the office of the United States Department of Veterans Affairs having jurisdiction over the area in which such court is located. If the requirement of certification is waived in writing by the United States Department of Veterans Affairs, an uncertified copy of each of such accounts shall be sent.

West's F.S.A. § 744.634(1)

*Notice of Hearing on Accounts (Veterans):*

2) The court, at its discretion or upon the petition of an interested party, shall fix a time and place for the hearing on such account; and notice of the hearing shall be given by the court to the United States Department of Veterans Affairs not less than 15 days prior to the date fixed for the hearing.

West's F.S.A. § 744.634(2)

(3) The court need not appoint a guardian ad litem to represent the ward at the hearing provided for in subsection (2). If the residence of the next kin of the ward is known, notice by registered mail shall be sent to such relative. Notice also shall be served on the ward; or, if the ward is mentally incapable of understanding the matter at issue, the notice may be served on the person in charge of the institution where the ward is detained, or on the person having charge or custody of the ward.

West's F.S.A. § 744.634 (3)

#### **Certified copies of public record made available**

When a copy of any public record is required by the U.S. Department of Veterans Affairs to be used in determining the eligibility of any person to participate in the benefits made available by the U.S. Department of Veterans Affairs, the official charged with the custody of such public record, shall without charge, provide the applicant for such benefits or any person acting on her or his behalf, or authorized representatives of the U.S. Department of Veterans affairs, a certified copy of such record.

West's F.S.A. § 744.637

#### **Clerk of the circuit court; fees; duties**

Upon issuing letter so f guardianship or letter appointing a guardian for the estate of a minor or incompetent, the clerk of the circuit court shall send to the regional office of the U.S. Department of Veterans Affairs having jurisdiction in this State two certified copies of the letters and two certified copies of the bond approved by the court, without charge or expense to the estate involved. The clerk shall also send copies to the property appraiser and tax collector in each county in which the ward owns real property.

West's F.S.A. § 744.638

#### **Final Settlement if guardianship; paper required by the U.S. Dept. of VA**

A certified copy of the final settlement so made in every case must be filed with the U.S. Dept. of Veterans Affairs by the clerk of the court.

West's F.S.A § 744.646

**Probate Rules on Notice & Service Requirements  
(Rules not directly referenced in statute)**

**Part I. General**

**Adversary Proceedings:**

(d) Notice and Procedure in Adversary Proceedings.

(1) Petitioner shall serve formal notice.

(2) After service of formal notice, the proceedings, as nearly as practicable, shall be conducted similar to suits of a civil nature and the Florida Rules of Civil Procedure shall govern, including entry of defaults.

(3) The court on its motion or on motion of any interested person may enter orders to avoid undue delay in the main administration.

(4) If a proceeding is already commenced when an order is entered determining the proceeding to be adversary, it shall thereafter be conducted as an adversary proceeding. The order shall require interested persons to serve written defenses, if any, within 20 days from the date of the order. It shall not be necessary to re-serve the petition except as ordered by the court.

(5) When the proceedings are adversary, the caption of subsequent pleadings, as an extension of the probate caption, shall include the name of the first petitioner and the name of the first respondent.

Probate Rule 5.025

**Attorneys Withdrawal or Limited Appearance:**

An attorney may withdraw or limit attorney's appearance with approval by the Court, after filing a motion setting forth the reasons and serving a copy on the client and interested persons.

Probate Rule 5.030

**Notice Defined:**

(a) *Formal Notice.*

(1) When formal notice is given, a copy of the pleading or motion shall be served on interested persons, together with a notice requiring the person served to serve written defenses on the person giving notice within 20 days after service of the notice, exclusive of the day of service, and to file the original of the written defenses with the clerk of the court either before service or immediately thereafter, and notifying the person served that failure to serve written defenses as required may result in a judgment or order for the relief demanded in the pleading or motion, without further notice.

(2) After service of formal notice, informal notice of any hearing on the pleading or motion shall be served on interested persons, provided

that if no written defense is served within 20 days after service of formal notice on an interested person, the pleading or motion may be considered ex parte as to that person, unless the court orders otherwise.

(3) Formal notice shall be served:

(A) by sending a copy by any commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt as follows:

- (i) to the attorney representing an interested person; or
- (ii) to an interested person who has filed a request for notice at the address given in the request for notice; or
- (iii) to an incapacitated person to the person's usual place of abode and to the person's legal guardian, if any, at the guardian's usual place of abode or regular place of business; or, if there is no legal guardian, to the incapacitated person at the person's usual place of abode and on the person, if any, having care or custody of the incapacitated person at the usual place of abode or regular place of business of such custodian; or
- (iv) on any other individual to the individual's usual place of abode or to the place where the individual regularly conducts business; or
- (v) on a corporation or other business entity to its registered office in Florida or its principal business office in Florida or, if neither is known after reasonable inquiry, to its last known address; or

(B) as provided in the Florida Rules of Civil Procedure for service of process; or

(C) as otherwise provided by Florida law for service of process.

(4) Service of formal notice pursuant to subdivision (3)(A) shall be complete on receipt of the notice. Proof of service shall be by verified statement of the person giving the notice, and there shall be attached to the verified statement the signed receipt or other evidence satisfactory to the court that delivery was made to the addressee or the addressee's agent.

(5) If service of process is made pursuant to Florida law, proof of service shall be made as provided therein.

(b) *Informal Notice.* --When informal notice of a petition or other proceeding is required or permitted, it shall be served as provided in rule 5.041(b).

(c) *"Notice" Defined.* --In these rules, the Florida Probate Code, and the Florida Guardianship Law "notice" shall mean informal notice unless formal notice is specified.

(d) *Formal Notice Optional.* --Formal notice may be given in lieu of informal notice at the option of the person giving notice unless the court orders otherwise. When formal notice is given in lieu of informal notice, formal notice shall be given to all interested persons entitled to notice.

Probate Rule 5.040

**Service of Pleading & Papers:**

(a) *Service is required:* Unless the court orders otherwise, every petition or motion for an order determining rights of an interested person, and every other pleading or paper filed in the particular proceeding which is the subject matter of such petition or motion, except applications for witness subpoenas, shall be served on interested persons unless these rules, the Florida Probate Code, or the Florida Guardianship Law provides otherwise. No service need be made on interested persons against whom a default has been entered, or against whom the matter may otherwise proceed ex parte, unless a new or additional right or demand is asserted.

(b) *Service; How Made.* --When service is required or permitted to be made on an interested person represented by an attorney, service shall be made on the attorney unless service on the interested person is ordered by the court. Except when serving formal notice, or when serving a motion, pleading, or other paper in the manner provided for service of formal notice, service shall be made by delivering or mailing a copy of the motion, pleading, or other paper to the attorney or interested person at the last known address or, if no address is known, leaving it with the clerk of the court. Service by mail shall be complete upon mailing except when serving formal notice or when making service in the manner of formal notice. Delivery of a copy within this rule shall be complete upon

- (1) handing it to the attorney or to the interested person, or
- (2) leaving it at the attorney's or interested person's office with the clerk or other person in charge thereof, or
- (3) if there is no one in charge, leaving it in a conspicuous place therein, or
- (4) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing that person of the contents; or
- (5) transmitting it by facsimile to the attorney's or interested person's office with a cover sheet containing the sender's name, firm, address, telephone number, facsimile number, and the number of pages transmitted. When delivery is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile delivery occurs when transmission is complete.

Service by delivery after 4:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

Probate Rule 5.041

**Time:**

a) *Computation.* --In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the period begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. When the period is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded. Any day the clerk's office is closed shall be deemed a legal holiday for purposes of this rule.

(c) *Service for hearing:* A copy of any written petition or motion which may not be heard ex parte and a copy of the notice of the hearing thereon shall be served a reasonable time before the time specified for the hearing.

(d) *Additional Time after Service by Mail.* --Except when serving formal notice, or when serving a motion, pleading, or other paper in the manner provided for service of formal notice, when an interested person has the right or is required to act within a prescribed period after the service of notice or other paper on the interested person and the notice or paper is served by mail, 5 days shall be added to the prescribed period

Probate Rule 5.042

**Request for Notice and Copies of Pleadings:**

(a) *Request.* --Any interested person who desires notice of proceedings in the estate of a decedent or ward may file a separate written request for the notice of further proceedings, designating therein such person's residence and post office address. When such person's residence or post office address changes, a new designation of such change shall be filed in the proceedings. A person filing such request, or address change, shall also deliver a copy thereof to the clerk, who shall forthwith mail it to the attorney for the personal representative or guardian, noting on the original the fact of mailing.

(b) *Notice and copies.* --A party filing a request shall be served thereafter by the moving party with notice of further proceedings and with copies of subsequent pleadings and papers as long as the party is an interested person. A party filing a request shall be served thereafter by the moving party with notice of further proceedings and with copies of subsequent pleadings and papers as long as the party is an interested person.

Probate Rule 5.046

**Request & notices for interested persons.**

(a) *Request.* --Any interested person who desires notice of proceedings in the estate of a decedent or ward may file a separate written request for the notice of further proceedings, designating therein such person's residence and post office address. When such person's residence or post office address changes, a new designation of such change shall be filed in the proceedings.

A person filing such request, or address change, shall also deliver a copy thereof to the clerk, who shall forthwith mail it to the attorney for the personal representative or guardian, noting on the original the fact of mailing.

(b) *Notice and copies.* --A party filing a request shall be served thereafter by the moving party with notice of further proceedings and with copies of subsequent pleadings and papers as long as the party is an interested person.  
Probate Rule 5.060

### **Designation for Personal Representative or Guardian/ Designation of Resident Agent and Acceptance**

(f) *Effect of Designation and Acceptance.* --The designation of and acceptance by the resident agent shall constitute consent to service of process or notice on the agent and shall be sufficient to bind the personal representative or guardian:

- (1) in its representative capacity in any action; and
- (2) in its personal capacity only in those actions in which the personal representative or guardian is sued personally for claims arising from the administration of the estate or guardianship.

(g) *Successor Agent.* --If the resident agent dies, resigns, or is unable to act for any other reason, the personal representative or guardian shall appoint a successor agent within 10 days after receiving notice that such event has occurred.

Probate Rule 5.110

### **Administrator Ad Litem and Guardian Ad Litem :**

(c) *Notice:* Within 10 days after appointment, the petitioner shall deliver or mail conformed copies of the petition for appointment of a guardian ad litem and order to any guardian, or if there is no guardian, to the living natural

(d) *Report.* --The guardian ad litem shall deliver or mail conformed copies of any written report or finding of the guardian ad litem's investigation and answer filed in the proceedings, petition for compensation and discharge, and the notice of hearing on the petition to any guardian, or in the event that there is no guardian, to the living natural guardians or the living natural guardian having legal custody of the minor or incapacitated person.

(e) *Service of Petition and Order.* --Within ten days after appointment, the petitioner for an administrator ad litem shall deliver or mail conformed copies of the petition for appointment and order to the attorney of record of each beneficiary and to each known beneficiary not represented by an attorney of record.

Probate Rule 5.120

### **Curators:**

(c) *Notice.* --Formal notice shall be given to the person apparently entitled to letters, if any. If it is likely that the decedent's property will be wasted, destroyed, or removed beyond the jurisdiction of the court and if the appointment of a curator would be delayed by giving notice, the court may appoint a curator without notice.

Probate Rule 5.122

## **Part II. Probate**

### **Notice of Petition for Administration**

Except as may otherwise be required by these rules or the Florida Probate Code, no notice need be given of the petition for administration or the issuance of letters when it appears that the petitioner is entitled to preference of appointment. Before letters shall be issued to any person who is not entitled to preference, formal notice shall be served on all known persons qualified to act as personal representative and entitled to preference equal to or greater than the applicant, unless those entitled to preference waive it in writing.

Probate Rule 5.210

### **Notice of Administration**

(a) *Service.* --The personal representative shall promptly serve a copy of the notice of administration on the following persons who are known to the personal representative and who were not previously served under section 733.2123, Florida Statutes:

- (1) the decedent's surviving spouse
- (2) all beneficiaries;
- (3) a trustee of any trust described in section 733.707(3), Florida Statutes and each beneficiary of the trust as defined in section 737.303(4)(b), if each trustee is also a personal representative of the estate; and
- (4) persons who may be entitled to exempt property in the manner provided for service of formal notice. The personal representative may similarly serve a copy of the notice on any devisee under another will or heirs or others who claim or may claim an interest in the estate.

(c) *Copy of Will.* --Unless the court directs otherwise, the personal representative of a testate estate shall, upon written request, furnish a copy of the will and all codicils admitted to probate to any person on whom the notice of administration was served.

Probate Rule 5.240

### **Notice to Creditors**

(a) *Publication and Service.* --Unless creditors' claims are otherwise barred by law, the personal representative shall promptly publish a notice to creditors and serve a copy of the notice on all creditors of the decedent who are reasonably ascertainable and, if required by law, on the Agency for Health Care Administration. Service of the notice shall be either in the manner provided for informal notice, or in the manner provided for service of formal notice at the option of the personal representative. Service on one creditor by a chosen method shall not preclude service on another creditor by another method.

Probate Rule 5.241

### **Disqualification of Personal Representative; Notification**

Any personal representative who was not qualified to act at the time of

appointment or who would not be qualified for appointment if application for appointment were then made shall immediately file and serve on all interested persons a notice describing:

- (a) the reason the personal representative was not qualified at the time of appointment; or
- (b) the reason the personal representative would not be qualified for appointment if application for appointment were then made and the date on which the disqualifying event occurred.

The personal representative's notice shall state that any interested person may petition to remove the personal representative

Probate Rule 5.310

### **Inventory**

(c) *Service.* --The personal representative shall serve a copy of the inventory and all supplemental and amended inventories on the Department of Revenue, the surviving spouse, each heir at law in an intestate estate, each residuary beneficiary in a testate estate, and any other interested person who may request it in writing. The personal representative shall file proof of such service.

(e) *Information.* --On reasonable request in writing the personal representative shall provide a beneficiary with information to which the beneficiary is entitled by law.

(f) *Elective Share Proceedings*

The personal representative shall serve the inventory of the elective estate as provided in rule 5.360. Service of an inventory of the elective estate on the Department of Revenue is not required. On reasonable request in writing the personal representative shall provide an interested person with a written explanation of how the inventory value for an asset was determined and shall permit an interested person to examine appraisals on which the inventory values are based.

Probate Rule 5.340

### **Inventory of Safe-deposit Box**

(c) *Service.* --The personal representative shall serve a copy of the inventory on the surviving spouse, each heir at law in an intestate estate, each residuary beneficiary in a testate estate, and any other interested person who may request it in writing. The personal representative shall file proof of such service.

Probate Rule 5.342

### **Accountings Other Than Personal Representatives' Final Accountings**

(b) *Notice of Filing.* --Notice of filing and a copy of any accounting to which this rule applies shall be served on all interested persons. The notice shall state that objections to the accounting must be filed within 30 days from the date of service of notice

(d) *Service of Objections.* --The objecting party shall serve a copy of the objection on the fiduciary filing the accounting and other interested persons.  
Probate Rule 5.345

## **Elective Share**

### (a) Election

(B) *Notice of Petition.* --Upon receipt of the petition, the personal representative shall promptly serve a copy of the petition by formal notice on all interested persons.

### (b) Procedure of Election

(3) *Service of Notice.* --Upon receipt of an election the personal representative shall serve a notice of election within 20 days following service of the election, together with a copy of the election, on all interested persons in the manner provided for service of formal notice.

(4) *Objection to Election.* --Within 20 days after service of the notice of election, an interested person may serve an objection to the election which shall state with particularity the grounds on which the objection is based. The objecting party shall serve copies of the objection on the surviving spouse and the personal representative. If an objection is served, the personal representative shall promptly serve a copy of the objection on all other interested persons who have not previously been served with a copy of the objection.

### (c) *Determination of Entitlement.*

(1) *No Objection Served.* --If no objection to the election is timely served, the court shall enter an order determining the spouse's entitlement to the elective share.

(2) *Objection Served.* --If an objection to the election is timely served, the court shall determine the surviving spouse's entitlement to the elective share after notice and hearing.

### (d) *Procedure to Determine Amount of Elective Share and Contribution.*

(2) *Service of Inventory.* --The inventory of the elective estate required by rule 5.340, together with the petition, shall be served within 60 days after entry of the order determining entitlement to the elective share on all interested persons in the manner provided for service of formal notice.

(4) *Objection to Amount of Elective Share.* --Within 20 days after service of the petition to determine the amount of the elective share, an interested person may serve an objection to the amount of or distribution of assets to satisfy the elective share. The objection shall state with particularity the grounds on which the objection is based. The objecting party shall serve copies of the objection on the surviving spouse and the personal representative. If an objection is served, the personal representative shall promptly serve a copy of the objection on all interested persons who have not previously been served.

### (5) *Determination of Amount of Elective Share and Contribution.*

(A) *No Objection Served.* --If no objection is timely served to the petition

to determine the amount of the elective share, the court shall enter an order on the petition.

(B) *Objection Served.* --If an objection is timely served to the petition to determine the amount of the elective share, the court shall determine the amount of the elective share and contribution after notice and hearing.

Probate Rule 5.360

#### **Petition for Dower**

Formal notice shall be served on persons adversely affected

Probate Rule 5.365

#### **Objections to Petition for Discharge or Final Accounting**

(c) *Service.* --Copies of the objections shall be served by the objector on the personal representative and interested persons not later than 30 days after the last date on which the petition for discharge or final accounting was served on the objector

Probate Rule 5.401

#### **Notice of Lien on Protected Homestead**

(c) *Service.* --A copy of the recorded notice of lien shall be served on interested persons in the manner provided for service of formal notice.

Probate Rule 5.402

#### **Proceedings to Determine Amount of Lien on Protected Homestead**

(c) *Service.* --The petition shall be served on interested persons by formal notice.

Probate Rule 5.403

#### **Notice of Taking Possession of Protected Homestead**

(a) *Filing of Notice.* --If a personal representative takes possession of what appears reasonably to be protected homestead pending a determination of its homestead status, the personal representative shall file a notice of that act.

(c) *Service of Notice.* --The notice shall be served in the manner provided for service of formal notice on interested persons and on any person in actual possession of the property.

Probate Rule 5.404.

#### **Resignation of Personal Representative**

(b) *Service.* --The petition shall be served by formal notice on all interested persons and the personal representative's surety, if any.

(f) *Delivery of Records and Property.* --The resigning personal representative shall immediately upon acceptance of the resignation by the court deliver to the remaining personal representative or the successor fiduciary all of the records of the estate and all property of the estate, unless otherwise directed by the court.

(h) *Notice, Filing, and Objections to Accounting.* --Notice of, filing of, and objections to the accounting of the resigning personal representative shall as provided in rule 5.345

- (i) *Notice Of Filing And Objections To Petition For Discharge.*
- (1) Notice of filing and a copy of the petition for discharge shall be served on all interested persons. The notice shall state that objections to the petition for discharge must be filed within 30 days after the later of service of the petition or service of the accounting on that interested person.
  - (2) Any interested person may file an objection to the petition for discharge within 30 days after the later of service of the petition or service of the accounting on that interested person. Any objection not filed within such time shall be deemed abandoned. An objection shall be in writing and shall state with particularity the item or items to which the objection. An objection shall be in writing and shall state with particularity the item or items to which the objection is directed and the grounds on which the objection is based
  - (3) The objecting party shall serve a copy of the objection on the resigning personal representative and other interested persons.
  - (4) Any interested person may set a hearing on the objections. Notice of the hearing shall be given to the resigning personal representative and other interested persons.
- (j) *Failure to File Accounting or Deliver Records or Property.* --The resigning personal representative shall be subject to contempt proceedings if the resigning personal representative fails to file an accounting or fails to deliver all property of the estate and all estate records under the control of the resigning personal representative to the remaining personal representative or the successor fiduciary within the time prescribed by this rule or by court order  
Probate Rule 5.430

### **Proceedings for Removal**

- (c) *Delivery of Records and Property.* A removed personal representative shall, immediately after removal or within such time prescribed by court order, deliver to the remaining personal representative or to the successor fiduciary all of the records of the estate and all of the property of the estate
- (d) *Failure to File Accounting or Deliver Records and Property.* --If a removed personal representative fails to file an accounting or fails to deliver all property of the estate and all estate records under the control of the removed personal representative to the remaining personal representative or to the successor fiduciary within the time prescribed by this rule or by order, the removed personal representative shall be subject to contempt proceedings.  
Probate Rule 5.440.

### **Ancillary Administration**

Notice: Before ancillary letters shall be issued to any person, formal notice shall be given to:

(1) all known persons qualified to act as ancillary personal representative and whose entitlement to preference of appointment is equal to or greater than petitioner's and who have not waived notice or joined in the petition; and

(2) all domiciliary personal representatives who have not waived notice or joined in the petition.

Probate Rule 5.470.

### **Ancillary Administration, Short Form**

(e) *Notification of Claims Filed.* --If any claim is filed against the estate within the time allowed, the clerk shall send to the foreign personal representative a copy of the claim and a notice setting a date for a hearing to appoint an ancillary personal representative. At the hearing, the court shall appoint an ancillary personal representative according to the preferences as provided by law.

Probate Rule 5.475.

### **Form and Manner of Objecting to Claim**

(b) *Service.* --A personal representative or other interested person who files an objection to the claim shall serve a copy of the objection on the claimant within 10 days after the filing of the objection. If the objection is filed by an interested person other than the personal representative, a copy of the objection shall also be served on the personal representative, a copy of the objection shall also be served on the personal representative within 10 days after the filing of the objection.

(c) *Notice to Claimant.* --An objection shall contain a statement that the claimant is limited to a period of 30 days from the date of service of an objection within which to bring an action as provided by law.

Probate Rule 5.496

### **Personal Representative's Proof of Claim**

(b) *Service.* --The proof of claim shall be served on all interested persons and all claimants listed in the proof of claim at the time of filing, or immediately thereafter

Probate Rule 5.498

### **Form and Manner of Objecting to Personal Representative's Proof of Claim**

(c) *Service.* --The objector shall serve a copy of the objection on the personal representative and on each claimant to which the objection relates within 10 days after the filing of the objection.

Probate Rule 5.499

## **Part III Guardianship**

### **Voluntary Guardianship of Property**

(c) *Notice of Hearing.* --Notice of hearing on the petition for appointment, and any petition for authority to act, shall be given to the ward and any person to whom the ward requests notice be given, which request can be made in the petition for appointment or a subsequent written request for appointment or a subsequent written request for notice signed by the ward.

(d) *Termination.* --The ward may terminate a voluntary guardianship by filing a notice of termination. Copies of the notice shall be served on all interested persons. The guardian shall file a petition for discharge in accordance with these rules.

*Probate Rule 5.552*

### **Guardianships of Minors**

(c)*Notice.* --Formal notice of the petition for appointment of guardian shall be served on any parent who is not a petitioner or, if there is no parent, on the persons with whom the minor resides and on such other persons as the court may direct.

*Probate Rule 5.555*

### **Petition for Appointment of a Guardian of An Incapacitated Person**

(b) *Notice.* --Notice of filing the petition for appointment of guardian shall be served as a part of the notice of filing the petition to determine incapacity, but shall be served a reasonable time before the hearing on the petition or other pleading seeking appointment of a guardian.

(c) *Service on Public Guardian.* --If the petitioner requests appointment of the public guardian, a copy of the petition and the notice shall be served on the public guardian.

*Probate Rule 5.560.*

### **Petition for Extraordinary Authority**

(b) *Notice.*

(1) The petition shall be served by formal notice. For good cause shown, the court may shorten the time for response to the formal notice and may set an expedited hearing.

(2) The petition shall be served on the guardian of the person, if the guardian is not the petitioner, the ward, the next of kin, if any, those interested persons who have filed requests for notices and copies of pleadings, and such other persons as the court may direct.

*Probate Rule 5.635*

### **Settlement of Minors' Claims**

(c) *Notice.* --Notice of the petition shall be given to the court-appointed guardians for the minor, to the natural guardians or other persons with legal custody of the minor, to the minor if age 14 or older, and to the minor's next of kin if required by the court.

*Probate Rule 5.636*

### **Termination of Guardianship on Change of Domicile of Resident Ward**

(e) *Service.* --A copy of the petition for discharge and of the notice of petition for discharge shall be served on the foreign guardian and such other persons as the court may direct.

(f) *Objections.* --Objections shall be in the form and be filed within the time set forth in the notice of petition for discharge. A copy of the objections shall be served by the objector on the Florida guardian and the foreign guardian.

(g) *Disposition of Objections.* --Any interested person may set a hearing on the objections. Notice of the hearing shall be served on the Florida guardian, the foreign guardian, and any other interested persons. If a notice of hearing on the objections is not served within 90 days of filing of the objections, the objections will be deemed abandoned.

*Probate Rule 5.670*

### **Termination of Guardianship**

(e) *Service.* --The guardian applying for discharge shall serve a copy of the petition for discharge and final report on the ward, on the personal representative of a deceased ward, or if there are no assets justifying qualification of a personal representative for the estate of a deceased ward, on the known next of kin of the deceased ward, or such other persons as the court may direct; provided, however, that a guardian of the property who is subsequently appointed personal representative shall serve a copy of the petition for discharge and final report on all beneficiaries of the ward's estate.

*Probate Rule 5.680*

### **Annual Guardianship Reports**

(b) *Service.* --Copies of the annual plan and accounting shall be served on the ward, unless the ward is a minor under the age of 14 years or is totally incapacitated, and the attorney for the ward, if any. With the approval of the court, service on the ward may be accomplished by serving the attorney for the ward. The guardian shall serve copies on such other persons as the court may direct.

*Probate Rule 5.695*

### **Magistrates' Review of Guardianship Accountings and Plans**

(f) *Filing Report; Service; Exceptions.* --The magistrate shall file a report with the court and serve copies on the parties. The parties may serve exceptions to the

report within 10 days from the date the report is served on them. If no exceptions are timely filed, the court shall take appropriate action on the report. All timely filed exceptions may be heard by the court on reasonable notice by any party.

Probate Rule 5.697

**Objections to Guardianship Reports**

(c) *Service.* --The objector shall serve a copy of the objection on each guardian and on any other person as directed by the court.

Probate Rule 5.700

**Petition for Interim Judicial Review**

(b) *Service.* --The petition shall be served by formal notice.

Probate Rule 5.705

**Part IV: Expedited Judicial Intervention Concerning Medical Treatment  
Procedures**

**Expedited Judicial Intervention Concerning Medical Treatment Procedures**

(c) *Notice.* --Unless waived by the court, notice of the petition and the preliminary hearing shall be served on the following persons who have not joined in the petition or otherwise consented to the proceedings:

- (1) the patient;
- (2) the patient's spouse and the patient's parents, if the patient is a minor;
- (3) the patient's adult children;
- (4) any guardian and any court-appointed health care decision-maker;
- (5) any person designated by the patient in a living will or other document to exercise the patient's health care decision in the event of the patient's incapacity;
  
- (6) the administrator of the hospital, nursing home, or other facility where the patient is located;
- (7) the patient's principal treating physician and other physicians believed to have provided any medical opinion or advice about any condition of the patient relevant to this petition;
- (8) all other persons the petitioner believes may have information concerning the expressed wishes of the patient; and
- (9) such other persons as the court may direct.

*Probate Rule 5.900*